

VILLAGE COUNCIL  
VILLAGE OF LAKEVIEW  
MONTCALM COUNTY, MICHIGAN

Council Member Schottle, supported by Council Member Winter, moved the adoption of the following Ordinance:

ORDINANCE NO. 00-2

AN ON-GOING USE OF THE VILLAGE OF LAKEVIEW'S PUBLIC  
TELECOMMUNICATION PROVIDERS

THE VILLAGE OF LAKEVIEW ORDAINS:

Section 1. Adoption of Ordinance. The following ordinance is hereby adopted in its entirety:

TELECOMMUNICATIONS

1.1 Purpose.

The purpose of this Ordinance is to regulate the access to and on-going use of Public Rights-of-Way by Telecommunications Providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the Public Rights-of-Way pursuant to the Charter of the Village of Lakeview, the Michigan Telecommunications Act (Act No. 216 of the Public Acts of 1995, as amended), other state statutes (including, without limitation, Act No. 368 of the Public Acts of 1925, as amended), and Article VII, s 29 of the 1963 Michigan Constitution by 1) minimizing disruption of the Public Rights-of-Way by Telecommunications Providers, and the construction, installation, operation, and use of facilities in the Public Rights-of-Way; 2) ensuring that the Village and the public are protected from liability for use of the Public Rights-of-Way by Telecommunications Providers; 3) providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the Public Rights-of-Way used by Telecommunications Providers; 4) assisting Telecommunications Providers in understanding the Village's requirements for use of the Public Rights-of-Way and providing a fair and non-discriminatory policy for permitting the use of the Public Rights-of-Ways by such providers.

1.2 Reservation of Rights.

The issuance of a Permit or Permits under this Ordinance and the access to and use of the Public Rights-of-Way by a Telecommunications Provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

A. Right to Require Franchise. Article VII, s 29 of the 1963 Michigan Constitution and the Village Charter require that all public utilities obtain a franchise to conduct a local business within the Village. The applicability of this requirement to Telecommunications Providers may be

challenged under Section 102(dd) of the Michigan Telecommunications Act which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation, the Village hereby determines that Telecommunications Providers shall be required to obtain and maintain a Permit for access to and on-going use of the Public Rights-of-Way and to otherwise comply with the terms of this Ordinance. Such a Permit shall not constitute a franchise. The Village reserves the right to require Telecommunications Providers to obtain a franchise in the future to transact local businesses within the Village.

B. Rights Regarding Takings Claim. Neither this Ordinance nor the issuance or acceptance of a Permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the Village or the Permittee in connection with disputed legal issues.

C. Option to Obtain Consent Agreement. The Village finds that legislative, legal and regulatory issues in connection with use of the Public Rights-of-Way by Telecommunications Providers and the resulting potential for litigation and delay are likely to have an adverse impact on the development of a healthy, competitive telecommunications infrastructure in the Village. This would be detrimental to the Village and its residents as well as to Telecommunications Providers. The issues affect, among other things, both the cost to Telecommunications Providers and compensation to the Village for the maintenance and use of its Public Rights-of-Way. In order to promote certainty, encourage competition and avoid litigation, the Village will, at the request and sole option of an applicant or Permittee, consider entering into a consent agreement for use of the Public Rights-of-Way for the provision of Telecommunications Services on terms and conditions mutually acceptable to the Village and the Telecommunications Provider. It is the Village's intent that such an agreement would satisfy the requirement for a Permit under this Ordinance, and would include, among other things, a fee of up to five percent of the applicable gross revenues of the Telecommunications Provider, which would include the Permit fee; an extended term of up to 15 years; authorization to conduct a local business in the Village pursuant to Article VII, Section 29 of the 1963 Michigan Constitution; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A Permittee may request a consent agreement at any time.

### 1.3 Terms Defined.

The meaning of the terms used in this Ordinance shall be as follows:

A. "Affiliate" and "Affiliated" means any entity Controlling, Controlled by or under common Control with a Permittee.

B. "Village" means the Village of Lakeview.

C. "Village Council" means the Village Council of the Village of Lakeview or its designee. This subsection does not authorize delegation of any decision of function that

is required by law to be made by the Village Council. In any case in which a hearing is held pursuant to this Ordinance, the Village Council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

D. "Manager" means the Village Manager or his or her designee.

E. "Control", "Controlling" and "Controlled" mean effective control, by whatever means exercised, such as those described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Rcd 6828 (1993) at paragraphs 22-28 (adopting broadcast transfer of control standards as then in effect).

F. "Local Exchange Service" means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.

G. "Permit" means a non-exclusive permit issued pursuant to this Ordinance for access to and on-going use of Public Rights-of-Way by Telecommunications Providers for wires, poles, pipes, conduits, or other facilities designed or used to provide Telecommunications Services.

H. "Permittee" means a Telecommunications Provider that has been issued a Permit pursuant to this Ordinance.

I. "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

J. "Public Rights-of-Way" means the public rights-of-way, easements, highways, streets, and alleys within the Village.

K. "Telecommunications Act" means Act No. 216 of the Public Acts of 1995, as amended.

L. "Telecommunications Provider" means a Person who provides one or more Telecommunications Services for compensation.

M. "Telecommunications Services" means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. "Telecommunications Services" does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.

N. "Telecommunications System" means facilities designed or used to provide Telecommunications Services.

#### 1.4 Permits.

A. Permit Required. No person shall use the Public Rights-of-Way to provide Telecommunications Services without a Permit issued pursuant to this Ordinance or a consent agreement under Section 1.2C of this Ordinance. For purposes of this Ordinance, use of the Public Rights-of-Way includes the installation, construction, maintenance, repair, or operation of a Telecommunications System within the Public Rights-of-Way. In addition, a Person providing Local Exchange Service or other local Telecommunications Services is using the Public Rights-of-Way for purposes of this Ordinance whether such Person owns the facilities in the Public Rights-of-Way outright or obtains the use of or access to the facilities from a third party under lease, contract, interconnection, or wholesale for retail or other similar arrangement. Failure to comply with the Permit requirement of this Section shall constitute a violation of this Ordinance. A Person who violates this requirement shall comply with all requirements of this Ordinance applicable to a Permittee and shall pay the annual fee plus late payment charges as provided by Section 1.6 for the time period in which the violator did not have a Permit plus the actual costs incurred by the Village in enforcing this Ordinance against the Person.

B. Consent Agreement. If a Telecommunications Provider negotiates a consent agreement with the Village under the provisions of Section 1.2C, and the Village determines that the consent agreement substantially satisfies the obligations of a Telecommunications Provider under this Ordinance, giving due regard to any special circumstances involving the Telecommunications Act. When a consent agreement is no longer in effect, the Telecommunications Provider shall be required to comply with all terms and conditions of this Ordinance as it may be amended from time to time.

#### 1.5 Permit Application Procedures.

A. Application. A Telecommunications Provider shall apply for a Permit pursuant to this Ordinance. The application shall be made on an application form provided by the Village. Ten (10) copies of the application shall be filed with the Village Clerk, and two (2) additional copies each shall simultaneously be filed with the Manager and Village Attorney.

B. Required Information. In addition to other information required by the application form or otherwise required by the Village or this Ordinance, the application shall include, without limitation, the following information:

(1) The name and address of the applicant and each Person exercising Control over the applicant, and if the applicant or any Person or Persons

exercising Control is not a natural Person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 5%.

(2) Copies of the most recent financial statements of the applicant.

(3) A description of (i) the applicant's existing and proposed Telecommunications System and Telecommunications Services in the Village, (ii) the types of existing and proposed wires

(4) A map setting forth the specific location of the facilities in the Public Rights-of-Way. The map shall identify the location of above ground and underground facilities.

C. Application Fee. The application will be accompanied by a non-refundable application fee in an amount established by resolution of the Village Council. The non-refundable application fee shall be designed to reimburse the Village for the costs of reviewing an application for a Permit and issuance of a Permit in accordance with the procedures of this Ordinance.

D. Administrative Completeness. An application shall not be deemed to be filed for purposes of the 90-day permit application review period in Section 251(3) of the Telecommunications Act until the application is determined by the Manager to be administratively complete. A determination whether the application is administratively complete shall be made by the Manager within then (10) business days after the application is received by the Village. If the Manager determines that the application is not administratively complete, the Manager shall so advise the applicant in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.

E. Additional Information. The Manager may request an applicant to submit such additional information, which the Manager deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Manager. If the applicant fails to provide the requested additional information by the deadline established by the Manager, the 90-day period for acting on the application under subsection G below shall be extended by the number of days after the deadline that the information was provided to the Manager.

F. Misleading Statements. A Person who provides information to the Village in connection with a Permit application or any other matters under this Section 1.5 which contains an untrue statement of a material fact or omits a material fact necessary to make the information misleading shall be in violation of this Ordinance, and shall be

subject to all remedies for violation of this Ordinance and the other ordinances of the Village including, without limitation, denial of the requested action and Permit revocation pursuant to Section 1.13. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

G. Permit Approval or Denial. Within 75 days after the Manager determines that the application is administratively complete (subject to any adjustments for delays in providing additional information as provided in subsection E), the Village Council shall hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten (10) days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten (10) days before the public hearing. Any report or recommendation on the application obtained or prepared by the Manager shall be mailed to the applicant not less than ten (10) days before the public hearing. The applicant and any other interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the application. Following the public hearing, the Village Council shall approve, approve with conditions, or deny the application within 90 days after the Manager determines that the application is administratively complete pursuant to subsection D, subject to any adjustments for delays in providing additional information as provided in subsection E. The Village Council shall not unreasonably deny an application for a Permit. The failure of the Village to comply strictly with the procedural requirements of this Section 1.5 for the review of Permit applications shall not invalidate the decision or proceedings of the Village.

H. Conditions. The Village Council may impose conditions on a Permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a bond by the Telecommunications Provider in an amount which shall not exceed the reasonable cost to ensure that the Public Rights-of-Way are returned to their original condition during and after the Telecommunications Provider's access and use.

I. Modification. The Village Council may, in its discretion, grant a modification of a specific requirement of Sections 1.7, 1.8, 1.9, or 1.11 of this Ordinance if the applicant requests such modification in its application for a Permit and if the applicant demonstrates that: 1) there are exceptional or extraordinary circumstances that warrant a modification, 2) the modification will not be detrimental to the public health, safety, and welfare, and 3) the modification will not impair the intent and purposes of this Ordinance. The application shall describe the basis for the requested by the Village Council pursuant to this Section shall expire upon the expiration of the Permit or earlier if so determined by the Village Council denies a request for a modification, the Telecommunications Provider shall comply with all requirements of this Ordinance without exception.

J. Waiver. The Village Council shall grant a waiver of any requirement of this Ordinance if an applicant or Permittee requests a waiver and the Village Council finds that 1) unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or Permittee to provide any Telecommunications Service within the meaning of Section 253(a) of the Federal Telecommunications Act, 47 USC s 253(a), 2) the requirement is not within the scope of any state or local authority referenced in Section 253(c) of the Federal Telecommunications Act, 47 USC s 253(c), and 3) the requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request. If the request is made in connection with an application for a Permit, the provisions of Sections 1.5D through 1.5G shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in Section 1.5G for holding a public hearing and acting on an application are extended by 90 days. Sections 1.5A, 1.5C, and 1.5F shall apply to a waiver request that is not made in connection with a Permit application, and the request may be denied for violation of or failure to comply with any of those provisions. Section 1.5G shall also apply to such a request, with the exception of the 75 and 90 day time periods set forth in that Section, but the Village Council may by resolution establish different or additional procedures for conducting the public hearing and acting on the request.

#### 1.6 Annual Permit Fees.

A. Establishment of Annual Fees; Payment. In addition to the nonrefundable application fee set forth in Section 1.5C and any other fees for other permits or authorizations required by the Village, the Permittee shall pay an annual fee in an amount as determined from time to time by resolution of the Village Council. The amount of the annual fee shall not exceed the fixed and variable costs to the Village in maintaining the Public Rights-of-Way used by a Telecommunications Provider unless otherwise permitted by law. The annual fee shall be payable semi-annually as follows:

Jan. 1 – June 30      Payment due April 1

July 1 – Dec. 31      Payment due October 1

When a Permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a semi-annual payment is not paid when due, the Permittee shall pay a late payment charge of the greater of \$100 or interest at the rate of one percent (1%) over the prime rate then charged by NBD Bank and computed monthly. A Person who violates this Ordinance by failing to obtain a Permit shall pay the annual fee plus late payment charges, as required by this Section, for the time period in which the violator did not have a Permit plus the actual costs of the Village in enforcing this Ordinance against the Person.

B. Option to Pay Annual Fee Based Upon Gross Revenues. A Permittee, at its option, may elect to pay an annual fee of 1% of its annual Gross Revenues as set forth below, in lieu of and in full satisfaction of the annual fee established by the Village Council pursuant to Section 1.6A. Permittees may elect this annual fee option for administrative convenience in computing the fee or for any other reason.

(1) An election shall be made within forty-five (45) days of applying for a Permit or at least 60 days before the start of any calendar year after issuance of a Permit.

(2) Any election, once made, shall continue in effect until the end of the next three years, such that an election made in a permit application in 2000 would continue in effect through the end of the year 2003.

(3) An election shall be made on a form provided by the Village. Copies of the form shall be submitted in the manner provided in Section 1.5A. The Permittee shall supply all information requested on the form and any additional information that the Manager deems reasonably necessary or relevant, including information on Affiliates of the Permittee relating to the requirements of Sections 1.6B(5), 1.6B(6), 1.6B(7), and 1.6C. After providing notice and an opportunity to be heard the Village may reject or revoke an election for failure to comply with this Section 1.6B(3).

(4) The annual fees shall be paid quarterly by the same due dates as are set forth in Section 1.6A above.

(5) An election shall apply to all Affiliates of a Permittee. In making its election, a Permittee shall expressly affirm that it has the authority to bind, and does bind, its Affiliates to the obligations of this Section 1.6B including Section 1.6B(6) and the audit and records provisions of Sections 1.6B(7) and 1.6C.

(6) For purposes of this Section 1.6B, "Gross Revenues" is defined in Appendix A.

(7) If a Permittee or any Affiliate of a Permittee refuses to pay the fees due under this option or prohibit or effectively prohibit the Village from auditing the Permittee or its Affiliates under Section 1.6C to verify the accuracy of annual fees, then the Village at its option may revoke the election for all or any portion of the time period in question. The annual fees computed under Section 1.6A shall then become immediately due and payable, less a credit for any sums paid by the Permittee or its Affiliates, plus the late payment charges set forth in Section 1.6A and any additional sums due under the last sentence of Section 1.6C.

C. Records. All records (including those of Affiliates) reasonably necessary to verify the accuracy of annual fees paid by the Permittee under either Section 1.6A or Section 1.6B shall be made available by a Permittee at a location within the Village or within fifty (50) miles of the Village's boundaries. The Village, by itself or in combination with other municipalities, reserves



the right to audit any Permittee (or any Affiliate of a Permittee) to verify the accuracy of annual fees paid or to be paid to the Village. Any additional amount due the Village shall be paid within 30 days of submission of an invoice. If the additional amount exceeds two percent (2%) of the total annual fee that the audit determines should have been paid for a calendar year, the Permittee shall pay the Village's costs in connection with the audit within 30 days of submission of an invoice.

D. Other Payments. The non-refundable application fees and the annual fees established pursuant to this Ordinance shall be in addition to any tax, charge, fee, or payment due, or to become due, to the Village by a Permittee under the Ordinances of the Village or the laws of the State of Michigan.

E. Misleading Statements. A Person who provides information to the Village in connection with any matter under this Section 1.6 which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Ordinance, and shall be subject to all remedies for violation of this Ordinance and the other ordinances of the Village including, without limitation, rejection or revocation of an election under Section 1.6B and Permit revocation pursuant to Section 1.13. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

#### 1.7 Duration of Permit; Renewal.

A permit shall remain in effect until December 31 following the fifth anniversary of the issuance of the Permit (unless the Permit expires pursuant to Section 1.8K or the Permit is earlier revoked pursuant to Section 1.13). Applications for renewal of Permits shall be filed in the same manner as original applications in Section 1.5 and shall be filed not less than 120 days before the expiration of the Permit. The Village expressly reserves all rights to approve, approve with conditions, or deny applications for Permit renewals pursuant to this Ordinance and to impose additional conditions on renewed Permits.

#### 1.8 Permit Terms and Requirements.

A. Non-Exclusive; Additional Permits. A permit shall be non-exclusive. The Village expressly reserves the right to approve, at any time, additional Permits for access to and on-going use of the Public Rights-of-Way by Telecommunications Providers and to enter into agreements and grant franchises for such access and use. The issuance of additional Permits, entry into agreements, or grant of franchises shall not be deemed to amend, modify, revoke, or terminate the terms and conditions of any Permits previously issued to Telecommunication Providers.

B. Expansion Requests. A Permit approved by the Village Council shall authorize access to and on-going use of the Public Rights-of-Way described in the Permit, subject to strict compliance with the conditions of the Permit, the requirements of this Ordinance, and any other applicable requirements of the other ordinances of the Village or applicable state and federal law. The Permittee shall not use

any Public Rights-of-Way not expressly authorized by the Permit. Any use of the Public Rights-of-Way (including any installation, construction, maintenance, repair, or operation of a Telecommunication System within the Public Rights-of-Way) to provide Telecommunications Services shall be performed only as authorized by the Permit. A Permittee may, however, expand its Telecommunications System to Public Rights-of-Ways not described in its Permit by obtaining approval of an amended Permit from the Village. Such approval may be granted in writing by the Manager in response to a written request from the Permittee for expansion to specific portions of named Public Rights-of-Way. The Village Council may establish by resolution a nonrefundable application fee for such a request. The Manager may grant, grant with conditions, or deny such request. The Manager shall not unreasonably deny any request. A denial of any request may be appealed to the Village Council, which shall make the final decision. Any expansion into additional Public Rights-of-Way shall be subject to all terms and conditions of the original Permit and this Ordinance including, without limitation, the application of the annual fee to the expanded Public Rights-of-Way used by the Permittee.

C. Construction Permit. A Permittee shall not commence construction upon, over, across or under the Public Rights-of-Way in the Village without first obtaining a construction permit for construction within the Public Rights-of-Way. A Permittee shall pay all fees assessed by the Village in connection with the issuance of such permits.

D. Lease or Use of Facilities; Overlashing. A Permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the Public Rights-of-Way by a Person who is required to obtain a Permit under Section 1.4 of this Ordinance or is required by law to obtain the Village's permission or consent to transact local business in the Village, and who lacks such Permit, permission or consent. A Permittee shall not allow the property of a third party or non-Telecommunications System wires or any other facilities to be overlashed, affixed or attached to any portion of a Permittee's Telecommunications System; or allow other actions with a similar result without the written consent of the Manager.

E. "As Built" Maps. Without expense to the Village, a Permittee shall provide the Village with "as-built" maps, records and plans showing its Telecommunications System or portions thereof within the Village, including those of Affiliates used by the Permittee, and maps and descriptive information of facilities of other Persons used by the Permittee. The maps, records, or plans shall be computer formatted as reasonably requested by the Village. The Manager may waive part or all of this requirement if satisfactory records of the location of the Telecommunications System were previously provided to the Village. The "as built" maps, records, and plans shall be provided within thirty (30) days of the completion of the Telecommunications System s and any extensions, additions, or modifications to the Telecommunications System. Upon request by the Village, a Permittee shall inform the Village as soon as possible (but no more than one business day after the request) of any changes from previously supplied maps, records, or plans and shall modify maps previously provided so as to show the location of its Telecommunication System.

F. No Recourse. A permittee shall have no recourse whatsoever against the Village for any loss, cost, expense or damage arising out of the failure of the Village to have the authority to grant all or

any part of a Permit or the authority to grant permission to use all or part of the Public Rights-of-Way. A Permittee expressly acknowledges that on accepting a Permit it did so relying on its own investigation and understanding of the power and authority of the Village.

G. No Inducement. By acceptance of a Permit, a Permittee acknowledges that it has not been induced to obtain the Permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Village or by any third Person concerning any term or condition of a Permit not expressed in this Ordinance.

H. Acceptance of Terms and Conditions. Permittee acknowledges by the acceptance of a Permit that it has carefully read its terms and conditions and does accept all of such terms and conditions.

I. No Priority. A permit does not establish any priority of use of the Public Rights-of-Way by a Permittee over any present or future Permittees or parties having agreements with the Village or franchises for such use. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the Village, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between Permittees, other Permit holders, parties having agreements with the Village, and franchisees, as determined by the Village in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

J. Future Use by Village. A Permittee acknowledges, by accepting a Permit, that it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Each Permittee acknowledges and accepts as its own risk that the Village may make using or in which a Permittee's Telecommunications System is located in a manner inconsistent with the Permittee's use of such Public Rights-of-Way and that in such event the Permittee will not be entitled to compensation from the Village.

K. Expiration of Permit. Unless the Village grants an extension, a Permit shall expire one year from the date of issuance unless prior thereto the Permittee either (1) commences construction, installation, or operation of its Telecommunications System within the Public Rights-of-Way authorized by the Permit and diligently pursues completion of construction or installation, or (2) commences use of the Public Rights-of-Way to provide Telecommunications Services as authorized by the Permit.

#### 1.9 Use of Public Rights-of-Way By Permittee.

A. No Burden on Public Rights-of-Way. A Permittee and its contractors and subcontractors and a Permittee's Telecommunications System shall not unduly burden or interfere with the present or future use of any of the Public Rights-of-Way within the Village. A Permittee shall erect and maintain its Telecommunications System so as to cause minimum interference with the use of the Public Rights-of-Way and with the rights and reasonable convenience of property owners. Permittee's cables and wires shall be suspended or buried so as to not endanger or injure Persons or property in the Public Rights-of-Way. If the Village in its reasonable judgement determines that any portion of the Telecommunications

System constitutes an undue burden or interference, the Permittee at its sole cost and expense shall modify its Telecommunications Systems or take such other actions as the Village may determine are in the public interest to remove or alleviate the burden, and the Permittee shall do so within the time period established by the Village.

B. Restoration of Property. A Permittee and its contractors and subcontractors shall immediately restore, at the Permittee's sole cost and expense and in a manner approved by the Village, any portion of the Public Rights-of-Way that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Telecommunications System to as good or better condition than that which existed prior to the disturbance. In the event that the Permittee, its contractors or subcontractors fail to do so within the time specified by the Village, the Village shall be entitled to complete the work and the Permittee shall reimburse the Village for the costs of doing so.

C. Easements. Any easements over or under private property necessary for the construction or operation of a Telecommunications System shall be arranged and paid for by the Permittee. Any use or intrusion on private property owner shall constitute a trespass by the Permittee and a violation of this Ordinance. Any easements over or under property owned by the Village other than the Public Rights-of-Way shall be separately negotiated with the Village.

D. Tree Trimming. A permittee may trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with its Telecommunications System. The Permittee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of its Telecommunications System. No trimming shall be done in the Public Rights-of-Way without previously informing the Village.

E. Pavement Cut Coordination/Additional Fees. A Permittee shall coordinate all construction work in the Public Rights-of-Way with the Village's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing").

The goals of such coordination shall be to require a Permittee to conduct all work in the Public Rights-of-Way in conjunction with or immediately prior to any Street Resurfacing planned by the Village, and to prevent the Public Rights-of-Way from being disturbed by a Permittee for a period of years after such Street Resurfacing.

In addition to any other fees or payments required by this Ordinance, a Permittee shall pay to the Village the sum of \$1,250 for each fifty feet (50') cut into or excavation of any Public Rights-of-Way, or portion thereof, which was subject to Street Resurfacing within eighteen (18) months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the Public Rights-of-Way and is in addition to all other fees required by this Ordinance or other Ordinances of the Village.

F. Marking. A Permittee shall mark any installation of its Telecommunications System which occurs after the effective date of this Ordinance as follows:

(1) Aerial portions of its Telecommunications System shall be marked with a marker on its lines on alternate poles which shall state the Permittee's name and provide a toll-free number to call for assistance.

(2) Direct buried underground portions of its Telecommunications System shall have (i) a conducting wire placed in the ground at least several inches above the Permittee's cable (if such cable is non-conductive), (ii) at least several inches above that a continuous colored tape with the Permittee's name and a toll-free phone number and a statement to effect that there is buried cable beneath, and (iii) stakes or other appropriate aboveground markers with the Permittee's name and a toll-free number indicating that there is buried telephone cable below.

(3) Portions of its Telecommunications System located in conduit, including facilities of others used by a Permittee, shall be marked at each manhole with the Permittee's name and toll-free telephone number to call for assistance.

G. Compliance with Laws. A Permittee shall comply with all laws, statutes, Ordinances, rules and regulations regarding the installation, construction, ownership and use of its Telecommunications System, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any Ordinance requiring the installation of additional conduit when a Permittee installs underground conduit for its Telecommunications System). Before any installation is commenced, the Permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or councils of the Village or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. A Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). A Permittee shall comply with all zoning and land use ordinances as may exist or hereafter be amended.

H. Street Vacation. If the Village vacates or consents to the vacation of Public Rights-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of a Permittee's facilities in the vacated right-of-way, the Permittee shall, as a condition of the Permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the Village or a court of competent jurisdiction. The Permittee shall relocate its facilities to such alternate route as the Village, acting reasonably and in good faith, shall designate.

I. Relocation. If the Village requests a Permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public projects, the Permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense, to such alternate route as the Village, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the Village.

J. Public Emergency. The Village shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of a Permittee, without any prior notice, if such action is deemed necessary by the Village President, Manager, Police Chief, or Fire Chief, or their designees because of a public emergency.

Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accident, explosions, major water main breaks, hazardous material spills, etc. The Permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the Village.

K. Miss Dig. If eligible, a Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL s 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

L. Use of Existing Facilities; Undergrounding. A Permittee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles or other facilities unless expressly authorized by the Permit. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a Permittee's Telecommunications System shall also be located underground unless otherwise expressly authorized by the Permit. All undergrounding shall be at the sole cost and expense of the Permittee.

M. Underground Relocation. If a Permittee has its facilities on poles of another public utility company and the other public utility company and the other public utility company relocates its facilities underground, the Permittee shall relocate its facilities underground in the same location at Permittee's sole cost and expense.

N. Pole/Conduit License Agreement; Notification. If a Permittee forfeits or otherwise loses its rights under a pole/conduit license agreement with an entity, then Permittee shall notify the Manager in writing within thirty (30) days.

O. Identification. All personnel of a Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A Permittee shall account for all identification cards at all times. Every service vehicle of a Permittee and its contractors or subcontractors shall be clearly identified as such to the public with the Permittee's name and telephone number.

P. 9-1-1 Emergency Service. As a condition of a Permit, a Permittee providing Local Exchange Service shall provide 9-1-1 service within the Village in accordance with the provisions of the applicable 9-1-1 Service Plan and the rules and orders of the Michigan Public Service Council.

#### 1.10 No Village Liability; Indemnification.

A. Village Not Liable. The Village, and its officers, agents, elected or appointed officials, employees, departments, boards, and councils, shall not be liable to a Permittee or to its Affiliates or customers for any interference with or disruption in the operation of a Permittee's Telecommunications

System or the provision of Telecommunications Services, or for any damages arising out of a Permittee's use of the Public Rights-of-Way.

B. Indemnification. As a condition of a Permit, a Permittee shall defend, indemnify, protect, and hold harmless the Village, its officers, agents, employees, elected and appointed officials, departments, boards, and Councils from any and all claims, losses, liabilities, causes of action, demands, judgements, decrees, proceedings and expenses of any nature resulting from the acts or omissions of the Permittee, its officers, agents, employees, contractors, successors, or assigns.

#### 1.11 Insurance.

A. A Permittee shall obtain and maintain in full force and effect for the duration of a Permit the following insurance covering all insurable risks associated with its ownership or use of its Telecommunications System:

(1) A comprehensive general liability insurance policy, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000.00).

(2) An Automobile Liability Insurance Policy covering any vehicles used in connection with its activities under its Permit in an amount not less than One Million Dollars (\$1,000,000.00).

(3) Workers' Compensation and Employer's Liability Insurance with statutory limits.

B. The Village shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the Village. A Permittee shall provide the Village with a certificate of insurance evidencing such coverage as a condition of issuance of the Permit and shall maintain of file with the Village a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Council approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

C. Each policy which is to be endorsed to add the Village as an additional insured hereunder shall contain cross-liability wording, as follows:

D. If the insurance policies required by this Section are written with deductibles in excess of \$50,000, the deductibles shall be approved in advance by the Village. A Permittee agrees to indemnify and save harmless the Village from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

E. The Permittee shall require that its contractors and subcontractors working in Public Rights-of-Way carry in full force and effect workers' compensation and employer liability,

comprehensive general liability and automobile liability insurance coverages of the types that Permittee is required to obtain under Section 1.11A with appropriate limits of coverage.

F. The Permittee's insurance coverage shall be primary insurance with respect to the Village, its officers, agents, employees, elected and appointed officials, departments, boards, and councils. Any insurance or self-insurance maintained by any of them shall be in excess of the Permittee's insurance and shall not contribute to it.

#### 1.12 No Assignment or Transfer of Control Without Village Consent.

A Permittee shall not assign or transfer a Permit or any of its rights under a Permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, nor shall there be a transfer of Control of a Permittee or its business, without the prior written consent of the Village, which shall not be unreasonably withheld. The Permittee shall reimburse the Village for reasonable, actual costs incurred in the review of a request by the Permittee for consent to an assignment or transfer of the Permit or a transfer of Control of a Permittee or its business. Notwithstanding anything in this Section to the contrary, the Permittee may grant a security interest in its rights under a Permit in favor of a third party without first obtaining the consent of the Village. If a Permit or any rights thereunder is assigned or transferred in whole or in part with the approval of the Village, the terms and conditions of the Permit and of this Ordinance shall be binding upon the successors and assigns of the Permittee.

#### 1.13 Revocation.

In addition to all other rights and powers reserved or pertaining to the Village, the Village reserves as an additional separate and distinct remedy the right to revoke a Permit and all rights and privileges of a Permittee in any of the following events or for any of the following reasons:

- A. A Permittee fails after thirty (30) days prior written notice to comply with any of the provisions of the Permit or this Ordinance (except Section 1.11E); or
- B. A Permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- C. All or part of a Permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the Permittee within ninety (90) days from such sale; or
- D. A Permittee violates Section 1.5F of this Ordinance or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the Village; or
- E. The Village condemns all of the property of a Permittee within the Village by the lawful exercise of eminent domain; or
- F. A Permittee abandons its Telecommunication System or fails to seek renewal of its Permit; or



- G. A Permittee fails to pay any fines due for violations of this Ordinance; or
- H. A Permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an Ordinance providing for civil infractions.

No revocation, except for reason of condemnation, shall be effective unless the Village Council shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to the Permittee and a hearing at which the Permittee receives rudimentary due process.

#### 1.14 Removal.

A. Removal; Underground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, the Permittee may remove any underground Cable from the Public Rights-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of Cable to be removed. Except as otherwise provided, the Permittee shall not remove any underground Cable or conduit which requires trenching or other opening of the Public Rights-of-Way along the extension of Cable to be removed. The Permittee shall remove, at its sole cost and expense, any underground Cable or conduit which is ordered to be removed by the Village based upon a determination, in the sole discretion of the Village, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Village to remove Cable or conduit shall be mailed to the Permittee not later than thirty (30) calendar days following the date of revocation or expiration of the Permit. A Permittee shall file written notice with the Village Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Permit of its intention to remove Cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Village. Removal shall be completed not later than twelve (12) months following the date of revocation or expiration of the Permit. Underground Cable and conduit in the Public Rights-of-Way which is not removed within such time period shall be deemed abandoned and, at the option of the Village, title shall be vested in the Village. For purposes of this subsection, "Cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

B. Removal; Above Ground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, a Permittee, at its sole cost and expense, shall, unless relieved of the obligation by the Village, remove from the Public Rights-of-Way all above ground elements of its Telecommunication System, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

C. Permit; Restoration; Completion. A Permittee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or Ordinance of the Village, shall conduct and complete the work of removal in compliance with all such applicable law or Ordinances, and shall restore the Public Rights-of-Way to the same condition they were in before the work of removal commenced.

#### 1.15 Other Provisions Not Waived.

A. Nothing in this Ordinance shall be construed as a waiver of any ordinances, Charter provisions, or regulations of the Village or the Village's right to require Permittee or Persons utilizing the Telecommunication System or Telecommunications Services to secure appropriate permits or authorization for such use.

B. The Village fully reserves its police powers to ensure and protect the public health, safety, and welfare and fully reserves its authority and power to amend this Ordinance at any time. The terms and conditions of any Permit shall be subject to compliance with any future amendments of this Ordinance. The Village fully reserves its right to exercise the reasonable control of the Public Rights-of-Way pursuant to Article VII, s 29 of the 1963 Michigan Constitution.

C. Nothing in this Ordinance or any Permit shall limit any right the Village may have to acquire by eminent domain any property of a Telecommunications Provider.

D. Nothing in this Ordinance or any Permit shall limit the authority of the Village to impose a tax, fee, or other assessment of any kind on any Person. A Telecommunications Provider shall pay all fees necessary to obtain all Federal, State, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Telecommunications System within the Public Rights-of-Way.

#### 1.16 Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, except as provided in this Section. If a court or administrative agency of competent jurisdiction determines, by a final, non-appealable order or an order from which no appeal has been taken within the time allowed, that any right or obligation of a Permittee under this Ordinance is invalid, unconstitutional or unenforceable, then the Permit shall become revocable and subject to termination without cause by either the Village or the Permittee on 60 days written notice. In the event of termination under this Section by either the Village or the Permittee, the provisions of Section 1.14 for removal shall apply.

#### 1.17 Municipal Civil Infraction.

A Person who violates any provision of this Ordinance is responsible for a municipal civil infraction and shall be subject to the payment of a civil fine of not less than Five Hundred Dollars (\$500.00) and not more than Five Thousand Dollars (\$5,000), plus the costs of prosecution and other sanctions, as permitted by law, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this Ordinance shall be subject to increased fines as follows:

First repeat offense	Not less than One Thousand Dollars (\$1,000) and not more than Ten Thousand Dollars (\$10,000)
Second and subsequent repeat offense	Not less than Two Thousand Dollars (\$2,000) and not more than Twenty Thousand Dollars (\$20,000).

The rights and remedies in this section are cumulative and in addition to any other remedies provided by law.  
Section 2. Effective Date. This Ordinance shall become effective twenty (20) days after its adoption or upon its publication in a newspaper of general circulation within the Village of Lakeview, whichever is later.  
YEAS: Earhart, McElhinny, Lund, Winter, Schottle, Burlison  
NAYS: None  
ABSENT: Rasmussen  
ORDINANCE NO. 00-2 ADOPTED.

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Lee Burlison, President

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Wally Delamater, Clerk

I, Wally Delamater, the Clerk of the Village of Lakeview, hereby certify the foregoing to be a true copy of an ordinance adopted at a regular meeting of the Village Council of the Village of Lakeview held on June 12, 2000.

\_\_\_\_\_  
Wally Delamater, Clerk

Published 6-21-2000.

## APPENDIX A – GROSS REVENUES

For the purpose of Section 1.6B, “Gross Revenues” means all amounts earned, received or accrued by a Permittee and its Affiliates in whatever form and from all sources which are in connection with or attributable to the Permittee’s Telecommunications System in Village or to the Permittee’s or its Affiliates’ provision of Telecommunications Services within the Village.

(1) Gross Revenues shall include, but not be limited to, all revenues from or attributable to customers, other carriers, or third parties whether for services, equipment, directories, publications, or otherwise. It shall include revenues of the types generally described in the Revenue Accounts of the FCC Uniform System of Accounts for Telecommunications Companies as in effect on October 31, 1996, 47 CFR s 32 Subpart D, whether or not the Permittee or its Affiliates are subject to such System of Accounts, including Accounts 4999 through 5302 and any cross referenced accounts, or subaccounts which may be established by Permittee or its Affiliates relating to the preceding account numbers. Gross Revenues shall include all services provided by a Permittee or its Affiliates, whether or not subject to regulation at the federal, state or local level. For transactions with Affiliates Gross Revenues shall be computed in accordance with the principles set forth in 47 CFR s 32.27 as in effect on October 31, 1996, including in particular s 32.27(d), and otherwise at the fair market rate.

(2) Gross Revenues shall include all amounts received, earned, or accrued during a period regardless of whether (a) received or not in the case of amounts earned or accrued; (b) the amounts are to be paid in cash, in trade, or by means of some other benefit to the Permittee or its Affiliates; (c) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; (d) the amounts are characterized, separately identified, or account as being for goods, services, or fees to be paid to units of government or government agencies; or (e) the amounts are initially recorded or received by the Permittee or by an Affiliate. However, Gross Revenues shall exclude uncollectible accounts during the period, computed on a fair basis consistently applied.

(3) Gross Revenues shall be computed at the level where first received from an entity not in any way Affiliated with the Permittee and shall not be net of (a) any operating expense; (b) any accrual, including without limitation, any accrual, including without limitation, any accrual for Councils; or (c) any other expenditure.

(4) Revenues from customers shall be allocated to the Village based upon whether or not the location being provided service pursuant to the Permit is located in the Village and not by any other allocation method. Revenues from Non-Switched Telecommunications Services shall be allocated to the Village as set forth in Appendix B.

(5) Revenues whose source cannot be identified with a specific customer or municipality shall be allocated to the Village based upon the percentage of customers in the Village compared to the number of customers served by that portion of Permittee’s Telecommunications System (including portions outside the Village) to which such revenues are reasonably attributable.

## APPENDIX B

### ALLOCATION OF REVENUE FROM NON-SWITCHED TELECOMMUNICATIONS SERVICES

Gross Revenues from Non-Switched Telecommunications Services shall be allocated to the Village as follows:

a. For purposes of this Appendix B, "Non-Switched Telecommunications Services" means the two-way transmission of high speed digital voice, data and (for such applications as teleconferencing) video signals (i) to carry interexchange traffic between long distance carrier points-of-presence; (ii) to interconnect user locations to interexchange carrier points-of-presence; and (iii) to interconnect user locations.

b. If all locations of a given customer receiving service from the Permittee are in the Village, Gross Revenues shall include all revenues received from or imputed to that customer.

c. If any but not all of the locations of a given customer receiving service from the Permittee are in the Village, the revenues attributable to the Village shall be computed separately for each service taken by the customer. For each separate service taken the revenues attributable to the Village are all revenues received from or imputed to that service times a fraction whose numerator is the number of locations of the customer within the Village taking that service and whose denominator is all the customer's locations taking that service.

d. If (such as with an Interexchange Carrier which contracts for capacity from the Permittee so as to connect with its customers through the Permittee's Telecommunications System) a customer uses the Permittee's Telecommunications System to connect to third parties, such third parties shall be treated as customers (or customer locations, as the case may be) for purposes of this provision and revenue attribution thereunder. "Interexchange Carrier" means a Person who provides interexchange telecommunications service, commonly called a long distance carrier (Sprint, MCI and AT&T are examples), and typically deemed a carrier under the Federal Communications Act of 1934 or amendments thereto.

e. The different services taken by customers shall correspond with the classes of service offered by the Permittee.

VILLAGE COUNCIL  
VILLAGE OF LAKEVIEW  
MONTCALM COUNTY, MICHIGAN

Council Member Schottle, supported by Council Member Earhart, moved the adoption of the following Ordinance:

ORDINANCE NO. 02-01

AN ORDINANCE AMENDING ORDINANCE NO. 00-2, ENTITLED "AN ORDINANCE TO REGULATE THE ACCESS TO AND ON-GOING USE OF THE VILLAGE OF LAKEVIEW'S PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATION PROVIDERS," TO ADD A NEW SECTION 18 AND TO ENACT A NEW TELECOMMUNICATIONS ORDINANCE FOR USE OF THE VILLAGE'S RIGHTS-OF-WAY

THE VILLAGE OF LAKEVIEW ORDAINS:

Section 1. Adoption of Ordinance. The following ordinance is hereby adopted in its entirety:

TELECOMMUNICATIONS

1. Purpose.

The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and to exercise reasonable control of the Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) and other applicable law, and to ensure that the Village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

2. Conflict.

Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

3. Terms Defined.

The terms used in this ordinance shall have the following meanings:

*Act* means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of Public Acts of 2002), as amended from time to time.

*Permit* means a nonexclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the Village for its telecommunication facilities.

*Village Council* means the Village Council of the Village of Lakeview or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

*Village Manager* means the Village Manager or his or her designee.

*Village* means the Village of Lakeview.

All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

*Authority* means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to the Act.

*MPSC* means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.

*Person* means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

*Public Rights-of-Way* means the area on, below, or above a public roadway, highway, street, alley easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

*Telecommunication Facilities* or *Facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

*Telecommunications Provider, Provider* and *Telecommunications Services* mean those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communications device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

A. A cable television operator that provides a telecommunication service.



B. Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

C. A person providing broadband internet transport access service.

4. Permit Required.

A. *Permit Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the Village for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

B. *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, one copy with the Village Manager, and one copy with the Village Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with the Act.

C. *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from Michigan's Freedom of Information Act, Act No. 442 of the Public Acts of 1976, as amended, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

D. *Application Fee.* Except as otherwise provided by the Act, an application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.00.

E. *Additional Information.* The Village Manager may request an applicant to submit such additional information which the Village Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village Manager. If the Village and the applicant cannot agree on the requirement of additional information requested by the Village, the Village or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

F. *Previously Issued Permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the Village under Section 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, as amended, and authorizations or permits issued by the Village to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this ordinance. With the exception of fee provisions, which are now covered by the Act, all provisions of Village Ordinance No. 00-2 shall remain in full force and effect with regard to permits or consent agreements issued by the Village to telecommunications providers prior to November 1, 2002.

G. *Existing Providers.* Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the Village of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, Act No. 179 of the Public Acts of 1991, as amended, shall submit to the Village an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (D) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority for good cause, as provided in Section 5(4) of the Act.

5. Issuance of Permit.

A. *Approval or Denial.* The authority to approve or deny an application for a permit is delegated to the Village Manager. Pursuant to Section 15(3) of the Act, the Village Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit in accordance with Section 4(B) of this ordinance for access to a public right-of-way within the Village. The Village Manager shall notify the MPSC when the Village Manager has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village Manager shall not unreasonably deny an application for a permit.

B. *Form of Permit.* If an application for a permit is approved, the Village Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

C. *Conditions.* Pursuant to Section 15(4) of the Act, the Village Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and use of the public right-of-way.

D. *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (C) above, the Village Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

6. Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the Village without first obtaining a construction or engineering permit as required under the Compilation of Ordinances, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

7. Conduit or Utility Poles.

In accordance with the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles.

8. Route Maps.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the Village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the Village. The route maps should be in electronic format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

9. Repair of Damage.

A telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the Village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

10. Establishment and Payment of Maintenance Fee.

In addition to the non-refundable application fee to the Village set forth in Section 4.D above, a telecommunications provider with telecommunications facilities in the Village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

11. Modification of Existing Fees.

In compliance with the requirements of Section 13(1) of the Act, the Village hereby modifies, to the extent necessary, fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and use of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the Village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the Village's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The Village shall provide each telecommunications provider affected by the fee a copy of this ordinance, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the Village's policy and intent, and upon application by a provider or discovery by the Village, shall be promptly refunded as having been charged in error.

12. Savings Clause.

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

13. Use of Funds.

Pursuant to Section 10(4) of the Act, all amounts received by the Village from the Authority shall be used by the Village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the Village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the Village under Act No 51 of the Public Acts of 1951.

14. Annual Report.

Pursuant to Section 10(5) of the Act, the Village Manager may file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

15. Cable Television Operators.

Pursuant to Section 13(6) of the Act, the Village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

16. Existing Rights.

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the Village may have under a permit issued by the Village or under a contract between the Village and a telecommunications provider related to the used of the public rights-of-way.

17. Compliance.

The Village declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions of this ordinance should be construed in such a manner as to achieve that purpose. The Village shall comply in all respects with the requirements of the Act, including but not limited to the following:

- A. Exempting certain route maps from disclosure consistent with the Act and state law as provided in Section 4(C) of this ordinance;
- B. Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(F) of this ordinance;
- C. Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and

usage of a public right-of-way within the Village, in accordance with Section 5(A) of this ordinance;

D. Notifying the MPSC when the Village has granted or denied a permit, in accordance with Section 5(A) of this ordinance;

E. Not unreasonably denying an application for a permit, in accordance with Section 5(A) of this ordinance;

F. Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(B) of this Ordinance;

G. Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and use of the public right-of-way, in accordance with Section 5(C) of this ordinance;

H. Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(D) of this ordinance;

I. Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;

J. Providing each telecommunications provider affected by the Village's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;

K. Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and

L. Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

18. Reservation of Police Powers.

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the Village's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the Village's authority to ensure and protect the health, safety, and welfare of the public.

19. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

20. Authorized Village Officials.

The Village Manager is hereby designated as the authorized Village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the violations bureau) for violations under this ordinance as provided by law.

21. Municipal Civil Infraction.

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be fined not less than \$500 for each violation and shall be construed to limit the remedies available to the Village in the event of a violation by a person of this ordinance or a permit.

22. Repealer.

All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

Section 2. Amendment of Ordinance No. 00-2. That Ordinance No. 00-2 is amended to add the following new Section 18, which shall read in its entirety as follows:

Section 18.

The Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 ("Act 48") is effective November 1, 2002. In order to comply with Act 48, the Village adopted Ordinance No. 02-01 for permits issued on or after November 1, 2002. However, some existing telecommunications right-of-way permits and consent agreements issued by the Village and dated before November 1, 2002 may incorporate by reference all or portions of this Ordinance No. 00-2, Entitled "An Ordinance To Regulate Access To and On-Going Use Of the Village Of Lakeview's Public Rights-Of-Way By Telecommunications Providers." Under Act 48, these existing permits and consent agreements continue in force and effect subject to the provisions of Act 48.

Notwithstanding any other provision herein, this Ordinance shall remain in effect solely for the limited purpose of those permits and consent agreements in existence before November 1, 2002 (except as otherwise provided in Act 48) and then, only until the time such permits or consent agreements expire or otherwise terminate. Except as provided in this section, this Section shall have no application to telecommunications providers after October 31, 2002.

Section 3. Effective Date. This Ordinance shall become effective twenty (20) days after its adoption or upon publication in a newspaper of general circulation within the Village of Lakeview, whichever is later.

YEAS: Tim Rasmussen, Janet Earhart, Kathy Lobert, Esther Collard, Ruth Schottle

NAYS: None

ABSENT: Dave Lund

ORDINANCE NO. 02-01 ADOPTED.

\_\_\_\_\_  
Ed Winter, President

\_\_\_\_\_  
Wally Delamater, Clerk

I, Wally Delamater, the Clerk of the Village of Lakeview, hereby certify the foregoing to be a true copy of an ordinance adopted at a regular meeting of the Village Council of the Village of Lakeview held on November 11, 2002.

\_\_\_\_\_  
Wally Delamater, Clerk

06939 (517) 178085.03