

CHAPTER 160: TELECOMMUNICATIONS REGULATIONS

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GENERAL

§160.001 PURPOSE.

The purpose and intent of this Telecommunications Ordinance (the "Ordinance") is to:

- (A) establish a local policy concerning Telecommunications Providers and services;
- (B) establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of Telecommunications Providers and services;

- (C) promote competition in telecommunications;
- (D) minimize unnecessary local regulation of Telecommunications Providers and services;
- (E) encourage the provision of advanced and competitive Telecommunications Services on the widest possible basis to the businesses, institutions and residents of the Village;
- (F) permit and manage reasonable access to the Public Ways of the Village for telecommunications purposes on a competitively neutral basis;
- (G) conserve the limited physical capacity of the Public Ways held in public trust by the Village;
- (H) 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;
- (I) secure fair and reasonable compensation to the Village and the residents of the Village for permitting private use of the Public Ways;
- (J) assure that all Telecommunications Carriers providing facilities or services within the Village comply with the ordinances, rules and regulations of the Village;
- (K) assure that the Village can continue to protect fairly and responsibly the public health, safety and welfare;
- (L) enable the Village to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

§160.002 DEFINITIONS.

For the purpose of this Ordinance, and the interpretation and enforcement thereof, the following words and phrases when capitalized shall have the meanings given herein, unless the context indicates that another meaning is intended. When not inconsistent with the context, words in the present tense include the future, words in plural include the singular, and words in singular include the plural.

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.

Annual Gross Revenue. . . . reserved.

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 the Village as that term is defined in the Cable Act.

Cable Service. The same meaning provided by the Cable Act.

Corporate Authorities. The President and Board of Trustees of the Village.

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.

FCC or Federal Communications Commission. 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 pursuant to the Ordinance to occupy specific Public Ways of the Village for the purpose of providing Telecommunications Services to any person or area in the Village.

Franchise Area. The corporate limits of the Village including all territory thereafter annexed to the Village.

Grantee. The natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind granted a franchise or license by the Village pursuant to the Ordinance and its lawful successor, transferee or assignee.

Gross Revenue. All of the revenue, as determined in accordance with generally accepted accounting principles, that is derived from or in conjunction with the operation of a telecommunications system in the Village including, without limitation, all revenue received for the provision of service, installation, reconnection, sale of products, and the imputed value of free service and the value of all goods and services received by a Grantee in exchange for the service; provided, however, that no billings shall be imputed related to the services provided to the Village.

ICC or Illinois Commerce Commission. The State administrative agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers, services and providers in the State of Illinois.

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. The utility poles, utility facilities and Telecommunications Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

Person. Corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and 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, or devoted to highway purposes not inconsistent with Telecommunications Facilities.

Public Way. All public streets and utility easements, as those terms are defined therein, 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.

State. The State of Illinois.

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.

Telecommunications Carrier. 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. 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.

Telecommunications System. See **Telecommunications Facilities.**

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 ICC.

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 Deer Park.

Village Property. 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 Ordinance.

§160.003 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 §§ 160.020, 160.021 and 160.022 of this Ordinance.

§160.004 TELECOMMUNICATIONS LICENSE.

Except as otherwise provided therein, 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 §§ 160.030-160.046 of this Ordinance.

§160.005 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 also to 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 §§ 160.050-160.067 of this Ordinance.

§160.006 CABLE TELEVISION FRANCHISE.

Except as otherwise provided herein, any Telecommunications Carrier who desires 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 §§ 160.070-160.095 of this Ordinance.

§160.007 APPLICATION TO EXISTING FRANCHISE ORDINANCES AND AGREEMENTS.

This Ordinance shall have no effect on any existing telecommunications or cable franchise ordinance or telecommunications or cable franchise agreement until:

- (A) the expiration of said franchise ordinance or agreement;
- (B) an amendment is made 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.

§160.008 PENALTIES.

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

§160.009 OTHER REMEDIES.

Nothing in the franchise ordinance or franchise agreement shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this Ordinance.

§160.010 SEVERABILITY.

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

REGISTRATION OF TELECOMMUNICATIONS CARRIERS AND PROVIDERS

§160.020 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 §§ 160.020-160.022 on forms to be provided by the Village, which shall include the following:

- (A) The identity and legal status of the registrant, including any affiliates.
- (B) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- (C) A description of registrant's existing or proposed Telecommunications Facilities within the Village.
- (D) 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.
- (E) Information sufficient to determine whether the registrant is subject to Public Way licensing or franchising under this Ordinance.
- (F) 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.
- (G) 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.
- (H) 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.
- (I) Such other information as the Village may reasonably require.

§160.021 REGISTRATION FEE.

Each application for registration as a Telecommunications Carrier or provider shall be accompanied by a fee of Twenty-Five Dollars (\$25.00).

§160.022 PURPOSE OF REGISTRATION.

The purpose of registration hereunder is to:

- (A) 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;
- (B) assist the Village in enforcement of this Ordinance;
- (C) assist the Village in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the Village; and
- (D) assist the Village in monitoring compliance with local, state and federal laws.

§160.030 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.

Except as expressly provided in a license agreement, the granting of a license shall not take the place of any license, permit, or approval that is, or may in the future be, required to be secured by the Grantee from any governmental authority or person in order to:

- (A) erect, construct, reconstruct, install, use, maintain, test, inspect, operate, repair, relocate, or remove a Telecommunications System;
- (B) access, possess, or otherwise use any real property in connection with a Telecommunications System; or
- (C) engage in, maintain, operate, or carry on a business within the Village.

§160.031 LICENSE APPLICATION.

Any person that desires a telecommunications license pursuant to this Chapter shall file an application with the Village which shall include the following information:

- (A) The identity of the license applicant, including all affiliates of the applicant.
- (B) A description of the Telecommunications Services that are or will be offered or provided by licensee over its Telecommunications Facilities.
- (C) A description of the transmission medium that will be used by the licensee to offer or provide such Telecommunications Services.

- (D) Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:
 - (1) the location and route requested for applicant's proposed Telecommunications Facilities;
 - (2) 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;
 - (3) the location(s), if any, for interconnection with the Telecommunications Facilities of other Telecommunications Carriers;
 - (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to remove or relocate temporarily or permanently.
- (E) 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.
- (F) If applicant is proposing an underground installation in existing ducts or conduits within the Public Ways, information in sufficient detail to identify:
 - (1) the Excess Capacity currently available in such ducts or conduits before installation of applicant's Telecommunications Facilities;
 - (2) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (G) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the Public Ways:
 - (1) the location proposed for the new ducts or conduits;
 - (2) the Excess Capacity that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (H) A preliminary construction schedule and completion date.
- (I) A preliminary traffic control plan in accordance with the IDOT Manual on Uniform Traffic Control Devices.
- (J) 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.
- (K) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Telecommunications Facilities and Services described in the application.
- (L) 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.

- (M) All fees, deposits or charges required pursuant to §§ 160.100 through 160.113 of this Chapter.
- (N) Such other and further information as may be required by the Village.

§160.032 DETERMINATION BY THE VILLAGE.

Within sixty (60) days after receiving a properly completed application pursuant to § 160.031 hereof, the Village shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the Village is unable to issue a written determination within the said sixty (60) days, it shall automatically have an additional sixty (60) days after providing written notice with the reasons for the extension within which to respond. If the application is denied, the written determination shall include the reasons for denial.

- (A) The financial and technical ability of the applicant.
- (B) The legal ability of the applicant.
- (C) The capacity of the Public Ways to accommodate the applicant's proposed facilities.
- (D) The capacity of the Public Ways to accommodate additional utility and Telecommunications Facilities if the license is granted.
- (E) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- (F) The public interest in minimizing the cost and disruption of construction within the Public Ways.
- (G) The service that applicant will provide to the community and region.
- (H) The effect, if any, on public health, safety and welfare if the license is granted.
- (I) The availability of alternate routes and/or locations for the proposed facilities.
- (J) Applicable federal, state and local telecommunications laws, regulations and policies.
- (K) Such other factors as may demonstrate that the grant to use the Public Ways will serve the community interest.

§160.033 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.

§160.034 NONEXCLUSIVE GRANT.

No license granted under this Article 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.

§160.035 REVOCABILITY.

Every license shall, whether or not specifically stated in the license agreement, be revocable in accordance with the terms of this Article and shall be deemed to create only a license to use the Public Ways to the extent and in the manner provided herein, which license shall terminate automatically upon the expiration, revocation, or other termination of the license agreement granting it.

§160.036 RIGHTS GRANTED.

No license granted under this Article 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.

§160.037 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.

§160.038 LICENSE ROUTE.

A telecommunications license granted under this Article shall be limited to a grant of specific Public Ways and defined portions thereof.

§160.039 LOCATION OF FACILITIES.

Unless otherwise specified in a license agreement, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (A) Telecommunications Facilities shall be installed within an existing underground duct or conduit whenever Excess Capacity exists within such Utility Facility.
- (B) A licensee 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.
- (C) Whenever any existing electric utilities, cable facilities or Telecommunications Facilities are located underground within a Public Way of the Village, a licensee with permission to occupy the same Public Way must also locate its Telecommunications Facilities underground.
- (D) 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.
- (E) Whenever new Telecommunications Facilities exhaust the capacity of a public street or utility easement to accommodate reasonably future Telecommunications Carriers or Facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities (“New Facilities”) for nondiscriminatory access to future Telecommunications Carriers. In the event that a Grantee

constructs New Facilities, Grantee may recapture the cost of said construction by leasing, assigning or otherwise transferring any unused portion of the New Facilities to other Telecommunication Providers for a reasonable fee or through cost recapture agreements approved by the Village. In no event shall the Village be responsible for any of the Grantee's costs associated with the construction of the New Facilities.

§160.040 CONSTRUCTION PERMITS.

All licensees are required to obtain construction permits for Telecommunications Facilities as required in § 160.122 of this Ordinance, provided, however, that nothing in this Article 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.

§160.041 COMPENSATION TO VILLAGE.

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

§160.042 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 §§ 160.050-160.067 hereof.

§160.043 AMENDMENT OF GRANT.

- (A) 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 Ordinance.
- (B) If Grantee is 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.

§160.044 RENEWAL APPLICATIONS.

A Grantee that desires to renew its license under this Article shall, not more than one hundred eighty (180) days nor less than ninety (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:

- (A) The information required pursuant to § 160.031 of this Article.
- (B) Any information required pursuant to the license agreement between the Village and the Grantee.

§160.045 RENEWAL DETERMINATIONS.

Within ninety (90) days after receiving a properly completed application pursuant to § 160.044 hereof, the Village 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 denied, the written determination shall include the reasons for non-renewal.

- (A) The financial and technical ability of the applicant.
- (B) The legal ability of the applicant.
- (C) The continuing capacity of the Public Ways to accommodate the applicant's existing facilities.
- (D) The applicant's compliance with the requirements of this Ordinance and the license agreement.
- (E) Applicable federal, state and local telecommunications laws, rules and policies.
- (F) Such other factors as may demonstrate that the continued grant to use the Public Ways will serve the community interest.

§160.046 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 Ordinance, have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by the Village.

TELECOMMUNICATIONS FRANCHISE

§ 160.050 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.

Except as expressly provided in a franchise agreement, the granting of a franchise shall not take the place of any license, permit, or approval that is, or may in the future be, required to be secured by the Grantee from any governmental authority or person in order to:

- (A) erect, construct, reconstruct, install, use, maintain, test, inspect, operate, repair, relocate, or remove a Telecommunications System;
- (B) access, possess, or otherwise use any real property in connection with a Telecommunications System; or
- (C) engage in, maintain, operate, or carry on a business within the Village.

§160.051 TELECOMMUNICATIONS FRANCHISE APPLICATION.

Any person that desires a telecommunications franchise pursuant to this § 160.051 shall file an application with the Village which shall include the following information:

- (A) The identity of the franchise applicant, including all affiliates of the applicant.

- (B) A description of the Telecommunications Services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- (C) A description of the transmission medium that will be used by the franchisee to offer or provide such Telecommunications Services.
- (D) Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:
 - (1) the location and route requested for applicant's proposed Telecommunications Facilities.
 - (2) 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.
 - (3) the location(s), if any, for interconnection with the Telecommunications Facilities of other Telecommunications Carriers.
 - (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to remove or relocate temporarily or permanently.
- (E) 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.
- (F) If applicant is proposing an underground installation in existing ducts or conduits within the Public Ways, information in sufficient detail to identify:
 - (1) the Excess Capacity currently available in such ducts or conduits before installation of applicant's Telecommunications Facilities;
 - (2) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (G) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the Public Ways:
 - (1) the location proposed for the new ducts or conduits;
 - (2) the Excess Capacity that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (H) A preliminary construction schedule and completion dates.
- (I) A preliminary traffic control plan in accordance with the IDOT Manual on Uniform Traffic Control Devices.
- (J) 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.
- (K) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Telecommunications Facilities and Services described in the application.

- (L) 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.
- (M) 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.
- (N) An accurate map showing the location of any existing Telecommunications Facilities in the Village that applicant intends to use or lease.
- (O) 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.
- (P) A description of applicant's access and line extension policies.
- (Q) The area or areas of the Village the applicant desires to serve and a schedule for build-out to the entire franchise area.
- (R) All fees, deposits or charges required pursuant to §§ 160.100-160.113 of this Ordinance.
- (S) Such other and further information as may be requested by the Village.

§160.052 DETERMINATION BY THE VILLAGE.

Within sixty (60) days after receiving a properly completed application pursuant to § 160.051 hereof, the Village shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the Village is unable to issue a written determination within the said sixty (60) days, it shall automatically have an additional sixty (60) days after providing written notice with the reasons for the extension within which to respond. If the application is denied, the written determination shall include the reasons for denial.

- (A) The financial and technical ability of the applicant.
- (B) The legal ability of the applicant.
- (C) The capacity of the Public Ways to accommodate the applicant's proposed facilities.
- (D) The capacity of the Public Ways to accommodate additional utility and Telecommunications Facilities if the franchise is granted.
- (E) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
- (F) The public interest in minimizing the cost and disruption of construction within the Public Ways.
- (G) The service that applicant will provide to the community and region.
- (H) The effect, if any, on public health, safety and welfare if the franchise requested is granted.

- (I) The availability of alternate routes and/or locations for the proposed facilities.
- (J) Applicable federal, state and local telecommunications laws, regulations and policies.
- (K) Such other factors as may demonstrate that the grant to use the Public Ways will serve the community interest.

§160.053 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.

§160.054 NONEXCLUSIVE GRANT.

No franchise granted under this Article 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.

§160.055 REVOCABILITY.

Every franchise shall, whether or not specifically stated in the franchise agreement, be revocable in accordance with the terms of this Article and shall be deemed to create only a license to use the Public Ways to the extent and in the manner provided herein, which license shall terminate automatically upon the expiration, revocation, or other termination of the franchise agreement granting it.

§160.056 TERM OF GRANT.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of ten (10) years.

§160.057 RIGHTS GRANTED.

No franchise granted under this Article 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.

§160.058 FRANCHISE TERRITORY.

A telecommunications franchise granted under this Article 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.

§160.059 LOCATION OF FACILITIES.

Unless otherwise specified in a franchise agreement, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- (A) Telecommunications Facilities shall be installed within an existing underground duct or conduit whenever Excess Capacity exists within such Utility Facility.

- (B) A franchisee 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.
- (C) Whenever any existing electric utilities, cable facilities or Telecommunications Facilities are located underground within a Public Way of the Village, a franchisee with permission to occupy the same Public Way must also locate its Telecommunications Facilities underground.
- (D) 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.
- (E) Whenever new Telecommunications Facilities exhaust the capacity of a Public Street or Utility Easement to accommodate reasonably future Telecommunications Carriers or Facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities (“New Facilities”) for nondiscriminatory access to future carriers. In the event that a Grantee constructs New Facilities, Grantee may recapture the cost of said construction by leasing, assigning or otherwise transferring any unused portion of the New Facilities to other Telecommunication Providers for a reasonable fee or through cost recapture agreements approved by the Village. In no event shall the Village be responsible for any of the Grantee’s costs associated with the construction of the New Facilities.

§160.060 CONSTRUCTION PERMITS.

All franchisees are required to obtain construction permits for Telecommunications Facilities as required in § 160.122 of this Ordinance provided, however, that nothing in this Article 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.

§160.061 COMPENSATION TO VILLAGE.

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

§160.062 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 Article shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

§160.063 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.

§160.064 AMENDMENT OF GRANT.

- (A) 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 Ordinance.
- (B) 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.

§160.065 RENEWAL APPLICATIONS.

A Grantee that desires to renew its franchise under this Article shall, not more than two hundred forty (240) days nor less than one hundred fifty (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:

- (A) The information required pursuant to § 160.051 of this Article.
- (B) Any information required pursuant to the franchise agreement between the Village and the Grantee.

§160.066 RENEWAL DETERMINATIONS.

Within one hundred twenty (120) days after receiving a properly completed application pursuant to § 160.065 hereof, the Village 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 denied, the written determination shall include the reasons for non-renewal.

- (A) The financial and technical ability of the applicant.
- (B) The legal ability of the applicant.
- (C) The continuing capacity of the Public Ways to accommodate the applicant's existing facilities.
- (D) The applicant's compliance with the requirements of this Ordinance and the franchise agreement.
- (E) Applicable federal, state and local telecommunications laws, rules and policies.
- (F) Such other factors as may demonstrate that the continued grant to use the Public Ways will serve the community interest.

§160.067 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 Ordinance, have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by the Village.

CABLE FRANCHISE

§160.070 DEFINITIONS.

For the purpose of this Section, the following terms, phrases, words and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. All terms not otherwise defined herein are defined in §§ 160.002-160.006 of this Ordinance. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory and not merely directory.

Agency. The person, department or agency designated by the Village to act in specified matters related to cable television, or in the absence of such designation, the President and Board of Trustees of the Village.

Auxiliary Services. Any communication service in addition to “regular subscriber services” including, but not limited to, services for which a per-program or per-channel charge is made, pay TV, burglar alarm services, data or other electronic transmission services, facsimile reproduction services, meter reading services and home shopping services, interactive two-way services and any other service utilizing any facility or equipment of a cable television system operating pursuant to a franchise granted under this ordinance.

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

Cable Television System (or “CATV system”). Any non-broadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that distributes or is designed to distribute to subscribers audio, video and other forms of electronic or electrical signals, but such term shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwelling under common ownership, control or management which does not use municipal rights-of-way.

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.

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.

Depreciated Value. The value as shown on the Grantee’s books and records of all the cable television system’s tangible assets after depreciation which shall be calculated to the end of the Grantee’s last fiscal year and which shall be based on a straight line depreciation method over the term of the franchise with no salvage remaining at the end of the term. Said value shall not include “good will” or any value that Grantee’s books and records attribute to the franchise.

Fair Market Value. The price that a willing buyer would pay to a willing seller for a going business based on the system valuation and sale multiples prevailing in the industry.

Franchise Area. The corporate limits of the Village including all territory thereafter annexed to the Village.

Gross Revenues. All revenue derived directly or indirectly from the operation or use of all or part of a Cable Television System franchised pursuant to the Ordinance by the Grantee, its affiliates, subsidiaries, parents, and any person in which the Grantee has a financial interest including, but not limited to, revenue from regular subscriber service fees, auxiliary service fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the Grantee herein imposed directly upon any subscriber or user by the State, local or other governmental unit and collected by the Grantee on behalf of said governmental unit.

Net Profit. The amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the cable television system including the franchise fee, interest, depreciation and Federal or State income taxes, to be determined in accordance with generally accepted accounting principles consistently applied.

Regular Subscriber Service. The distribution to subscribers of signals over the cable television 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.

Schools. All public, and private, elementary and secondary schools, junior colleges, colleges and universities which have been granted a certificate of recognition by the Illinois State Board of Education, pursuant to Section 2-3.25 of the Illinois School Code.

Subscriber. Any person 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 television system, and does not further distribute such service(s).

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

§160.071 CABLE FRANCHISE.

A cable franchise shall be required of any Telecommunications Carrier who desires to occupy specific Public Ways of the Village for the purpose of providing Cable Service to persons in the Village.

§160.072 CABLE FRANCHISE APPLICATION.

Any person that desires a cable franchise pursuant to this Article shall file an application with the Village which shall include the following information:

- (A) The identity of the franchise applicant, including all affiliates of the applicant.
- (B) A description of the Telecommunications Services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.
- (C) A description of the transmission medium that will be used by the franchisee to offer or provide such Telecommunications Services.
- (D) Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:

- (1) the location and route requested for applicant's proposed Telecommunications Facilities.
 - (2) 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.
 - (3) the location(s), if any, for interconnection with the Telecommunications Facilities of other Telecommunications Carriers.
 - (4) the specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to remove or relocate temporarily or permanently.
- (E) 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.
- (F) If applicant is proposing an underground installation in existing ducts or conduits within the Public Ways, information in sufficient detail to identify:
- (1) the Excess Capacity currently available in such ducts or conduits before installation of applicant's Telecommunications Facilities;
 - (2) the Excess Capacity, if any, that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (G) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the Public Ways:
- (1) the location proposed for the new ducts or conduits;
 - (2) the Excess Capacity that will exist in such ducts or conduits after installation of applicant's Telecommunications Facilities.
- (H) A preliminary construction schedule and completion dates.
- (I) A preliminary traffic control plan in accordance with the IDOT Manual on Uniform Traffic Control Devices.
- (J) 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.
- (K) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Telecommunications Facilities and Services described in the application.
- (L) 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.
- (M) 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.

- (N) An accurate map showing the location of any existing Telecommunications Facilities in the Village that applicant intends to use or lease.
- (O) 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.
- (P) A description of applicant's access and line extension policies.
- (Q) The area or areas of the Village the applicant desires to serve and a schedule for build-out to the entire franchise area.
- (R) All fees, deposits or charges required pursuant to §§ 160.100-160.113 of this Ordinance.
- (S) Such other and further information as may be requested by the Village.

§160.073 TERM OF GRANT AND NONEXCLUSIVE GRANT.

The term of the original franchise shall be ten (10) years from the date the franchise is accepted by the Grantee. The term of a renewed franchise shall be no more than ten (10) years, and may be less, in the discretion of the Village. No franchise granted pursuant to this Ordinance shall give any exclusive right to a Grantee and every such franchise shall be deemed to reserve the right to grant other franchises to use and occupy the Public Ways of the Village for cable television or any other purpose on such terms as the Village may then deem appropriate.

§160.074 NOTICE TO THE GRANTEE.

Except as provided in §160.073 above, the Village shall not take any final action involving the modification, renewal, revocation or termination of the Grantee's franchise unless the Village has (1) advised the Grantee in writing, at least thirty (30) days prior to a meeting where such action is contemplated, as to its time, place and purpose, and (2) published a notice, at least once, ten (10) days before the meeting in a newspaper of general circulation within the Village; provided such notice need not be given of any adjourned or continued meeting where notice was given of the original meeting. The Grantee and any interested person shall be entitled to be heard at such meeting.

§160.075 FRANCHISE REVIEW AND MODIFICATION.

It shall be the policy of the Village to amend a Franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of significant operational or technological advancements which will afford it an opportunity to serve more effectively, efficiently, or economically its subscribers in the Village and the Village shall not unreasonably withhold such amendment. Further, within the term of the franchise, the Board may, after notice and hearing as required in § 160.074 of above, adopt a resolution providing for reasonable and appropriate modifications in franchisee's franchise of a nature that would not result in effectively terminating same.

§160.076 PERFORMANCE EVALUATION SESSIONS.

The Village and the Grantee shall hold an annual performance evaluation in addition to any other evaluations as may be required by federal and state law. All such evaluation meetings shall be open to the public. Such meetings may be called by the Village or the Grantee by notifying the other that such a meeting shall be held no less than thirty (30) days after receipt of the notice.

- (A) Special evaluation meetings may be held at any time during the term of the franchise at the request of the Agency, the Village or the Grantee.
- (B) All evaluation meetings shall be open to the public and announced in a newspaper of general circulation in accordance with the notice requirements of § 160.074 above. Grantee shall notify subscribers of all evaluation meetings including any adjourned meetings by announcement on the highest use origination channel on the system no less than three (3) times between the hours of 7 o'clock p.m. and 9 o'clock p.m. for five (5) consecutive days immediately preceding each meeting and, in addition, on the Community Service channel at least once per hour for 48 hours before the meeting.
- (C) Topics which may be discussed at any scheduled or special evaluation session may include, but are not limited to, franchise fees, penalties, applications of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this ordinance, modification to the franchise, judicial and FCC rulings, line extension policies and Grantee or Village rules.
- (D) During a review and evaluation by the Village, the Grantee shall fully cooperate with the Village and shall provide such information and documents as the Village may need to perform reasonably its review.
- (E) If at any time during its review the Village determines that reasonable evidence exists of inadequate CATV system performance, it may require the Grantee to perform tests and analyses directed toward the suspected inadequacies. The Grantee shall fully cooperate with the Village in performing such testing and shall prepare results and a report if requested within thirty (30) days after notice. Such report shall include the following information:
 - (F) The nature of the complaint or problem which precipitated the special tests;
 - (G) What system component was tested;
 - (H) The equipment used and procedures employed in testing;
 - (I) The method, if any, in which such complaint or problem was resolved;
 - (J) Any other information pertinent to said tests and analyses which may be required.
- (K) The Village may require the test to be supervised at Grantee's expense by a professional engineer not on the permanent staff of the Grantee to be approved by the Village. The engineer should sign all records of special tests and forward to the Village such records with a report interpreting the results of the test and recommending actions to be taken.
- (L) The Village's right under § 160.076 shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the Village has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

§160.077 CABLE FRANCHISE RENEWAL.

As set forth in the Cable Act, the Grantee shall be solely responsible for requesting the Village, in writing, to hold a special meeting of the Board or designated committee thereof, the purpose of which will be to review the Grantee's performance during the term of its franchise, to consider the adequacy of the franchise from the standpoint of the Village, the Grantee, and the Federal Communications Commission Rules for Cable Television, and to determine the advisability of renewing the Grantee's franchise. Unless the Board shall consent to some lesser notice, said request shall be made not less than six (6) months prior to the franchise expiration date. Upon receipt of said request, the Village shall adopt a resolution setting forth the time and place of the special meeting. If no request for renewal is made, the franchise shall expire according to its terms.

- (A) The Village shall hear any interested persons during said special meeting and shall determine whether or not the Grantee did reasonably comply with the terms and conditions imposed by the Ordinance and the Franchise. Notice of such meeting shall be given in accordance with § 160.074 above.
- (B) If the Village determines that the Grantee has been in reasonable compliance with the terms and conditions imposed by the Ordinance and the Franchise, the Village may renew the Grantee's Franchise by resolution, with any reasonable modifications it deems desirable, for a period of time not longer than ten (10) years; provided renewal provisions and the renewal process shall be subject to the provisions of then applicable federal rules and statutes.
- (C) If the Village does not renew the Franchise, the Village shall have the option, to the extent then permitted by existing law, to acquire the tangible assets (plant, equipment and facilities) of the Grantee's cable television system, or the option to require the sale of such assets to a succeeding Grantee on the terms hereinafter specified.
- (D) The Village shall have the right to recoup from the Grantee all direct expenses incurred pursuant to the consideration of renewal of the franchise to the then existing Grantee whether or not the Franchise was renewed. The Village may require the Grantee to remove or abandon all or a portion of the tangible assets of the cable television system from the Village, it being recognized that it may be in the best interests of the Village and the Grantee to abandon certain facilities, such as underground cable, rather than removing the same. If the Village acquires the assets for municipal ownership, the amount paid for such assets shall be their fair market value. If the Village requires sale of the assets to a succeeding Grantee, the amount paid for such assets shall be in the Fair Market Value of the assets, but not including in such valuation the value as a going business and not including sales multiples, but not less than the replacement cost of the assets in place as adjusted for their remaining useful life. Except as provided in § 160.080 below, the Village's option to acquire the assets of the Grantee or to require the sale of such assets to a succeeding Grantee or to require the removal of such assets from the municipality must be exercised within one (1) year from the date of the franchise expiration, unless such period is extended with the consent of the Grantee.

§160.078 FRANCHISE REVOCATION PROCEDURE.

Whenever a Grantee shall refuse, neglect or willfully fail to construct, operate or maintain its cable television system or to provide service to its subscribers in substantial accordance with the terms of the Ordinance and the franchise or to comply with the conditions of occupancy of any Public Way or to make required extension of service, or shall in any other way substantially violate the terms and conditions of

this ordinance, the franchise, or any applicable rule or regulation, or practices any fraud or deceit upon the Village or its subscribers, or fails to pay franchise fees when due, or if a Grantee becomes insolvent, or is unable to or unwilling to pay its debts, or is adjudged bankrupt, or seeks relief under the bankruptcy laws, then the Franchise may be revoked.

- (A) In the event the Village or the Agency believes that grounds for revocation exist or have existed, the Village or Agency may notify a Grantee, in writing, setting forth the nature and facts of such noncompliance. If, within fifteen (15) days following delivery of such written notification, the Grantee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that the alleged violations did not occur, or that the alleged violations were beyond the Grantee's control, the Agency shall thereupon refer the matter to the Village.
- (B) Upon referral from the Agency or by its own motion, the Village may, following notice and hearing pursuant to § 160.074 of this Article, revoke a franchise pursuant to § 160.078 above.
- (C) A Grantee shall not be subject to revocation pursuant to this Section for any act or omission wherein such act or omission was beyond the Grantee's control, such as, but not limited to, strikes, war, acts of God, or governmental regulations. An act or omission shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation or other business entity which holds a controlling interest in the Grantee, whether held directly or indirectly. Further, the failure of a Grantee to obtain financing, or to pay any money due from it to any person, including the Village, for whatever reason, shall not be an act or omission which is beyond the Grantee's control.
- (D) In the event that a Franchise has been revoked by the Village, the Village shall have an option, to the extent then permitted by existing law, to either purchase the tangible assets of the Grantee's cable television system previously governed by the franchise at their Fair Market Value as defined herein, assign such rights to purchase to any person including a successor Grantee, whether or not for consideration paid to the Village and without consideration to the Grantee, or to require the Grantee to remove or abandon all or a portion of the tangible assets (plant, equipment and facilities) of the cable television system from the municipality, it being recognized that it may be in the best interests of the Village and the Grantee to abandon certain facilities, such as underground cable, rather than removing the same. Unless some later date is agreed to by the Grantee and except as provided in § 160.080, such an option must be exercised within one (1) year from the date of the revocation of the Franchise, or the entry of the final judgment by a court reviewing the question of the Village's revocation, or the entry of a final order upon appeal of same, whichever is later.
- (E) The termination of a Grantee's rights under a Franchise shall in no way affect any other rights the Village may have under the Franchise or under any provision of law or ordinance.

§160.079 ARBITRARY AND CAPRICIOUS ACTION BY GRANTEE.

If a Grantee arbitrarily and capriciously discontinues service to a substantial number of its subscribers, the Grantee's franchise may be revoked by a resolution of the Village following notice to the Grantee and an opportunity to be heard. Notwithstanding the provisions of § 160.074 above, notice to the Grantee under this Section may be less than thirty (30) days. Provided further, the Village may seek appropriate judicial or other relief, including specific performance, and/or may proceed to exercise its rights and powers as provided for herein.

§160.080 PROVISION FOR ARBITRATION.

In the event the Village pursues the option to purchase Grantee's cable television system, or any of its assets, and the Fair Market Value, replacement cost or depreciated value cannot be agreed upon, said value shall be determined by a panel of arbitrators, which panel may be requested by either the Board or the Grantee no sooner than ninety (90) days after notice that the Village desires to purchase the system (unless such ninety (90) day provision is waived by both parties). The panel shall be composed of one arbitrator chosen by the Village, one arbitrator chosen by the Grantee, and a third arbitrator chosen by the first two arbitrators. The expenses of the arbitration, including the fees of the arbitrators, shall be borne by the parties in such manner as the arbitrators provide in their award, but in no event will the Village be obligated for more than one-half the expenses. The determination of a majority of the arbitrators shall be binding on the parties. The arbitrators shall follow the rules and procedures of the American Arbitration Association except where in conflict with an express provision of this ordinance. The arbitration hearing shall take place in Cook or Lake County, as determined by the Village, unless otherwise agreed to by the parties in writing. Notwithstanding any other timetable imposed by this ordinance, the Village shall, within ninety (90) days following notice to it of the decision of the arbitrators, either withdraw any notice it may have given of its intent or election to acquire the Grantee's system or shall affirmatively accept the decision of the arbitrators and affirm its election to purchase the system or assets. If the Village fails to accept the arbitrator's decision and affirm its election to purchase within the aforesaid ninety (90) day period, the rights of the Village to purchase shall expire.

§160.081 TRANSFER OF OWNERSHIP TO VILLAGE.

In those circumstances wherein the Village shall have elected to purchase ownership of a Grantee's cable television system or any of its assets, the Village shall, unless the Grantee has agreed to some other terms, pay the price of such assets to the Grantee within twelve (12) months following the date upon which the election to purchase becomes irrevocable and title to the system or assets shall pass to the Village upon such payment.

§160.082 GRANTEE'S OBLIGATION AS TRUSTEE.

At all times from the expiration or revocation of a franchise and until either (1) a Grantee transfers to the Village or other succeeding operator of the system all of its rights, title and interest to all assets, real and personal, related to its cable television system, or (2) the Village's right to either acquire or assign its rights to acquire any of the Grantee's assets expires without the Village having exercised such a right, whichever occurs first, the Grantee shall have a duty to such successor as a trustee holding such assets for the benefit of such successor and the Grantee shall not sell or otherwise dispose of any of the system assets nor shall the Grantee make any physical, material or administrative operational changes that would tend to (1) degrade the quality of service to the subscribers, (2) decrease gross revenues, or (3) materially increase expenses, without the expressed permission, in writing, of the Village or its assigns. The Grantee, as such trustee, shall at all times operate the system in accordance with terms of the Ordinance and the terms of the Franchise as if the Franchise had not expired or had not been revoked. In the event the Grantee fails or refuses to operate the system as trustee, the Village shall have the option to name a successor trustee or operate the system itself as a trustee in accordance with the terms of the Ordinance and the terms of the Franchise.

- (A) In the event of expiration or revocation of a franchise, this Section shall not be construed to give a Grantee any vested or other franchise right, but the right of the Grantee in such circumstances shall exist only on a day-to-day basis until the transfer is effected.

- (B) As full compensation for its ownership interests and during this interim period, the Grantee shall be entitled to receive a reasonable profit during the period between the expiration or revocation of the franchise, as the case may be, and the transfer of the Grantee's assets to the Village or a successor.
- (C) Further, this Section shall in no way limit the power of the Village, upon expiration or revocation of a franchise, to require the Grantee to cease all operations whatsoever and/or remove its facilities, or otherwise exercise any rights the Village would otherwise have.

§160.083 FRANCHISE FEE.

The Grantee, in consideration of the privilege granted under the franchise for the operation of a cable television system, and the expense of regulation pursuant to the franchise incurred by the Village, shall pay to the Village five percent (5%) of its annual gross revenues during the period of its operation under the franchise unless a lesser amount is specified in the franchise granted; or the maximum amount as may be set from time to time by controlling Federal or State law, if such maximum is less than five percent (5%).

- (A) The Grantee shall file with the Village, within thirty (30) days after the expiration of each of the Grantee's fiscal quarters, a financial statement clearly showing the Gross Revenues received by Grantee during the preceding quarter, and shall simultaneously tender payment of the quarterly portion of the franchise fee. The Grantee shall also file, within one hundred twenty (120) days following the conclusion of the Grantee's fiscal year, a financial report prepared and audited annually by a Certified Public Accountant, clearly showing the yearly total gross revenues.
- (B) The Village shall have the right, consistent with the provision of § 160.132, to inspect the Grantee's income records, the right of audit and the right to recompute any amounts determined to be payable under the Ordinance. Any additional amount due the Village as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the Village which notice shall include a copy of the audit report. The cost of said audit shall be borne by the Grantee if it is properly determined that the Grantee's annual payment due to the Village for the preceding year is increased thereby by more than five percent (5%).
- (C) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such due date at the annual rate of twelve percent (12%) or two percent (2%) over the "Prime Rate" as published in the Wall Street Journal (currently in the "Money Rates" column as of the last day of each month) whichever is higher.
- (D) In the event the Franchise is terminated for any reason, the Grantee shall file with the Village, within thirty (30) days of the termination of service by the Grantee pursuant to the Franchise or this Ordinance, a financial statement clearly showing the Gross Revenues received by Grantee since the end of the previous fiscal quarter. The Grantee shall pay the franchise fee due at the time such statement is filed or within thirty (30) days, whichever is earlier.

§160.084 SUBSCRIBER AND USER FEES.

By accepting a Franchise granted pursuant to the terms and conditions imposed by the Ordinance, and pursuant to the terms of such Franchise, the Grantee agrees that the Village shall have the authority and right to establish, in a reasonable manner, the Grantee's fees for regular subscriber service, and all other subscriber and user services, if, and to the extent permitted by law or FCC rules and regulations.

- (A) The Grantee shall not, with regard to fees, discriminate or grant any preference or advantage to any person or group of persons.
- (B) The Grantee shall be required to notify in writing each new subscriber of all applicable fees and charges for providing cable television service.
- (C) Grantee may, at its own discretion, in a non-discriminatory manner, waive, reduce or suspend connection fees or monthly service fees for promotional purposes.
- (D) Except as may otherwise be provided in a franchise ordinance, a Subscriber shall have the right to have its service disconnected without charge, which shall include the removal of any equipment owned by the Grantee from the Subscriber's residence. Such disconnection shall be made as soon as practicable and in no case later than thirty (30) days following written notice to the Grantee of same. No Grantee shall enter into any agreement with a Subscriber which imposes any charge following disconnection of service, except for reconnection and subsequent monthly or periodic charges, and those charges shall be no greater than charges for new customers. This Section shall not prevent a Grantee from refusing service to any person because the Grantee's prior accounts with that person remain due and owing or from charging a reconnection fee for an account which was terminated for non-payment.
- (E) Except as may be otherwise provided in a franchise, a Grantee may offer service which requires advance payment of periodic service charges for no more than one (1) year in advance subject to the conditions contained in this section. A Subscriber shall have the right, at any time, to have its service disconnected without charge and with a refund of unused service charges paid to the customer within thirty (30) days from the date of service. Rate increases shall not be effective with respect to any Subscriber until after the expiration of any period for which advance payment has been accepted by the Grantee.

§160.085 VILLAGE SERVICE AREA.

Grantee shall provide service to every potential subscriber within the Village within twelve (12) months from the date of the acceptance by Grantee of a franchise.

§160.086 EXTENSION OF SERVICE TO NEWLY ANNEXED OR DEVELOPING AREAS.

Whenever the density of dwelling units in newly annexed areas of the Village, or in newly established subdivisions in the Village equals or exceeds twenty-five (25) dwelling units per-cable route mile, service will be provided, at the same rates as other areas of the Village, within six (6) months (weather and make ready by public utilities permitting; provided that Grantee will not be required to service a new subdivision until fifty per cent (50%) of the homes in such subdivision, or in any platted unit of the subdivision, have been occupied, whenever the density of dwelling units of such areas is less than twenty-five (25) dwelling units per-cable route mile, connection and service rates may be charged which reflect the additional costs of such service).

§160.087 INDIVIDUAL SERVICE DROPS.

Grantee shall extend and make cable television service available to any potential Subscriber within the Village at the standard connection charge, if the connection to such subscriber would require no more than a standard two hundred fifty (250) foot aerial or buried drop line from the closer of any Public Way, or any trunk or feeder cable.

With respect to requests for connection requiring an aerial or buried drop line in excess of such two hundred fifty (250) feet, Grantee shall extend and make available cable television service to such Subscribers at a connection charge not to exceed the actual installation costs incurred by the Grantee for the distance exceeding two hundred fifty (250) feet, but not to exceed fifty cents (\$.50) per foot. However, there shall be no charge for aerial or buried drop lines to any institutional user, regardless of the distance of such drop line.

§160.088 SYSTEM DESCRIPTION AND SERVICE.

The cable television system to be installed by Grantee shall comply in all respects with the requirements set forth in the FCC's Rules for Cable Television including applicable amendments thereto, provided, however, that nothing contained herein shall be construed to prohibit the Grantee from proposing to comply with more rigid technical performance requirements, in which case the Grantee's application shall be incorporated by reference in the Franchise, and will be binding on the Grantee. If the FCC should delete said requirements, the Village hereby reserves the right to amend the Ordinance and any franchise ordinance or agreement to incorporate similar standards and every franchise granted pursuant to this Ordinance shall be subject to such reserved power whether or not expressly so conditioned.

- (A) The Grantee shall not permit the transmission of any programming in violation of any federal, state or local law. Except as specifically modified by the Cable Franchise Ordinance, Grantee shall provide, without charge, each subscriber's television set with a lock out capability to limit the programs available to viewers. Such lockout shall have the capability of being changed at no charge to the subscriber.
- (B) All reasonable steps shall be taken by the Grantee as necessary from time to time to minimize signal leakage and/or any adverse effects of such leakage from the CATV system consistent with the then existing state of technology.

§160.089 OPERATIONAL REQUIREMENTS AND RECORDS.

Grantee shall construct, operate, and maintain the cable television system in full compliance with the rules and regulations, including applicable amendments, of the FCC and all other applicable federal, state or local laws and regulations, including the latest editions of the National Electrical Safety Code and the National Fire Protection Association National Electrical Code. The cable television system and all its parts shall be subject to inspection by the Village, and the Village hereby reserves the right to review Grantee's construction plans prior to the commencement of construction. The Village shall not, however, be required to make inspections or approve the Grantee's system and plans, and specifically disclaims such obligation; the Grantee shall be solely responsible for taking all steps necessary to assure compliance with such laws and regulations and the safety of its system as installed.

- (A) Grantee shall maintain a location, within the Village or within fifteen (15) miles of the Village limits, which shall be open and accessible to the public during normal business hours to allow payment of bills. Grantee shall employ an operator or maintain a telephone answering service twenty-four (24) hours per day, each day of the year, with a toll free or local number, to receive subscriber complaints and to dispatch assistance in the case of any emergency or major system malfunction affecting a number of subscribers.
- (B) Grantee shall design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality (within the limitations imposed by the technical state-of-the-art).

- (C) Copies of all correspondence, petitions, reports, applications and other documents filed by Grantee with federal or state agencies having appropriate jurisdiction in matters affecting cable television operation within the Village or received from said agencies shall be furnished simultaneously to the Village by Grantee.
- (D) In the case of any emergency or disaster, the Grantee shall, upon request of the Village, make available its facilities to the Village, without cost, for emergency use during the emergency or disaster period.

§160.090 TESTS AND PERFORMANCE MONITORING.

Not later than ninety (90) days after any new or substantially rebuilt portion of the system is made available for service to Subscribers, technical performance tests shall be conducted by the Grantee to demonstrate full compliance with the Technical Standards applicable pursuant to §§ 160.088 and 160.089 above. Such tests shall be performed by, or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the Village, describing test results, instrumentation, calibration, and test procedures, and the qualifications of the engineer responsible for the tests. Upon the reasonable belief of the Village that the Grantee has failed to meet the franchise requirements, the Village may request additional tests to be conducted by an independent registered professional engineer at the expense of the Grantee.

- (A) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities, or at the locations to be specified in the Franchise. Such periodic tests shall be made at the test points as shall be required by the Village.
- (B) At any time after commencement of service to subscribers, the Village may require additional reasonable tests, including full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal, at the Grantee's expense to the extent such tests may be performed by the Grantee's employees utilizing its existing facilities and equipment; provided, however, that the Village reserves the right to conduct its own tests upon reasonable notice to the Grantee and if non-compliance is found, the expense thereof shall be borne by the Grantee. The Village will endeavor to arrange its request for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

§160.091 SERVICES ADJUSTMENT AND COMPLAINT PROCEDURE.

Grantee shall establish a maintenance service capable of locating and correcting major system malfunctions promptly, except for circumstances beyond the Grantee's control such as strikes, acts of God, wars, riots and civil disturbances. Said maintenance service shall be available at all hours, to correct such major system malfunctions affecting a number of Subscribers.

- (A) A listed local telephone number or toll free number, shall be made available to Subscribers for service calls at any time of the day or night. Whenever service to more than four (4) subscribers is unintentionally interrupted, Grantee shall fully restore such service to all the affected Subscribers within six (6) hours of the first report of the service interruption and whenever unintentional service interruptions affect four (4) or less Subscribers, service to such Subscribers shall be fully restored within one business day (Saturday being a business day) of the first report of the service interruption. In the event that service is not restored with said times, the Subscriber or Subscribers affected will be given credit on the next regular bill for one full day for each day or part day when service not so restored. Appropriate records shall be made of service calls showing when and what corrective action was completed. Such records shall be available to the Village during normal

business hours and retained in Grantee's files until the next scheduled performance evaluation session described in § 160.077 above or for a longer period as directed by the Village. A summary of such calls shall be prepared by the Grantee and submitted to the Village annually, beginning twelve (12) months after service is provided to the first Subscriber.

- (B) The Grantee shall furnish each subscriber at the time service is installed written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment.
- (C) In the event a Subscriber does not obtain a satisfactory response or resolution to his request for service or an adjustment within a reasonable period of time, he may advise the Agency or other designated employee in writing of his dissatisfaction. The Agency or other designated employee shall have authority to investigate any subscriber or user complaint or request for adjustment and to order corrective action as shall be appropriate. The Village may require Grantee to establish rules and procedures regulating complaint resolution in the Franchise agreement. Nothing herein shall limit the rights of any Subscriber or other person to bring an action against Grantee in a court of law.
- (D) The Grantee shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after cablecasting notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance, and repair, with notification, on any day except Saturday or Sunday, or the day following a legal holiday.

§160.092 PROTECTION OF PRIVACY.

Grantee shall not permit the transmission of any signal, aural, visual or digital, including "polling" the channel selection, from any Subscriber's premises without first obtaining informed consent of the Subscriber which shall not have been obtained from the Subscriber as a condition of any service for which transmission is not an essential element. The request for such consent shall be contained in a separate document, which specially enumerates and describes the transmissions being authorized and includes a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provision and shall be revocable at any time by the subscriber without penalty of any kind, whatsoever. This provision is not intended to prohibit the use or transmission of signals useful only for the control or measurement of system performance or used for billing Subscribers.

- (A) Grantee shall not permit the installation of any special terminal equipment in any Subscriber's premises that will permit transmission from Subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the Subscriber as provided in this Section.
- (B) Grantee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, as provided in this Section, sell or otherwise make available to any party any information which identifies the viewing habits or responses of individual Subscribers.

§160.093 PROHIBITION FROM ENGAGING IN RADIO AND TELEVISION SALES OR SERVICE.

The Grantee, its subsidiaries and affiliates are specifically prohibited from engaging directly or indirectly in the sale or leasing of television receivers, radio receivers, or television or radio parts, except such parts

and accessories required for any type of cable connections, such as converters and connection plugs and accessories, individually or with any person, anywhere in the Village, whether or not for a fee or charge, and is further prohibited from engaging in any type of repair service to television receivers or radio receivers.

§160.094 PENALTIES.

It shall be unlawful for any person to attach or affix or to cause to be attached or affixed any equipment or device which allows access to or use of any cable television service without payment to the Grantee for same.

- (A) Persons, whether natural or artificial, or commercial entities who violate any of the following provisions of this ordinance shall be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense: willful action or inaction by Grantee as described in § 160.078; non-compliance by a Grantee as described in § 160.078; arbitrary or capricious action by a Grantee as described in § 160.079; willful failure by a Grantee to comply with the laws, rules or regulations described in § 160.088; transmission by a Grantee of a signal from a subscriber's premises in violation of § 160.091, and any person attaching or affixing or causing to be attached or affixed any equipment or device as described in § 160.093 above, and each such equipment or device shall be deemed a separate offense. Each day of said violations shall constitute a separate offense.

§160.095 GRANTEE MAY PROMULGATE RULES.

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the Rules of the FCC, and to assure uninterrupted service to each and all of its Subscribers. Such rules and regulations shall not be deemed to have the force of law. Such rules and regulations shall be filed with the Village and shall not, unless the Village consents in writing to an earlier effective date, take effect until after such filing.

COSTS; EXPENSES; FEES; OTHER PAYMENTS

§160.100 PURPOSE.

It is the purpose of this Article 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 Ordinance. In case of conflict or ambiguity between §§ 160.100-160.119 and §§ 160.070-160.095, the Grantee agrees that the provision which provides the greatest benefit to the Village, in the sole discretion of the Village, shall prevail.

§160.101 APPLICATION AND REVIEW FEE.

Any applicant for a Telecommunications License or Telecommunications Franchise or Cable Franchise pursuant to this Ordinance shall pay a fee of One Thousand Five Hundred Dollars (\$1,500.00) or one percent (1%) of the estimated cost of applicant's proposed Telecommunications Facilities, as certified by the applicant's professional engineer, whichever is greater.

- (A) The application and review fee shall be deposited with the Village as part of the application filed pursuant to the application sections of this Ordinance.

- (B) An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of its application and review fee payment written request, be refunded the balance of its deposit under this Section, less all ascertainable costs and expenses incurred by the Village in connection with the application.

§160.102 OTHER VILLAGE COSTS.

All license or franchise Grantees shall, within thirty (30) days after written demand therefore, 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.

§160.103 RESERVED COMPENSATION FOR PUBLIC WAYS.

The Village reserves its right to fix annually a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise Grantee. Nothing in this Article shall prohibit the Village and a Grantee from agreeing to the compensation to be paid for the granted property rights.

§160.104 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.

§160.105 CONSTRUCTION PERMIT FEE (OR ENGINEERING REVIEW FEE).

Prior to issuance of a construction permit, any Grantee obtaining a permit (the "Permittee") shall pay a permit fee equal to three percent (3%) of the estimated cost of constructing the Telecommunication Facilities, as certified by the applicant's engineer and approved by the Village Engineer, whichever is greater.

§160.106

Repealed by Ordinance 02-21, effective 11-18-02.

§160.107 CABLE FEES.

Cable television franchisees shall be subject to the franchise fees, payments and costs provided in §§ 160.070-160.095 of this Ordinance.

§160.108 REGULATORY FEES AND COMPENSATION NOT A TAX.

The regulatory fees and costs provided for in this Article, and any compensation charged and paid for the Public Ways provided for in § 160.103, are separate from, and additional to, any and all federal, state and local 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 of transmission of Telecommunications Services.

§ 160.109 ACCEPTANCE BY THE VILLAGE.

The acceptance by the Village of any payment shall not be construed as an accord by the Village that the amount of such payment is the correct amount due from Grantee pursuant to the license or franchise agreement entered into with the Grantee, nor shall such acceptance of any payment be construed to be a release or waiver of any claim the Village may have for further or additional sums due and payable pursuant to a license or franchise agreement.

§160.110 TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

Definitions. As used in this §160.110 the following terms shall have the following meanings:

- (A) **“Gross Charges”** means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. “Gross charges” for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. However, “gross charges” shall not include:
- (1) any amounts added to a purchaser’s bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser’s bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;
 - (2) charges for a sent collect telecommunication received outside the Village;
 - (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
 - (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
 - (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;
 - (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

- (7) bad debts (“bad debt” means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
 - (8) charges paid by inserting coins in coin-operated telecommunications devices; or
 - (9) charges for telecommunications and all services and equipment provided to the Village.
- (B) **“Public Right-of-Way”** means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. “Public Right-of-Way” shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.
- (C) **“Retailer maintaining a place of business in this State,”** or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.
- (D) **“Sale of telecommunications at retail”** means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.
- (E) **“Service address”** means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, “service address” shall mean the location of the customer’s primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.
- (F) **“Telecommunications”** includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, “telecommunications” shall also include wireless telecommunications as hereinafter defined. “Telecommunications” shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. “Telecommunications” shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who

originates or terminates the end-to-end communications. Retailer access charges, rights of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

- (G) **"Telecommunications provider"** means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.
- (H) **"Telecommunications retailer" or "retailer" or "carrier"** means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Village.
- (I) **"Wireless telecommunications"** includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

§160.111

Repealed by Ordinance 02-21, effective 11-18-02.

§160.112

Repealed by Ordinance 02-21, effective 11-18-02.

§160.113

Repealed by Ordinance 02-21, effective 11-18-02.

§160.114 COMPLIANCE WITH OTHER LAWS.

Nothing in §§160.100-160.119 shall excuse any person or entity from obligations imposed under any law, including but not limited to.

- (A) generally applicable taxes; and
- (B) standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and

- (C) any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (D) compliance with any ordinance or provision of this Code, concerning uses or structures not located on, over, or within the right-of-way.

§160.115 EXISTING FRANCHISES AND LICENSES.

Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

§160.116 PENALTIES.

Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of §§ 160.100-160.119 shall be subject to fine in accordance with the general penalty provisions of § 160.008.

§160.117 ENFORCEMENT.

Nothing herein shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Section.

§160.118 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of §§ 160.100-160.119 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

§160.119 CONFLICT.

Sections 160.100 through 160.119 supersede all Sections or parts of Sections adopted prior hereto which are in conflict herewith, to the extent of such conflict.

(Ord. 01-4, passed 1-15-01)

CONDITIONS OF GRANT

§160.120 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. In case of conflict or ambiguity between §§ 160.120-160.155 and §§ 160.070-160.095, the Grantee agrees that the provision which provides the greatest benefit to the Village, in the sole discretion of the Village, shall prevail.

- (A) A Grantee shall install its Telecommunications Facilities within an existing underground duct or conduit whenever Excess Capacity exists within such utility facility.

- (B) 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.
- (C) 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.
- (D) 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.
- (E) Whenever new Telecommunications Facilities will exhaust the capacity of a Public Street or Utility Easement to accommodate reasonably future Telecommunications Carriers or Facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

§160.121 COMPLIANCE WITH 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.

§160.122 CONSTRUCTION PERMITS.

All license or franchise Grantees are required to obtain construction permits for Telecommunications Facilities as required in §§ 160.16-160.178 of this Ordinance. However, nothing in this Article shall prohibit the Village and a Grantee from agreeing to alternative plan review, permit and construction procedures in a license or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§160.123 INTERFERENCE WITH THE PUBLIC WAYS.

No license or franchise Grantee may locate or maintain its Telecommunications Facilities so as to interfere unreasonably 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.

§160.124 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.

§160.125 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 nonemergency work in or about the Public Ways of the Village or Other Ways within ten (10) working days advance notice to the Village.

§160.126 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.

§160.127 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.

§160.128 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:

- (A) The construction, repair, maintenance or installation of any Village or other public improvement in or upon the Public Ways.
- (B) The operations of the Village or other governmental entity in or upon the Public Ways.

§160.129 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:

- (A) Upon expiration or termination of the Grantee's telecommunications license or franchise.
- (B) Upon abandonment of a facility within the Public Ways of the Village.
- (C) If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.
- (D) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (E) If the system or facility was constructed or installed at a location not permitted by the Grantee's telecommunications license or franchise.

§160.130 RESTORATION OF PUBLIC WAYS, OTHER WAYS AND VILLAGE PROPERTY.

- (A) 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.

- (B) 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.
- (C) 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.

§160.131 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.

§160.132 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:

- (A) That Grantee has complied with all requirements of this Ordinance.
- (B) 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.
- (C) Financial data of Grantee of franchise.
 - (1) Annual reports. The Grantee of a franchise shall, annually, within ninety (90) days after the close of its fiscal year, submit to the Village a written statement, approved by an officer of the Grantee, of the Grantee's gross revenues for the year just concluded. Such statement shall be supplemented by an audit prepared by an independent certified public accountant in accordance with generally accepted accounting principles, as well as by such additional financial statements and records as may be required by the Village, within six (6) months following the close of the Grantee's fiscal year. Unless required by applicable law, the Village shall keep all financial statements and records of the Grantee confidential.
 - (2) Books and records. The Grantee shall maintain, at all times during the term of the franchise, (1) complete, accurate and properly totaled books and records showing the business conducted by the Grantee in the Village in sufficient detail to show all gross revenue; (2) complete, accurate and up-to-date maps of the Telecommunications System. The Village may require the Grantee to keep additional records and maps which it determines are reasonably necessary.
 - (3) Inspection and audits. All of such books and records and originals of all maps and other documents pertaining to this franchise shall be maintained in and made available for inspection by the Village or its agents or employees, at the Grantee's principal office, at reasonable times and intervals. A Franchise shall maintain such books and records for the

Franchise Area specified in the franchise separately from any other operations, provided, however, that any expenses or expenditures which apply to both the system in said Franchise Area and any other operations shall be reasonably allocated between all such operations, consistent with generally accepted accounting principles. Such books and records shall be retained, in any reasonable form, for a period of not less than seven (7) years, or as required for Internal Revenue Service audit requirements, whichever is longer. The Village shall have the right to extend the retention period through the term of any renewed franchise. If such books and records are kept outside of the immediate Chicago metropolitan area, the Grantee shall transport the books and records, to the extent practicable, to the Village if the Village desires to review them. The Village shall have the right to obtain copies of all documents, maps, or records pertaining to the franchise. The Grantee shall fully cooperate in assisting in this regard.

- (4) Inquiries. The Village may, at any time, make inquiries pertaining to the franchise and the operation of the Telecommunications System. The Grantee shall respond to such inquiries within five (5) business days of such inquiry.

§160.133 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:

- (A) Grantee shall furnish the Village with a copy of any such lease or agreement.
- (B) The customer or lessee has complied, to the extent applicable, with the requirements of this Ordinance.

§160.134 LIABILITY; INDEMNIFICATION; INSURANCE.

- (A) Grantee. The Grantee shall be responsible for any damage or loss to any real or personal property of the Village or of any person, and for any injury to or death of any individual person, or any officer, employee, or agent of the Village, arising out of or in connection with the Grantee's negligence or misconduct in the construction, installation, use, operation, maintenance, repair, and/or removal of the Telecommunications System, or its failure to act in connection therewith when, in the reasonable judgment of the Village, the Grantee should have taken certain action.
- (B) Village. The Village and its officers, employees, and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any individual person, arising out of or in connection with the Grantee's negligence or misconduct in the construction, operation, maintenance, repair, removal of, or other action or event with respect to, the telecommunications system.
- (C) Emergency and other actions.
 - (1) The Village may, at any time, in case of fire, disaster, or other emergency, as determined by the Village, cut or move any facilities, in which event the Village shall not be liable therefore to the Grantee. When practical, as determined in the sole judgment and discretion of the Village, the Grantee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself.

- (2) Unless directly caused by the malicious or intentional acts of the Village, the Village shall not be liable to the Grantee for any damage to or loss of all or any part of the Telecommunications System, or otherwise, as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the Telecommunications System by or on behalf of the Grantee or the Village in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Public Way, or the elimination, discontinuation, and closing of any Public Way, as provided herein. When practical, as determined in the sole judgment and discretion of the Village, the Grantee shall be consulted prior to any such cutting or movement of its wires and be given the opportunity to perform such work itself.
- (3) The Village and its officers, employees, and agents shall not be liable to the Grantee or any affiliates of the Grantee for any special, incidental, consequential, punitive, or other damages as a result of the exercise of any right of the Village pursuant to this Ordinance or the license or franchise agreement, including, without limitation, the right of the Village to terminate the license or franchise and to take any action subsequent thereto.

§160.135 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 as a named insured, and the Village's elected and appointed officers, officials, agents and employees as coinsureds:

- (A) Comprehensive general liability insurance with limits not less than:
 - (1) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;
 - (2) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and
 - (3) Five Million Dollars (\$5,000,000) for all other types of liability.
- (B) 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.
- (C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- (D) 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).
- (E) The liability insurance policies required by this Section shall be maintained by the Grantee throughout the term of the telecommunications license or franchise, and any 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 Administrator of such intent to cancel or not to renew.”

- (F) 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 Section.

§160.136 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 Ordinance or by a grant agreement made or entered into pursuant to this Ordinance.

§160.137 PERFORMANCE AND CONSTRUCTION SURETY.

Before a license or franchise granted pursuant to this Ordinance is effective, and as necessary thereafter, the Grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the Village as may be required by this Ordinance or by an applicable license or franchise agreement.

§160.138 SECURITY FUND.

Each Grantee shall establish a permanent security fund with the Village by depositing the amount of Fifty Thousand Dollars (\$50,000.00) 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.

- (A) The fund shall serve as security for the full and complete performance of this Ordinance, 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.
- (B) Before any sums are withdrawn from the security fund, the Village shall give written notice to the Grantee:
- (1) 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;
 - (2) providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable;
 - (3) providing a reasonable opportunity for Grantee to pay any monies due the Village before the Village withdraws the amount thereof from the security fund, if applicable;
 - (4) that the Grantee will be given an opportunity to review the act, default or failure described in the notice with the Village Administrator or his designee.

- (C) 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.

§160.139 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.

- (A) 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.
- (B) The construction bond shall guarantee, to the satisfaction of the Village:
- (1) timely completion of construction;
 - (2) construction in compliance with applicable plans, permits, technical codes and standards;
 - (3) proper location of the facilities as specified by the Village;
 - (4) restoration of the Public Ways and other property affected by the construction;
 - (5) the submission of "as-built" drawings after completion of the work as required by this Ordinance;
 - (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

§160.140 COORDINATION OF CONSTRUCTION ACTIVITIES.

All Grantees are required to cooperate with the Village and with each other.

- (A) 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.
- (B) 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.
- (C) All construction locations, activities and schedules shall be coordinated, as ordered by the Village Engineer, to minimize public inconvenience, disruption or damages.

§160.141 ASSIGNMENTS OR TRANSFERS OF GRANT.

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.

- (A) 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.
- (B) 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.
- (C) 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:
 - (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
 - (2) All information required of a telecommunications license or franchise applicant pursuant to §§160.030-160.095 of this Ordinance with respect to the proposed transferee or assignee;
 - (3) Any other information reasonably required by the Village.
- (D) 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 Ordinance.
- (C) 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.
- (F) 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.
- (G) Any sale, transfer or assignment authorized by the Village shall be made by a bill of sale or similar document, an executed copy of which shall be filed with the Village within thirty (30) days after any such sale, transfer or assignment. The Village shall not withhold its consent unreasonably; provided, however, the proposed assignee agrees to comply with all the provisions of this Ordinance and the franchise and reasonable amendments thereto, and must, in the Village's discretion reasonably exercised, have the technical and character qualifications required by §§160.030-160.095 and have the financial wherewithal to carry out the obligations set forth in this Ordinance.
- (H) The consent of the Village to any sale, transfer, lease, trust, mortgage or other instrument of hypothecation shall not constitute a waiver or release of any of the rights of the Village under the Ordinance and the franchise.

§160.142 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 § 160.141 hereof. Transactions between affiliated entities are not exempt from Village approval.

§160.143 FORECLOSURE, CONDEMNATION, AND RECEIVERSHIP.

- (A) Foreclosure. Upon the scheduled occurrence of any foreclosure or other judicial sale of all or any part of the Telecommunications System, or the termination of any lease or mortgage covering all or any material part of the Telecommunications System, the Grantee shall immediately notify the Village of such occurrence. Such notification shall be treated as a notification of a proposed change in control of the Grantee, and the provisions of § 160.141 shall apply.
- (B) Condemnation. In the event that the Telecommunications System, or any material part thereof, is taken, appropriated, or condemned pursuant to law, and the effect of such taking is to frustrate or impede materially the ability of the Grantee to carry out any of its obligations pursuant to, and the purposes of, this Ordinance, then the Village may revoke the license or franchise in accordance with the applicable provisions of this Ordinance.
- (C) Receivership. The Grantee shall notify the Village, in writing, immediately if: (1) the Grantee files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; (2) the Grantee files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the bankruptcy code, as amended from time to time; (3) the Grantee is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including, without limitation, all of any part of the Telecommunications System; (4) the Grantee institutes dissolution or liquidation proceedings with respect to its business; (5) an order is entered approving an involuntary petition to reorganize the business of the Grantee or to effect a plan or other arrangement with creditors or appointing a receiver or trustee for the Grantee of all or a part of its property including, without limitation, all or any part of the Telecommunications Systems; or (6) a writ or warrant of attachment, execution, distraint, levy, possession, or any similar process shall be issued by any court against all or any part of the property of the Grantee including, without limitation, all or any part of the Telecommunications System.

§160.144 SAFETY.

- (A) Standard of Care. The Grantee shall at all times utilize the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantee.
- (B) Equipment Installation and Maintenance. All installations in the Telecommunications System shall be made so as not to impair the fire integrity of any building or structure. The Grantee shall install and maintain its facilities in accordance with the requirements of all applicable codes and in such manner that they will not interfere with any installations of the Village or any public utility. All facilities in, over, under, and upon the Public Ways and private property within the Village, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

§160.145 COMPLIANCE WITH LAW.

The Grantee shall at all times comply with laws, codes, rules, and regulations of all governmental authorities, regardless of whether such law, code, rule, or regulation is expressly referenced in this Ordinance or the license or franchise agreement. The Grantee shall at all times comply with all applicable laws, ordinances, resolutions, codes, rules, and regulations of the Village and all applicable memoranda and other directives of the Village, as such laws, ordinances, resolutions, codes, rules, regulations, memoranda, and directives may be modified or amended provided that such modification or amendment does not impair, conflict with, or diminish the rights granted to the Grantee under this Ordinance or the license or franchise agreement.

§160.146 SUBSEQUENT ACTION BY GOVERNMENT AUTHORITIES.

If any subsequent law, ordinance, rule, code, regulation, controlling judicial review, or decision shall require or permit the Grantee to perform any act or shall prohibit the Grantee from performing any act such that the Grantee may be in conflict with the terms of this Ordinance or an applicable license or franchise agreement, then as soon as possible following knowledge thereof, the Grantee shall so notify the Village. If the Village determines, in its sole judgment and discretion, that a material provision of this Ordinance or the license or franchise agreement is affected by such changed or new law, ordinance, or regulation, then the Village and the Grantee shall enter into good faith negotiations to modify the license or franchise agreement to conform with such changed requirements.

§160.147 NONENFORCEMENT BY VILLAGE.

No Grantee shall be excused from complying with any of the terms and conditions of this Ordinance or the license or franchise agreement by any failure of the Village, on any one or more occasions, to insist on the Grantee's performance of, or to seek the Grantee's compliance with, any one or more of such terms and conditions.

§160.148 RIGHTS AND REMEDIES.

- (A) Cumulative Effect. All rights and remedies given to the Village by this Ordinance and the license or franchise agreement shall be in addition to and cumulative with each other and with any and all other rights or remedies shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the Village in its sole judgment and discretion, and the exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any default. The exercise of any such right of remedy by the Village shall not release the Grantee from its obligations of any liability under this Ordinance or the license or franchise agreement.
- (B) Injunction or Decree. In addition to all other remedies granted or available to the Village, the Village shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, by the Grantee of any terms or provisions of this Ordinance or the license or franchise agreement, or to a decree compelling performance by the Grantee of any term or provision thereof.
- (C) Village Rights Reserved. The Village expressly reserves the following rights which shall not be deemed to be waived or abrogated by any license or franchise granted or any license or franchise agreement executed pursuant to this Ordinance:

- (1) to exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the Village;
- (2) to adopt, in addition to the provisions contained herein, in the license or franchise agreement, or in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power; and
- (3) to modify the license or franchise agreement executed pursuant to this Ordinance.

The express reservation of the foregoing rights shall not be construed as a waiver of any other rights lawfully belonging to the Village.

§160.149 LIMITS ON GRANTEE’S RECOURSE.

Grantee shall have no recourse against the Village for any loss, expense or damage resulting from the terms and conditions of this Ordinance or the franchise or because of the Village’s granting or enforcement thereof nor for the Village’s failure to have the authority to grant the franchise. The Grantee expressly agrees that upon its acceptance of the franchise it does so relying upon its own investigation and understanding of the power and authority of the Village to grant said franchise.

- (A) The decision of the Village concerning the awarding of the license or franchise shall be final.

§160.150 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:

- (A) Construction or operation in the Village or in the Public Ways of the Village without a license or franchise grant of authorization.
- (B) Construction or operation at an unauthorized location.
- (C) Unauthorized transfer of control of the Grantee.
- (D) Unauthorized assignment of a license or franchise.
- (E) Unauthorized sale, assignment or transfer of Grantee’s franchise or license assets, or a substantial interest therein.
- (F) Misrepresentation or lack of candor by or on behalf of a Grantee in any application to the Village.
- (G) Abandonment of Telecommunications Facilities in the Public Ways.
- (H) Failure to relocate or remove facilities as required in this Ordinance.
- (I) Failure to pay taxes, compensation, fees or costs when and as due the Village.
- (J) Insolvency or bankruptcy of the Grantee.

- (K) Violation of material provisions of this Ordinance.
- (L) Violation of the material terms of a license or franchise agreement.

§160.151 NOTICE AND DUTY TO CURE.

In the event that the Village Administrator believes that grounds exist for revocation of a license or franchise, he 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:

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

§160.152 HEARING.

In the event that a Grantee fails to provide evidence reasonably satisfactory to the Village Administrator as provided in § 160.150 hereof, the Village Administrator 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.

§160.153 STANDARDS FOR REVOCATION OR LESSER SANCTIONS.

If persuaded that the Grantee has violated or failed to comply with material provisions of this Ordinance, 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:

- (A) Whether the misconduct was egregious.
- (B) Whether substantial harm resulted.
- (C) Whether the violation was intentional.
- (D) Whether there is a history of prior violations of the same or other requirements.
- (E) Whether there is a history of overall compliance.
- (F) Whether the violation was voluntarily disclosed, admitted or cured.

§160.154 FORCE MAJEURE.

Whenever a period of time is provided for in this Ordinance for either the Village or the Grantee to do or perform any act or obligation, neither the Village nor the Grantee shall be liable for any delays or inability to perform due to causes beyond their respective control such as war, riot, insurrection, rebellion, strike, lockout, unavoidable casualty or damage to personnel, materials, or equipment, fire, flood, storm,

earthquake, tornado, or any act of God; provided, however, that such time period shall be extended for only the actual amount of time the Village or Grantee is so delayed and provided further, however, that an act or omission shall not be deemed to be “beyond the Grantee’s control” if committed, omitted, or caused by the Grantee, the Grantee’s employees, officers, or agents or a subsidiary, affiliate, or parent of the Grantee or by any corporation or other business entity that holds a controlling interest in the Grantee, whether held directly or indirectly.

§160.155 TIME ESSENCE OF AGREEMENT.

Whenever this Ordinance or the license or franchise sets forth any time for any act to be performed by the Grantee, such time shall be deemed of the essence and the Grantee’s failure to perform within the time allotted shall, be sufficient grounds for the Village to invoke the remedies available under the terms and conditions of this Ordinance and the license or franchise.

§§160.160 – 160.178 repealed by Ordinance 07-27, passed 12-17-07, effective 1-16-08.

(Am. Ord. 07-27, passed 12-17-07)