

# **Exhibit 7**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ILLINOIS BELL TELEPHONE	)	
COMPANY d/b/a AT&T Illinois,	)	
	)	
Plaintiff,	)	
	)	Case No. 06 C 2008
vs.	)	
	)	
CITY OF WHEATON, ILLINOIS	)	Honorable Wayne R. Andersen
	)	
Defendant.	)	
	)	

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**AMENDED COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Illinois Bell Telephone Company d/b/a AT&T Illinois ("AT&T Illinois") brings this action for declaratory, injunctive, and other relief and alleges as follows:

**INTRODUCTION**

1. The City of Wheaton ("City") recently enacted an ordinance designed to obstruct AT&T Illinois's use of public and private rights-of-way within the City by prohibiting the placement within the City of certain utility cabinets. The City's ordinance deprives AT&T Illinois of its rights to use the public rights-of-way for its telecommunications network, and is contrary to law.

2. Project Lightspeed is AT&T Inc.'s ("AT&T") initiative to invest nearly \$5 billion across its 13-state incumbent local telephone service territory, including Illinois, to upgrade its telecommunications network to a fiber-rich infrastructure capable of delivering innovative new services to consumers and improving the service quality of existing services. By deploying even more fiber optic facilities and associated equipment and cabinets in its existing network, AT&T Illinois will increase the amount of available bandwidth to residential customers. This upgraded

network will enable AT&T Illinois to provide both telecommunications services that AT&T Illinois already provides today, such as voice telephone service, and a bundle of new communications services, including Voice over Internet Protocol (“VoIP”), even higher-speed Internet access, and Internet Protocol (“IP”) video services (collectively, the “IP-based communications services suite”).

3. On April 3, 2006, the City enacted an ordinance designed to stop AT&T Illinois’s network upgrade in its tracks. Ordinance F-1151 (the “Ordinance”) (attached as Exhibit A hereto) places a 180-day moratorium upon the granting of permits for or the construction of a “ground mounted utility installation,” whether on private or public property, including the telecommunications cabinets that AT&T Illinois is seeking to deploy in the City.

4. The City’s obstruction is contrary to law for several reasons:

(1) The facilities that AT&T Illinois seeks to deploy will be used to provide telecommunications services. Federal law, in particular 47 U.S.C. § 253, prohibits the City from denying AT&T Illinois access to the public rights-of-way to deploy facilities that will be used to provide telecommunications services;

(2) Illinois law grants every telecommunications carrier the right to place its wires and other facilities in the public ways. AT&T Illinois is a telecommunications carrier, and thus the City’s attempt to block AT&T Illinois from placing its wires and other facilities in the public ways violates AT&T Illinois’s statutory rights and is contrary to Illinois law;

(3) AT&T Illinois’s deployment in the City’s rights-of-way of facilities that will transmit voice, data, and video services, as well as the actual provision of those services, are activities protected by the First Amendment to the United States

Constitution. The City's attempt to prohibit AT&T Illinois's First Amendment activities does not further any important or substantial governmental interest, is far greater than is essential to further any important or substantial governmental interest even if such an interest existed, and deprives AT&T Illinois of its rights under the First Amendment;

(4) The City's Ordinance has deprived AT&T Illinois of rights, privileges, and immunities secured by the due process and equal protection clauses of the United States and Illinois constitutions, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was discriminatory, unfair, arbitrary and capricious, lacking in a rational basis, and without legitimate justification.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because AT&T Illinois's claims arise under the Constitution and laws of the United States, including the federal Telecommunications Act of 1996 ("1996 Act"). This Court has supplemental jurisdiction over AT&T Illinois's state law claims pursuant to 28 U.S.C. § 1367. The Court's authority to grant declaratory relief and other appropriate relief is founded upon 28 U.S.C. §§ 2201 and 2202.

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). AT&T Illinois does business in this district, the City is located in this district, and substantial components of the property affected by the City's actions are located in this district.

#### **PARTIES**

7. AT&T Illinois is a corporation organized under the laws of the State of Illinois, with its principal place of business in Illinois. AT&T Illinois is a subsidiary of AT&T Inc. ("AT&T"). AT&T Illinois is an "incumbent local exchange carrier" ("incumbent LEC" or

“ILEC”), as that term is defined in Section 251(h) of the federal 1996 Act, in its authorized service areas in the State of Illinois.

8. The City is a municipal corporation organized and constituted under the Constitution and laws of the State of Illinois.

### **BACKGROUND**

#### **A. Description of AT&T Illinois’s Network Upgrade**

9. For many decades, telephone companies (including AT&T Illinois) used exclusively copper wires for “loops,” or the transmission facilities that connect the homes and businesses of customers to the buildings (known as “central offices”) that house the switches used to route and connect telephone calls. In the late 1980s, many local telephone companies, including AT&T Illinois, begin installing fiber optic wires in lieu of copper wires over certain parts of their local networks. Beginning in late 1999, AT&T Illinois undertook “Project Pronto” to further deploy more fiber optic wires deeper (that is, closer to customers’ premises) into its network.

10. AT&T Illinois undertook Project Pronto so that its network was capable of supporting Digital Subscriber Line (“DSL”)-based communications services, such as high-speed Internet access, on a wider basis. DSL technology is distance sensitive, meaning that, as is the case with all copper-based services, the signal strength and the amount of available bandwidth to the subscriber decreases the further the signal must travel over a copper loop. Because many of its copper loops were too long to support the provision of broadband DSL-based communications services, AT&T Illinois began deploying additional fiber optic cables (which do not experience the same signal degradation as copper) from its central offices to a point between the central office and the customer premises. At that point, known as a Remote Terminal (or

“RT”), AT&T Illinois placed cabinets (or in some cases underground vaults) to house electronics used to provide DSL-based communications services and to cross-connect the fiber optic cables with existing copper wires extending from the RT to the customer premises. As a result of this network upgrade, much of AT&T Illinois’s outside plant network now consists of loops that are part fiber optic cable and part copper wire.

11. Project Lightspeed picks up where Project Pronto left off by extending the fiber portion of AT&T Illinois’s network even deeper into neighborhoods. For neighborhoods where AT&T Illinois currently provides service, AT&T Illinois will install additional fiber optic cable, extending further than existing RTs to a “node” near the edge of a residential neighborhood, typically 3,000 to 5,000 feet from the customer premises. At the node, AT&T Illinois will place additional electronics housed in new equipment cabinets (in most cases called “52B cabinets”), and from the node to customers’ premises AT&T Illinois will utilize the existing copper facilities.

12. By moving these electronics closer to customer homes and by reducing the length of copper wires used to provide service, AT&T Illinois will be able to provide substantially more bandwidth to its subscribers, as well as new services that require more bandwidth than AT&T Illinois’s existing network could support. For example, the upgraded network will enable AT&T Illinois to provide, in addition to telecommunications services that AT&T Illinois has provided to customers for years, a bundle of IP-based communications services that includes an Internet Protocol-based voice service known as “VoIP” service, a significantly faster Internet access service (“HSIA”), and an IP video service.

13. These network upgrades will have limited impact on the public rights-of-way that AT&T Illinois’s facilities already occupy. AT&T Illinois is using existing copper facilities from

the node to customer homes, so its upgrade will have minor impact on the public streets and rights-of-way in individual neighborhoods. Further, the additional fiber optic cable and associated equipment and cabinets that AT&T Illinois will deploy will follow the same rights-of-way already used by AT&T Illinois, resulting in little expected disruption of public convenience.

**B. The Wheaton Ordinance**

14. Ordinance F-1151, enacted on April 3, 2006, places a 180-day moratorium upon the granting of permits for or the construction of a "ground mounted utility installation," whether on private or public property. A ground mounted utility installation is defined as "any ground mounted utility fixture, cabinet, box, structure, device or appurtenance, including those related to video transmissions," that is "powered by stand alone electric service" or that exceeds certain dimensions (50 inches high, by 36.5 inches long, by 17.5 inches wide). Ordinance F-1151, Section 2. However, the Ordinance expressly excludes "ground mounted electric substations, ground mounted traffic light control cabinets or utility poles."

15. Prior to the passage of Ordinance F-1151, AT&T Illinois had developed a Project Lightspeed construction schedule that called for AT&T Illinois to begin upgrading its network within the City and secure permits from the City to place a number of cabinets within the City during the period covered by the 180-day moratorium. Indeed, AT&T Illinois had already submitted five permit applications to the City for the installation of new cabinets and related facilities before the Ordinance was passed. The new cabinets, which exceed the dimensions described in the City's ordinance, are intended to provide telecommunications services in addition to new IP-based services. That is, AT&T Illinois will use electronic equipment contained in the cabinets not just to provide new IP-based services, but also to provide telecommunications services such as residential telephone service. The City's ordinance,

however, prevents AT&T Illinois from undertaking its planned network upgrade, and makes applying for additional permits to place new cabinets a futile act.

16. The obstruction of AT&T Illinois's placement of additional cabinets and associated facilities will drastically curtail or altogether eliminate AT&T's ability to provide its new suite of IP-based communications services, as well as negatively impact AT&T Illinois's ability to enhance the reliability, quality, and cost-effectiveness of the telecommunications services that AT&T Illinois provides. The City's obstruction is unrelated to the reasonable management of the rights-of-way that are under the City's authority.

#### COUNT I

#### **The City's Attempt To Stop AT&T Illinois From Deploying Its Facilities Is Preempted By Section 253 Of The Federal Telecommunications Act of 1996**

17. AT&T Illinois repeats paragraphs 1 through 16 as though fully set forth herein.

18. Through the federal Telecommunications Act of 1996, Congress imposed strict limitations on municipal authority over telecommunications carriers such as AT&T Illinois. The City's attempt to prevent AT&T Illinois from deploying facilities used for the provision of telecommunications services is prohibited by federal law.

19. The 1996 Act established a pro-competitive, deregulatory national policy framework. Since the Act's inception, Congress and the Federal Communications Commission ("FCC") consistently have stressed the importance of reducing regulation and encouraging the rapid deployment of new telecommunications technologies. Those policy objectives are paramount, for the federal courts have recognized that with regard to the matters addressed by the 1996 Act and the FCC's implementing regulations, Congress unquestionably has taken the regulation of local telecommunications competition away from state and local governments.

20. In accord with these principles, Section 253 of the 1996 Act (47 U.S.C. § 253) prohibits state and local governments from creating legal requirements that may have the effect of prohibiting a telephone company like AT&T Illinois from providing telecommunications services. In particular, Section 253(a) states: “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). At the same time, Section 253(c) preserves “the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” 47 U.S.C. § 253(c).

21. The City’s Ordinance goes far beyond the City’s power to engage in reasonable and ordinary management of the public rights-of-way. The City instead seeks to altogether prevent AT&T Illinois from accessing the public rights-of-way to place new cabinets. Under Section 253(a), the City’s actions do not constitute legitimate rights-of-way regulation, but rather amount to an unlawful attempt to stop AT&T Illinois’s deployment in the public rights-of-way of facilities that will be used to provide telecommunications services.

22. By purporting to exercise authority to exclude AT&T Illinois from the City’s streets and public rights-of-way and to prohibit AT&T Illinois from installing additional facilities that will be used to provide telecommunications services to the City’s residents, the City’s actions violate Section 253 of the 1996 Act.

23. The work that AT&T Illinois performs as part of its network upgrade includes the conditioning of the copper distribution portion of AT&T Illinois’s outside loop plant – the copper telephone lines that run from end-users’ premises to the SAI (an existing neighborhood

cross-connect point in AT&T Illinois's network). This conditioning work enhances AT&T Illinois's ability to economically maintain its telecommunications network and to provide more reliable, cost-effective, and better quality telecommunications services and other communications services.

24. The City's permit denials prohibit or have the effect of prohibiting the ability of AT&T Illinois to provide an interstate or intrastate telecommunications service.

25. Pursuant to the Supremacy Clause of the United States Constitution, the City's Ordinance is thus preempted by federal law.

26. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

## COUNT II

### **The City Is Violating AT&T Illinois's Statutory Right Under The Illinois Telephone Company Act To Deploy Its Facilities In The Public Rights Of Way**

27. AT&T Illinois realleges and incorporates paragraphs 1 through 26 as though fully set forth herein.

28. Under Illinois's Telephone Company Act, "every telecommunications carrier is authorized to construct, maintain, alter and extend its poles, wires, and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water in this State, but so as not to incommode the public in the use thereof." 220 ILCS 65/4.

29. Illinois municipalities may not prevent telecommunications carriers from constructing and maintaining their lines and associated facilities upon and across any public roads, streets and waters of Illinois as long as the telecommunications carrier does so in a manner as not to incommode the public in the use of such roads, streets and waters.

30. AT&T Illinois is a “telecommunications carrier” within the meaning of the Telephone Company Act. Accordingly, AT&T Illinois has a statutory right to use the public ways to install its facilities.

31. AT&T Illinois’s network upgrade in the public rights-of-way within the City will not obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities. The City’s obstruction is unrelated to and outside of its authority to engage in reasonable management of those public rights-of-way.

32. The City’s attempt to block AT&T Illinois’s placement of its facilities in the public rights-of-way violates AT&T Illinois’s statutory rights under the Telephone Company Act and is contrary to Illinois law.

33. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

### COUNT III

**The City’s Attempt to Prohibit AT&T Illinois From  
Deploying Its Facilities To Offer A Suite Of IP-Based Voice, Data, and Video Services  
Violates The First Amendment to the United States Constitution**

34. AT&T Illinois realleges and incorporates paragraphs 1 through 33 as though fully set forth herein.

35. The First Amendment to the Constitution of the United States rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public and that a reduction in the volume of available speech harms not only speakers themselves but society as a whole which is deprived of an uninhibited marketplace of ideas.

36. The information transmitted through the existing and new IP-based communications services that AT&T Illinois will provide over the facilities that it seeks to lay and upgrade in the City's rights-of-way is entitled to protection under the First Amendment.

37. The City's Ordinance prohibits AT&T Illinois from upgrading its facilities with additional equipment and cabinets that will be used to provide telephone and telecommunications services and a suite of IP-based communications services, and constitutes an unlawful abridgement of AT&T Illinois's First Amendment rights.

38. The City's attempt to prohibit AT&T Illinois's First Amendment activity in the face of the federal government's policy objective of expanding advanced and interactive services unfettered from federal or state regulation does not further – and, indeed, runs directly counter to – an important or substantial governmental interest.

39. Even if the City's prohibition on AT&T Illinois's First Amendment activity did further an important or substantial governmental interest, the City's absolute ban on AT&T Illinois's access to the rights-of-way for the purpose of deploying its equipment cabinets is far greater than is essential to the furtherance of any such interest.

40. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

41. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

42. The City's refusal to allow AT&T Illinois to access rights-of-way to upgrade its facilities with the cabinets that will be used to provide telephone and telecommunications services

and a suite of IP-based communications services deprives AT&T Illinois of its rights, privileges, and immunities under the Constitution of the United States.

43. 42 U.S.C. § 1988 provides in relevant part that “[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.”

44. Accordingly, this Court should declare that the City’s actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights, privileges, and immunities afforded to it by the Constitution of the United States, and hold that the City’s actions violate the First Amendment and that AT&T Illinois is entitled to injunctive and other relief as described in the prayer for relief at the end of this Complaint. Furthermore, this Court should award attorneys’ fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT IV

##### **The City’s Ordinance Violates AT&T Illinois’s Due Process Rights Under The United States Constitution**

45. AT&T Illinois repeats paragraphs 1 through 44 as though fully set forth herein.

46. The City’s Ordinance has deprived AT&T Illinois of rights, privileges, and immunities secured by the Due Process Clause, in that the City’s decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was unfair, arbitrary and capricious, and lacking in a rational basis.

47. Accordingly, the City’s Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of due process, and should be set aside and enjoined by the Court on that basis.

48. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

49. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

50. As alleged above, the City's actions violate AT&T Illinois's rights, privileges and immunities under the Due Process Clause of the United States Constitution, as secured by section 1983.

51. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

52. Accordingly, this Court should declare that the City's actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights, privileges, and immunities afforded to it by the Constitution of the United States. Furthermore, this Court should award attorneys' fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT V

**The City's Ordinance Deprives AT&T Illinois Of Its Rights  
Under The Equal Protection Clause Of The United States Constitution**

53. AT&T Illinois repeats paragraphs 1 through 52 as though fully set forth herein.

54. The City's Ordinance is discriminatory in that it blocks some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets. These distinctions are not tailored to any legitimate justification.

55. The discrimination effected by the City's Ordinance violates AT&T Illinois's rights under the Equal Protection Clause of the United States Constitution.

56. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection of the laws, and should be set aside and enjoined by the Court on that basis.

57. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

58. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

59. The City's actions violate AT&T Illinois's rights under the Equal Protection Clause of the United States Constitution, as secured by section 1983.

60. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

61. Accordingly, this Court should declare that the City's actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights afforded to it by the Constitution of the United

States. Furthermore, this Court should award attorneys' fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT VI

##### **The City's Ordinance Violates AT&T Illinois's Due Process Rights Under The Illinois Constitution**

62. AT&T Illinois repeats paragraphs 1 through 61 as though fully set forth herein.

63. Article I, Section 2 of the Illinois Constitution states: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

64. The City's Ordinance has deprived AT&T Illinois of its rights secured by the due process clause of the Illinois Constitution, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was unfair, arbitrary and capricious, and lacking in a rational basis.

65. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of due process, and should be set aside and enjoined by the Court on that basis.

#### COUNT VII

##### **The City's Ordinance Deprives AT&T Illinois Of Its Rights Under The Equal Protection Clause Of The Illinois Constitution**

66. AT&T Illinois repeats paragraphs 1 through 65 as though fully set forth herein.

67. Article I, Section 2 of the Illinois Constitution states: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

68. The City's Ordinance has deprived AT&T Illinois of its rights secured by the equal protection clause of the Illinois Constitution, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was discriminatory, unfair, arbitrary and capricious, lacking in a rational basis and without legitimate justification.

69. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection of the laws, and should be set aside and enjoined by the Court on that basis.

#### **PRAYER FOR RELIEF**

THEREFORE, AT&T Illinois respectfully requests that this Court grant it the following relief:

- (a) Enjoin the City from enforcing Ordinance F-1151;
- (b) Declare that Ordinance F-1151 is preempted by 47 U.S.C. § 253;
- (c) Declare that Ordinance F-1151 violates AT&T Illinois's rights under the Illinois Telephone Company Act;
- (d) Declare that Ordinance F-1151 violates AT&T Illinois's rights under the First Amendment to the United States Constitution;
- (e) Declare that Ordinance F-1151 deprives AT&T Illinois of its rights without due process of law in violation of the Fifth and Fourteenth to the United States Constitution and the Illinois Constitution;
- (f) Declare that Ordinance F-1151 deprives AT&T Illinois of its rights under the Equal Protection Clause of the United States Constitution and the Illinois Constitution;
- (g) Enjoin defendant from acting in any manner inconsistent with the declaratory relief sought herein;
- (h) Award AT&T Illinois its attorneys' fees pursuant to 42 U.S.C. § 1988; and

- (i) Award AT&T Illinois such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ILLINOIS BELL TELEPHONE COMPANY

By: /s/ Robert M. Dow, Jr.

One of its Attorneys

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Dated: April 10, 2006

Attorneys for Plaintiff  
Illinois Bell Telephone Company

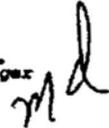
# **EXHIBIT A**

## NEW BUSINESS #5

# M

## emorandum

Michael G. Dragan  
Assistant City Manager



**TO:** The Honorable Mayor and City Council

**DATE:** March 29, 2006

**SUBJECT:** Ordinance Establishing Moratorium on Ground Mounted Utility Installations

Please find attached an ordinance which creates a 180-day moratorium on the construction of ground mounted utility structures within the City, either on private property or public ways, which are much larger than the City has seen in the past. Recently, a ground mounted utility structure was constructed on the west side of President Street, between Lowden Avenue and Farnham Lane (please find attached a photo showing this ground mounted installation). This structure is located approximately 1 ½ ft. off of the right-of-way line within an easement on private property.

This type of utility structure is being pursued by AT&T in an effort to upgrade and extend their infrastructure to provide new and enhanced services. This effort by AT&T raises not only concerns about the placement of such ground mounted utility structures within right-of-ways and/or existing private property easements, but potential negative impact on cable franchising. City Attorney Knippen is working with the DuPage Mayors & Managers and Northwest Municipal Conference and will be reviewing these and other issues as a collective effort.

The staff is recommending favorable consideration of the attached moratorium ordinance to allow City staff time to appropriately evaluate all of the issues.

C: City Attorney

ORDINANCE NO F-

**AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON THE  
CONSTRUCTION OF CERTAIN GROUND MOUNTED UTILITY INSTALLATIONS**

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality having those powers provided by State Law; and

WHEREAS, the City has the authority to adopt ordinances pertaining to the public health, safety and welfare regulating private and public property; and

WHEREAS, in conformance with said authority, as well as its franchise authority, the City has issued permits, in accordance with its zoning ordinances, engineering ordinances, life safety ordinances as well as franchise ordinances and agreements pertaining to the installation of structures, including utility installations, fixtures, devices and appurtenances, on both private and public land within the City; and

WHEREAS, the City has recently received applications for permits for the ground mounted installation of utility structures within public ways and easements within the City which utility structures are significantly larger than any prior utility installations within the City; and

WHEREAS, the City recently had a ground mounted utility structure constructed (west side of President Street between Lowden Avenue and Farnham Lane) within the City of Wheaton which, excluding electric substations, is significantly larger than any prior utility installations within the City; and

WHEREAS, the significantly larger ground mounted utility structure for which permits have been requested, present numerous issues not previously considered by the Corporate Authorities of the City with respect to its zoning, public safety, as well as franchising implications; and

WHEREAS, the public health safety and welfare of the citizens of the City of Wheaton requires the Corporate Authorities of the City to more thoroughly evaluate the significantly larger ground mounted utility installations to determine reasonable and adequate regulation of those installations in such manner as will protect the zoning, public health safety and welfare, and franchising authority and franchising ordinances of the City.

NOW THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

**SECTION 1: TEMPORARY MORATORIUM.** No grounded mounted utility installation shall be granted a permit, or constructed within the corporate limits of the City of Wheaton, on any private or public property, including public or private ways or public or private easements within 180 days of the passage of this Ordinance.

**SECTION 2: DEFINITIONS.** **Ground mounted utility installation:** A ground mounted utility installation, shall mean any ground mounted utility fixture, cabinet, box, structure, device or appurtenance, including those related to video transmissions, having exterior dimensions greater than fifty inches (50") high by thirty six and one half inches (36 1/2") long, by seventeen and one half (17 1/2")

wide, or which is powered by stand alone electric service, but excluding ground mounted electric substations, ground mounted traffic light control cabinets or utility poles.

SECTION 3: STAFF INVESTIGATION. City staff is hereby directed to investigate the issue of ground mounted utility installations in consideration of the possible adoption of ordinances reasonably regulating such installations in the interest of the public health safety and welfare, and existing franchise agreements and ordinances, during this temporary moratorium.

SECTION 4: All Ordinances and parts of Ordinances in conflict with or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such conflict or inconsistency.

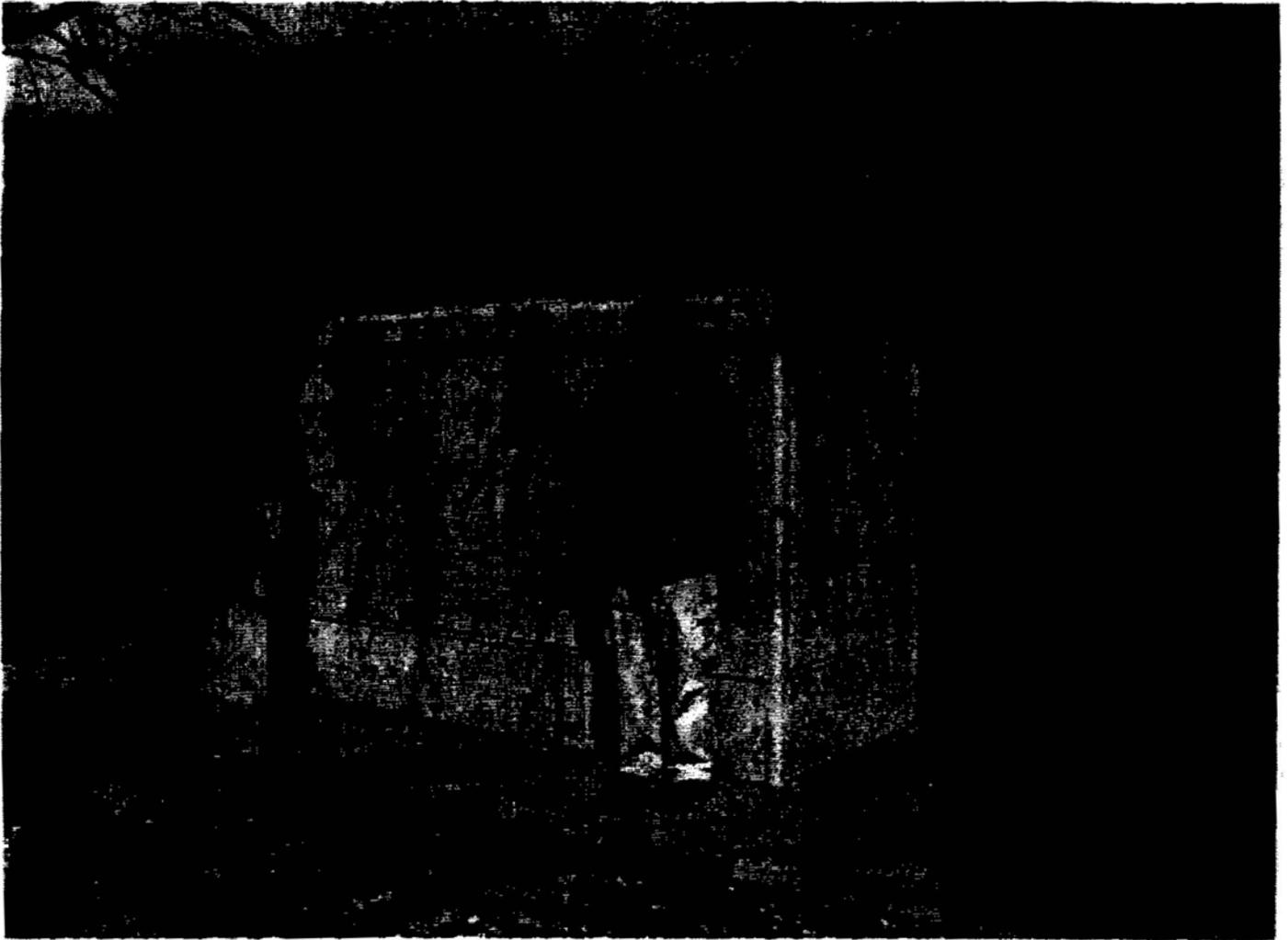
SECTION 5: That if any part of part or portion of this Ordinance is declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in a manner prescribed by law.

\_\_\_\_\_  
Mayor

Attested by:

\_\_\_\_\_  
City Clerk



**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on May 4, 2006, he caused a copy of the foregoing Amended Complaint for Declaratory and Other Relief to be served upon the following persons by electronic mail and by First Class United States Mail, postage prepaid:

Edward J. Walsh  
James H. Knippen, II  
Walsh, Knippen, Knight & Pollock, Chartered  
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(630) 462-1980

/s/ Robert M. Dow, Jr.  
Robert M. Dow, Jr.

# **Exhibit 8**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ILLINOIS BELL TELEPHONE	)	
COMPANY d/b/a AT&T Illinois,	)	
	)	
Plaintiff,	)	
	)	Case No. 06 C 2437
vs.	)	
	)	Honorable Elaine E. Bucklo
CITY OF WOOD DALE, ILLINOIS	)	
	)	
Defendant.	)	
	)	

---

**AMENDED COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T Illinois”) brings this action for declaratory, injunctive, and other relief and alleges as follows:

**INTRODUCTION**

1. The City of Wood Dale (“City”) recently enacted an ordinance designed to obstruct AT&T Illinois’s use of public and private rights-of-way within the City by prohibiting the placement within the City of certain utility cabinets. The City’s ordinance deprives AT&T Illinois of its rights to use the public rights-of-way for its telecommunications network, and is contrary to law.

2. Project Lightspeed is AT&T Inc.’s (“AT&T”) initiative to invest nearly \$5 billion across its 13-state incumbent local telephone service territory, including Illinois, to upgrade its telecommunications network to a fiber-rich infrastructure capable of delivering innovative new services to consumers and improving the service quality of existing services. By deploying even more fiber optic facilities and associated equipment and cabinets in its existing network, AT&T Illinois will increase the amount of available bandwidth to residential customers. This upgraded

network will enable AT&T Illinois to provide both telecommunications services that AT&T Illinois already provides today, such as voice telephone service, and a bundle of new communications services, including Voice over Internet Protocol (“VoIP”), even higher-speed Internet access, and Internet Protocol (“IP”) video services (collectively, the “IP-based communications services suite”).

3. On April 6, 2006, the City enacted an ordinance designed to stop AT&T Illinois’s network upgrade in its tracks. Ordinance O-06-022 (the “Ordinance”) (attached as Exhibit A hereto) places a 180-day moratorium upon the granting of permits for or the construction of a “ground mounted utility installation,” whether on private or public property, including the telecommunications cabinets that AT&T Illinois is seeking to deploy in the City.

4. The City’s obstruction is contrary to law for several reasons:

(1) The facilities that AT&T Illinois seeks to deploy will be used to provide telecommunications services. Federal law, in particular 47 U.S.C. § 253, prohibits the City from denying AT&T Illinois access to the public rights-of-way to deploy facilities that will be used to provide telecommunications services;

(2) Illinois law grants every telecommunications carrier the right to place its wires and other facilities in the public ways. AT&T Illinois is a telecommunications carrier, and thus the City’s attempt to block AT&T Illinois from placing its wires and other facilities in the public ways violates AT&T Illinois’s statutory rights and is contrary to Illinois law;

(3) AT&T Illinois’s deployment in the City’s rights-of-way of facilities that will transmit voice, data, and video services, as well as the actual provision of those services, are activities protected by the First Amendment to the United States

Constitution. The City's attempt to prohibit AT&T Illinois's First Amendment activities does not further any important or substantial governmental interest, is far greater than is essential to further any important or substantial governmental interest even if such an interest existed, and deprives AT&T Illinois of its rights under the First Amendment;

(4) The City's Ordinance has deprived AT&T Illinois of rights, privileges, and immunities secured by the due process and equal protection clauses of the United States and Illinois constitutions, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was discriminatory, unfair, arbitrary and capricious, lacking in a rational basis, and without legitimate justification.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because AT&T Illinois's claims arise under the Constitution and laws of the United States, including the federal Telecommunications Act of 1996 ("1996 Act"). This Court has supplemental jurisdiction over AT&T Illinois's state law claims pursuant to 28 U.S.C. § 1367. The Court's authority to grant declaratory relief and other appropriate relief is founded upon 28 U.S.C. §§ 2201 and 2202.

6. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). AT&T Illinois does business in this district, the City is located in this district, and substantial components of the property affected by the City's actions are located in this district.

#### **PARTIES**

7. AT&T Illinois is a corporation organized under the laws of the State of Illinois, with its principal place of business in Illinois. AT&T Illinois is a subsidiary of AT&T Inc. ("AT&T"). AT&T Illinois is an "incumbent local exchange carrier" ("incumbent LEC" or

“ILEC”), as that term is defined in Section 251(h) of the federal 1996 Act, in its authorized service areas in the State of Illinois.

8. The City is a municipal corporation organized and constituted under the Constitution and laws of the State of Illinois.

### **BACKGROUND**

#### **A. Description of AT&T Illinois’s Network Upgrade**

9. For many decades, telephone companies (including AT&T Illinois) used exclusively copper wires for “loops,” or the transmission facilities that connect the homes and businesses of customers to the buildings (known as “central offices”) that house the switches used to route and connect telephone calls. In the late 1980s, many local telephone companies, including AT&T Illinois, begin installing fiber optic wires in lieu of copper wires over certain parts of their local networks. Beginning in late 1999, AT&T Illinois undertook “Project Pronto” to further deploy more fiber optic cable deeper (that is, closer to customers’ premises) into its network.

10. AT&T Illinois undertook Project Pronto so that its network was capable of supporting Digital Subscriber Line (“DSL”)-based communications services, such as high-speed Internet access, on a wide basis. DSL technology is distance sensitive, meaning that, as is the case with all copper-based services, the signal strength and the amount of available bandwidth to the subscriber decreases the further the signal must travel over a copper loop. Because many of its copper loops were too long to support the provision of broadband DSL-based communications services, AT&T Illinois began deploying additional fiber optic cables (which do not experience the same signal degradation as copper) from its central offices to a point between the central office and the customer premises. At that point, known as a Remote Terminal (or

“RT”), AT&T Illinois placed cabinets (or in some cases underground vaults) to house electronics used to provide DSL service and to cross-connect the fiber optic cables with existing copper wires extending from the RT to the customer premises. As a result of this network upgrade, much of AT&T Illinois’s outside plant network now consists of loops that are part fiber optic cable and part copper wire.

11. Project Lightspeed picks up where Project Pronto left off by extending the fiber portion of AT&T Illinois’s network even deeper into neighborhoods. For neighborhoods where AT&T Illinois currently provides service, AT&T Illinois will install additional fiber optic cable, extending further than existing RTs to a “node” near the edge of a residential neighborhood, typically 3,000 to 5,000 feet from the customer premises. At the node, AT&T Illinois will place additional electronics housed in new equipment cabinets (in most cases called “52B cabinets”), and from the node to customers’ premises AT&T Illinois will utilize the existing copper facilities.

12. By moving these electronics closer to customer homes and by reducing the length of copper wires used to provide service, AT&T Illinois will be able to provide substantially more bandwidth to its subscribers, as well as new services that require more bandwidth than AT&T Illinois’s existing network could support. For example, the upgraded network will enable AT&T Illinois to provide, in addition to telecommunications services that AT&T Illinois has provided to customers for years, a bundle of IP-based communications services that includes an Internet Protocol-based voice service known as “VoIP” service, a significantly faster Internet access service, and an IP video service.

13. These network upgrades will have limited impact on the public rights-of-way that AT&T Illinois’s facilities already occupy. AT&T Illinois is using existing copper facilities from

the node to customer homes, so its upgrade will have minor impact on the public streets and rights-of-way in individual neighborhoods. Further, the additional fiber optic cable and associated equipment and cabinets that AT&T Illinois will deploy will follow the same rights-of-way already used by AT&T Illinois, resulting in little expected disruption of public convenience.

**B. The Wood Dale Ordinance**

14. Ordinance O-06-022, enacted on April 6, 2006, places a 180-day moratorium upon the granting of permits for or the construction of a “ground mounted utility installation,” whether on private or public property. A ground mounted utility installation is defined as “any ground mounted utility fixture, cabinet, box, structure, device or appurtenance, including those related to video transmissions,” that is “powered by stand alone electric service” or that exceeds certain dimensions (50 inches high, by 36.5 inches long, by 17.5 inches wide). Ordinance O-06-022, Section 1. However, the Ordinance expressly excludes “ground mounted electric substations, power off emergency electric generators, ground mounted traffic light control cabinets or utility poles.” *Id.* Section 2.

15. Prior to the passage of Ordinance O-06-022, AT&T Illinois had developed a Project Lightspeed construction schedule that called for AT&T Illinois to begin upgrading its network within the City and place a number of cabinets within the City during the period covered by the 180-day moratorium. The new cabinets, which exceed the dimensions described in the City’s ordinance, are intended to provide telecommunications services in addition to new IP-based services. That is, AT&T Illinois will use electronic equipment contained in the cabinets not just to provide new IP-based services, but also to provide telecommunications services such as residential telephone service. The City’s ordinance, however, prevents AT&T Illinois from undertaking its planned network upgrade, and makes applying for permits to place new cabinets

a futile act. Indeed, the City has already invoked the moratorium to deny one permit application submitted by AT&T Illinois.

16. The obstruction of AT&T Illinois's placement of additional cabinets and associated facilities will drastically curtail or altogether eliminate AT&T's ability to provide its new suite of IP-based communications services, as well as negatively impact AT&T Illinois's ability to enhance the reliability, quality, and cost-effectiveness of the telecommunications services that AT&T Illinois provides. The City's obstruction is unrelated to the reasonable management of the rights-of-way that are under the City's authority.

#### COUNT I

#### **The City's Attempt To Stop AT&T Illinois From Deploying Its Facilities Is Preempted By Section 253 Of The Federal Telecommunications Act Of 1996**

17. AT&T Illinois repeats paragraphs 1 through 16 as though fully set forth herein.

18. Through the federal Telecommunications Act of 1996, Congress imposed strict limitations on municipal authority over telecommunications carriers such as AT&T Illinois. The City's attempt to prevent AT&T Illinois from deploying facilities used for the provision of telecommunications services is prohibited by federal law.

19. The 1996 Act established a pro-competitive, deregulatory national policy framework. Since the Act's inception, Congress and the Federal Communications Commission ("FCC") consistently have stressed the importance of reducing regulation and encouraging the rapid deployment of new telecommunications technologies. Those policy objectives are paramount, for the federal courts have recognized that with regard to the matters addressed by the 1996 Act and the FCC's implementing regulations, Congress unquestionably has taken the regulation of local telecommunications competition away from state and local governments.

20. In accord with these principles, Section 253 of the 1996 Act (47 U.S.C. § 253) prohibits state and local governments from creating legal requirements that prohibit or have the effect of prohibiting a telephone company like AT&T Illinois from providing telecommunications services. In particular, Section 253(a) states: “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). At the same time, Section 253(c) preserves “the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” 47 U.S.C. § 253(c).

21. The City’s Ordinance goes far beyond the City’s power to engage in reasonable and ordinary management of the public rights-of-way. The City instead seeks to altogether prevent AT&T Illinois from accessing the public rights-of-way to place new cabinets. Under Section 253(a), the City’s actions do not constitute legitimate rights-of-way regulation, but rather amount to an unlawful attempt to stop AT&T Illinois’s deployment in the public rights-of-way of facilities that will be used to provide telecommunications services.

22. By purporting to exercise authority to exclude AT&T Illinois from the City’s streets and public rights-of-way and to prohibit AT&T Illinois from installing additional facilities that will be used to provide telecommunications services to the City’s residents, the City’s actions violate Section 253 of the 1996 Act.

23. The work that AT&T Illinois performs as part of its network upgrade includes the conditioning of the copper distribution portion of AT&T Illinois’s outside loop plant – the

copper telephone lines that run from end-users' premises to the SAI (an existing neighborhood cross-connect point in AT&T Illinois's network). This conditioning work enhances AT&T Illinois's ability to economically maintain its telecommunications network and to provide more reliable, cost-effective, and better quality telecommunications services and other communications services.

24. The City's permit denials prohibit or have the effect of prohibiting the ability of AT&T Illinois to provide an interstate or intrastate telecommunications service.

25. Pursuant to the Supremacy Clause of the United States Constitution, the City's Ordinance is thus preempted by federal law.

26. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

## COUNT II

### **The City Is Violating AT&T Illinois's Statutory Right Under The Illinois Telephone Company Act To Deploy Its Facilities In The Public Rights Of Way**

27. AT&T Illinois realleges and incorporates paragraphs 1 through 26 as though fully set forth herein.

28. Under Illinois's Telephone Company Act, "every telecommunications carrier is authorized to construct, maintain, alter and extend its poles, wires, and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water in this State, but so as not to incommode the public in the use thereof." 220 ILCS 65/4.

29. Illinois municipalities may not prevent telecommunications carriers from constructing and maintaining their lines and associated facilities upon and across any public

roads, streets and waters of Illinois as long as the telecommunications carrier does so in a manner as not to incommode the public in the use of such roads, streets and waters.

30. AT&T Illinois is a "telecommunications carrier" within the meaning of the Telephone Company Act. Accordingly, AT&T Illinois has a statutory right to use the public ways to install its facilities.

31. AT&T Illinois's network upgrade in the public rights-of-way within the City will not obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities. The City's obstruction is unrelated to and outside of its authority to engage in reasonable management of those public rights-of-way.

32. The City's attempt to block AT&T Illinois's placement of its facilities in the public rights-of-way violates AT&T Illinois's statutory rights under the Telephone Company Act and is contrary to Illinois law.

33. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

### COUNT III

#### **The City's Attempt to Prohibit AT&T Illinois From Deploying Its Facilities Violates The First Amendment to the United States Constitution**

34. AT&T Illinois realleges and incorporates paragraphs 1 through 33 as though fully set forth herein.

35. The First Amendment to the Constitution of the United States rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public and that a reduction in the volume of available speech harms not only speakers themselves but society as a whole which is deprived of an uninhibited marketplace of ideas.

36. The information transmitted through the existing and new communications services that AT&T Illinois will provide over the facilities that it seeks to lay and upgrade in the City's rights-of-way is entitled to protection under the First Amendment.

37. The City's Ordinance prohibits AT&T Illinois from upgrading its facilities with additional equipment and cabinets that will be used to provide telephone and telecommunications services and a suite of IP-based communications services, and constitutes an unlawful abridgement of AT&T Illinois's First Amendment rights.

38. The City's attempt to prohibit AT&T Illinois's First Amendment activity in the face of the federal government's policy objective of expanding advanced and interactive services unfettered from federal or state regulation does not further – and, indeed, runs directly counter to – an important or substantial governmental interest.

39. Even if the City's prohibition on AT&T Illinois's First Amendment activity did further an important or substantial governmental interest, the City's absolute ban on AT&T Illinois's access to the rights-of-way for the purpose of deploying its equipment cabinets is far greater than is essential to the furtherance of any such interest.

40. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

41. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

42. The City's refusal to allow AT&T Illinois to access rights-of-way to upgrade its facilities with the cabinets that will be used to provide telephone and telecommunications services

and a suite of IP-based communications services deprives AT&T Illinois of its rights, privileges, and immunities under the Constitution of the United States.

43. 42 U.S.C. § 1988 provides in relevant part that “[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.”

44. Accordingly, this Court should declare that the City’s actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights, privileges, and immunities afforded to it by the Constitution of the United States, and hold that the City’s actions violate the First Amendment and that AT&T Illinois is entitled to injunctive and other relief as described in the prayer for relief at the end of this Complaint. Furthermore, this Court should award attorneys’ fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT IV

##### **The City’s Ordinance Violates AT&T Illinois’s Due Process Rights Under The United States Constitution**

45. AT&T Illinois repeats paragraphs 1 through 44 as though fully set forth herein.

46. The City’s Ordinance has deprived AT&T Illinois of rights, privileges, and immunities secured by the Due Process Clause, in that the City’s decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was unfair, arbitrary and capricious, and lacking in a rational basis.

47. Accordingly, the City’s Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of due process, and should be set aside and enjoined by the Court on that basis.

48. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

49. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

50. As alleged above, the City's actions violate AT&T Illinois's rights, privileges and immunities under the Due Process Clause of the United States Constitution, as secured by section 1983.

51. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

52. Accordingly, this Court should declare that the City's actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights, privileges, and immunities afforded to it by the Constitution of the United States. Furthermore, this Court should award attorneys' fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT V

**The City's Ordinance Deprives AT&T Illinois Of Its Rights  
Under The Equal Protection Clause Of The United States Constitution**

53. AT&T Illinois repeats paragraphs 1 through 52 as though fully set forth herein.

54. The City's Ordinance is discriminatory in that it blocks some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets. These distinctions are not tailored to any legitimate justification.

55. The discrimination effected by the City's Ordinance violates AT&T Illinois's rights under the Equal Protection Clause of the United States Constitution.

56. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection of the laws, and should be set aside and enjoined by the Court on that basis.

57. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

58. The City is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the City has acted under color of state law.

59. The City's actions violate AT&T Illinois's rights under the Equal Protection Clause of the United States Constitution, as secured by section 1983.

60. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

61. Accordingly, this Court should declare that the City's actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights afforded to it by the Constitution of the United

States. Furthermore, this Court should award attorneys' fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT VI

##### **The City's Ordinance Violates AT&T Illinois's Due Process Rights Under The Illinois Constitution**

62. AT&T Illinois repeats paragraphs 1 through 61 as though fully set forth herein.

63. Article I, Section 2 of the Illinois Constitution states: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

64. The City's Ordinance has deprived AT&T Illinois of its rights secured by the due process clause of the Illinois Constitution, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was unfair, arbitrary and capricious, and lacking in a rational basis.

65. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of due process, and should be set aside and enjoined by the Court on that basis.

#### COUNT VII

##### **The City's Ordinance Deprives AT&T Illinois Of Its Rights Under The Equal Protection Clause Of The Illinois Constitution**

66. AT&T Illinois repeats paragraphs 1 through 65 as though fully set forth herein.

67. Article I, Section 2 of the Illinois Constitution states: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

68. The City's Ordinance has deprived AT&T Illinois of its rights secured by the equal protection clause of the Illinois Constitution, in that the City's decision to block some, but not all, utility cabinets that exceed a certain size, and without regard to the proposed use or placement of the banned cabinets, was discriminatory, unfair, arbitrary and capricious, lacking in a rational basis and without legitimate justification.

69. Accordingly, the City's Ordinance should be declared to be in violation of, and preempted by, constitutional guarantees of equal protection of the laws, and should be set aside and enjoined by the Court on that basis.

#### **PRAYER FOR RELIEF**

THEREFORE, AT&T Illinois respectfully requests that this Court grant it the following relief:

- (a) Enjoin the City from enforcing Ordinance O-06-022;
- (b) Declare that Ordinance O-06-022 is preempted by 47 U.S.C. § 253;
- (c) Declare that Ordinance O-06-022 violates AT&T Illinois's rights under the Illinois Telephone Company Act;
- (d) Declare that Ordinance O-06-022 violates AT&T Illinois's rights under the First Amendment to the United States Constitution;
- (e) Declare that Ordinance O-06-022 deprives AT&T Illinois of its rights without due process of law in violation of the Fifth and Fourteenth to the United States Constitution and the Illinois Constitution;
- (f) Declare that Ordinance O-06-022 deprives AT&T Illinois of its rights under the Equal Protection Clause of the United States Constitution and the Illinois Constitution;
- (g) Enjoin defendant from acting in any manner inconsistent with the declaratory relief sought herein;
- (h) Award AT&T Illinois its attorneys' fees pursuant to 42 U.S.C. § 1988; and

- (i) Award AT&T Illinois such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ILLINOIS BELL TELEPHONE COMPANY

By: /s/ Hans J. Germann

One of its Attorneys

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Dated: May 11, 2006

Attorneys for Plaintiff  
Illinois Bell Telephone Company

**EXHIBIT A**

ORDINANCE O-06- 022

AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON THE  
CONSTRUCTION OF CERTAIN GROUND MOUNTED UTILITY INSTALLATIONS

WHEREAS, the City of Wood Dale, (hereinafter "City"), has the authority to adopt ordinances pertaining to the public health, safety and welfare regulating private and public property; and

WHEREAS, in conformance with said authority, as well as its franchise authority, the City has issued permits, in accordance with its zoning ordinances, engineering ordinances, life safety ordinances as well as franchise ordinances and agreements pertaining to the installation of structures, including utility installations, fixtures, devices and appurtenances, on both private and public land within the City; and

WHEREAS, the City has recently received applications for permits for the ground mounted installation of utility structures within public ways and easements within the City which utility structures are significantly larger than any prior utility installations within the City ; and

WHEREAS, the significantly larger ground mounted utility structure for which permits have been requested, present numerous issues not previously considered by the Corporate Authorities of the City with respect to its zoning, public safety, as well as franchising implications ; and

WHEREAS, the public health safety and welfare of the citizens of the City of Wood Dale requires the Corporate Authorities of the City to more thoroughly evaluate the significantly larger ground mounted utility installations to determine reasonable and adequate regulation of those installations in such manner as will protect the zoning, public health safety and welfare, and franchising authority and franchising ordinances of the City.

NOW THEREFORE, be it Ordained by the Mayor and City Council of the City of Wood Dale, DuPage County, Illinois, that the Corporate authorities hereby adopt this Ordinance entitled AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON CERTAIN GROUND MOUNTED UTILITY INSTALLATIONS which shall read:

SECTION 1: DEFINITIONS

**Ground mounted utility installation:** A ground mounted utility installation, shall mean any ground mounted utility fixture, cabinet, box, structure, device or appurtenance, including those related to video transmissions, having exterior dimensions greater than fifty inches (50") high by thirty six and one half inches (36 1/2") long, by seventeen and one half (17 1/2") wide, or which is powered by stand alone electric service, but excluding ground mounted electric substations, power off emergency electric generators, ground mounted traffic light control cabinets or utility poles.

SECTION 2: TEMPORARY MORATORIUM

No grounded mounted utility installation shall be granted a permit, or constructed within the corporate limits of the City of Wood Dale, on any private or public property, including public or private ways or public or private easements within 180 days of the passage of this Ordinance.

SECTION 3: STAFF INVESTIGATION

City staff is hereby directed to investigate the issue of ground mounted utility installations in consideration of the possible adoption of ordinances reasonably regulating such installations in the interest of the public health safety and welfare, and existing franchise agreements and ordinances, during this temporary moratorium.

SECTION 4: All Ordinances and parts of Ordinances in conflict with or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of any such conflict or inconsistency.

SECTION 5: That if any part of part or portion of this Ordinance is declared invalid by a court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance.

SECTION 6: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and City Council.

AYES: Aldermen Kneip, Kolz, Shawke, Subach, Tolemy, Wesley and Winger

NAYS: None

ABSENT: Alderman Piegzik

Passed this 6 day of April, 2006.

Approved this 6 day of April, 2006.

SIGNED:

  
Mayor Kenneth P. Johnson

ATTEST:

  
Shirley J. Siebert City Clerk

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that on May 11, 2006, he caused a copy of the foregoing Amended Complaint for Declaratory and Other Relief to be served upon the following persons by First Class United States Mail, postage prepaid:

Village of Wood Dale, Illinois  
c/o Kenneth Johnson, Mayor  
404 North Wood Dale Road  
Wood Dale, IL 60191

/s/ Hans J. Germann  
Hans J. Germann

# **Exhibit 9**



1200 L.W. Besinger Drive ♦ Carpentersville, IL 60110  
Phone (847) 836-2464 Fax (847) 426-9125  
Email: bcole@vil.carpentersville.il.us

**BOB COLE**  
*Public Works Director*

March 23, 2006

Ms. Pam Summers  
Project Manager – Project Lightspeed  
AT&T Illinois  
Design Engineering  
255 E. Chicago Street  
Elgin, Illinois 60120

Re: Project #: 5801149, Project #: 5800548, and Project #: 5807300

Dear Ms. Summers:

I am in receipt of your requests to perform certain work related to the above referenced projects.

It is the understanding of the Village of Carpentersville (Village) that Project Lightspeed will enable residents to receive television services. Based on that understanding, AT&T is subject to local franchising authority by providing video services to residents of the Village. A franchise agreement between AT&T and the Village must be in place prior to permission being granted for the use of public right-of-way for the physical plant associated with Project Lightspeed. Therefore, permission for the work associated with the above referenced projects is denied.

The Village requests that AT&T provide a draft franchise agreement for review and discussion.

Sincerely,

Bob Cole  
Public Works Director

Cc: Village Board  
Village Manager  
Village Attorney  
Assistant Village Manager  
Village Engineer

# **Exhibit 10**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

RECEIVED

APR 06 2006

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

ILLINOIS BELL TELEPHONE )  
COMPANY, INC., d/b/a AT&T Illinois, )

Plaintiff, )

vs. )

VILLAGE OF CARPENTERSVILLE, )  
ILLINOIS )

Defendant. )

Case No.

060 1919

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Illinois Bell Telephone Company, Inc. d/b/a AT&T Illinois ("AT&T Illinois") brings this action for declaratory, injunctive, and other relief and alleges as follows:

**INTRODUCTION**

1. The Village of Carpentersville ("Village") has deprived AT&T Illinois of its rights to use the public rights-of-way for its telecommunications network, on the theory that AT&T Illinois may not upgrade its network unless it first enters into a video franchise with the Village. The Village is wrong, and its actions are contrary to law.

2. Project Lightspeed is AT&T Inc.'s ("AT&T") initiative to invest nearly \$5 billion across its 13-state incumbent local telephone service territory, including Illinois, to upgrade its telecommunications network to a fiber-rich infrastructure capable of delivering innovative new services to consumers and improving the service quality of existing services. By deploying even more fiber optic facilities and associated equipment in its existing network, AT&T Illinois will increase the amount of available bandwidth to residential customers. This upgraded network will enable AT&T Illinois to provide both telecommunications services that AT&T Illinois already

provides today, such as voice telephone service, and a bundle of new communications services, including Voice over Internet Protocol (“VoIP”), even higher-speed Internet access, and Internet Protocol (“IP”) video services.

3. AT&T Illinois’s network upgrade is driven by a new competitive landscape. Cable television companies have rapidly entered into the traditional markets of local telephone companies such as AT&T Illinois, and have begun offering the coveted “triple play” of communications services – a complete package of voice, Internet access, and video services. In order to enter the triple play competition using its telecommunications network, and to deliver to consumers the new services that IP technology makes possible, AT&T Illinois must upgrade its network by deploying additional fiber optic facilities and associated equipment cabinets in public and private rights-of-way, which in most instances already are occupied by AT&T Illinois’s existing network facilities.

4. The Village, however, has stopped AT&T Illinois in its tracks. In early March, 2006, AT&T Illinois submitted three permit applications to the Village to place three new equipment cabinets, along with associated fiber optic conduit and underground electric service, adjacent to existing cabinets. The Village flatly denied all three permits, asserting that AT&T Illinois must enter into a video franchise agreement with the Village before it can upgrade its network.

5. The Village’s obstruction is contrary to law. Under both federal and state law, AT&T Illinois has a right to use the public rights-of-way to construct and operate its telecommunications network, and the Village may not deny AT&T Illinois access to the rights-of-way. In addition, the Village may not lawfully require AT&T Illinois to obtain a video franchise.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because AT&T Illinois's claims arise under the Constitution and laws of the United States, including the federal Telecommunications Act of 1996 ("1996 Act") and the "cable" provisions set forth in Title VI of the federal Communications Act of 1934 ("1934 Act"). This Court has supplemental jurisdiction over AT&T Illinois's state law claims pursuant to 28 U.S.C. § 1367. The Court's authority to grant declaratory relief and other appropriate relief is founded upon 28 U.S.C. §§ 2201 and 2202.

7. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). AT&T Illinois does business in this district, the Village is located in this district, and substantial components of the property affected by the Village's actions are located in this district.

## **PARTIES**

8. AT&T Illinois is a corporation organized under the laws of the State of Illinois, with its principal place of business in Illinois. AT&T Illinois is a subsidiary of AT&T Inc. ("AT&T"). AT&T Illinois is an "incumbent local exchange carrier" ("incumbent LEC" or "ILEC"), as that term is defined in Section 251(h) of the federal 1996 Act, in its authorized service areas in the State of Illinois.

9. The Village is a municipal corporation organized and constituted under the Constitution and laws of the State of Illinois.

## **BACKGROUND**

### **A. Description of AT&T Illinois's Network Upgrade**

10. For many decades, telephone companies (including AT&T Illinois) used exclusively copper wires for "loops," or the transmission facilities that connect the homes and

businesses of customers to the buildings (known as “central offices”) that house the switches used to route and connect telephone calls. In the late 1980s, many local telephone companies, including AT&T Illinois, began installing fiber optic wires in lieu of copper wires over certain parts of their local networks. Beginning in late 1999, AT&T Illinois undertook “Project Pronto” to further deploy more fiber optic cable deeper (that is, closer to customers’ premises) into its network.

11. AT&T Illinois undertook Project Pronto so that its network was capable of supporting Digital Subscriber Line (“DSL”) services, such as high-speed Internet access, on a wide basis. DSL technology is distance sensitive, meaning that, as is the case with all copper-based services, the signal strength and the amount of available bandwidth to the subscriber decreases the further the signal must travel over a copper loop. Because many of its copper loops were too long to support the provision of broadband DSL service, AT&T Illinois began deploying additional fiber optic cables (which do not experience the same signal degradation as copper) from its central offices to a point between the central office and the customer premises. At that point, known as a Remote Terminal (or “RT”), AT&T Illinois placed cabinets (or in some cases underground vaults) to house electronics used to provide DSL service and to cross-connect the fiber optic cables with existing copper wires extending from the RT to the customer premises. As a result of this network upgrade, much of AT&T Illinois’s outside plant network now consists of loops that are part fiber optic cable and part copper wire.

12. Project Lightspeed picks up where Project Pronto left off by extending the fiber portion of AT&T Illinois’s network even deeper into neighborhoods. For neighborhoods where AT&T Illinois currently provides service, AT&T Illinois will install additional fiber optic cable, extending further than existing RTs to a “node” near the edge of a residential neighborhood,

typically 3,000 to 5,000 feet from the customer premises. At the node, AT&T Illinois will place additional electronics housed in new equipment cabinets (in most cases called "52B cabinets"), and from the node to customers' premises AT&T Illinois will utilize the existing copper facilities.

13. By moving these electronics closer to customer homes and by reducing the length of copper wires used to provide service, AT&T Illinois will be able to provide substantially more bandwidth to its subscribers, as well as new services that require more bandwidth than AT&T Illinois's existing network could support. For example, the upgraded network will enable AT&T Illinois to provide an Internet Protocol-based voice service known as "VoIP" service, a significantly faster Internet access service, and an IP video service, in addition to telecommunications services that AT&T Illinois has provided to customers for years.

14. These network upgrades will have limited impact on the public rights-of-way that AT&T Illinois's facilities already occupy. AT&T Illinois is using existing copper facilities from the node to customer homes, so its upgrade will have minor impact on the public streets and rights-of-way in individual neighborhoods. Further, the additional fiber optic cable and associated equipment and cabinets that AT&T Illinois will deploy will follow the same rights-of-way already used by AT&T Illinois, resulting in little expected disruption of public convenience.

#### **B. Description of IP-Based Services**

15. IP is essentially the common language of the Internet, and is the transmission protocol that underlies the "packet switching" used to route and send data from one computer to another on the Internet. Packet switching is a method of routing information by first dividing messages – whether comprised of voice, pictures, video, or other information – into discrete "packets" of data. The data packets are then transmitted individually and, once the packets

arrive at the destination, they are re-compiled into the original message. From the network's view, an IP packet is an IP packet irrespective of the informational content of the packet. Thus, using the high-bandwidth loops resulting from AT&T Illinois's network upgrade, AT&T Illinois can provide multiple IP-based services, including IP-based voice, video, and Internet access services.

16. While AT&T Illinois will provide new IP-based services, including an IP video service, over its upgraded network, AT&T Illinois's network architecture remains fundamentally the same. In particular, AT&T Illinois's architecture will remain a fundamentally two-way architecture supporting a broad array of communications services, as it has for decades. AT&T Illinois's existing network is, and its upgraded network will remain, a two-way, point-to-point, switched network that allows customers to send or obtain communications – including voice and data communications – upon demand. For instance, unlike television broadcast or cable television service, which provide a one-way broadcast of video programming to customers, the IP video component of AT&T Illinois's planned suite of IP-based services is a highly interactive, two-way service that will provide each customer a unique, individualized data stream.

### **C. The Carpentersville Permits**

17. On March 6, 7, and 8, 2006, AT&T Illinois submitted three permit requests (Projects 5801149, 5800548, and 5807300) to the Village to undertake work related to Project Lightspeed. The three requests are attached hereto as Exhibit A. Each of the requests described a similar project AT&T Illinois sought to undertake, in three different locations within the Village. In particular, in each of these three locations, AT&T Illinois proposed to place a 52B cabinet adjacent to existing AT&T equipment cabinets, to install underground electric service to the new cabinet, and to place conduit to transport fiber optics. The new 52B cabinets are

intended to provide telecommunications services in addition to new IP-based services. That is, AT&T Illinois will use electronic equipment contained in the 52B cabinets not just to provide new IP-based services, but also to provide telecommunications services such as residential telephone service.

18. On March 23, 2006, the Village denied all three of AT&T Illinois's requests, preventing AT&T Illinois from commencing its planned network upgrade projects. *See* Exhibit B hereto. The Village stated that because AT&T Illinois's network upgrade "will enable residents to receive television services," a "franchise agreement between AT&T and the Village must be in place prior to permission being granted for the use of public right-of-way for the physical plant associated with Project Lightspeed."

19. The Village's obstruction is contrary to law for numerous reasons. In particular:

(1) The facilities that AT&T Illinois seeks to deploy will be used to provide telecommunications services. Federal law, in particular 47 U.S.C. § 253, prohibits the Village from denying AT&T Illinois access to the public rights-of-way to deploy facilities that will be used to provide telecommunications services;

(2) Illinois law grants every telecommunications carrier the right to place its wires and other facilities in the public ways. AT&T Illinois is a telecommunications carrier, and thus the Village's attempt to block AT&T Illinois from placing its wires and other facilities in the public ways violates AT&T Illinois's statutory rights and is contrary to Illinois law;

(3) AT&T Illinois's deployment in the Village's rights-of-way of facilities that will transmit voice, data, and video services, as well as the actual provision of those services, are activities protected by the First Amendment to the United States

Constitution. The Village's attempt to prohibit AT&T Illinois's First Amendment activities does not further any important or substantial governmental interest, is far greater than is essential to further any important or substantial governmental interest even if such an interest existed, and deprives AT&T Illinois of its rights under the First Amendment;

(4) AT&T Illinois' IP video service is not subject to video franchising under federal law. The federal Cable Act requires a local franchise only for "cable services" provided over a "cable system." AT&T Illinois's IP video service is not a "cable service" and will not be provided over a "cable system";

(5) The Village's attempt to impose a video franchise requirement upon AT&T Illinois's IP video service conflicts with and frustrates Congress's objectives of promoting the deployment of broadband facilities, such as those at issue here, through regulatory forbearance, and is thus preempted by federal law;

(6) AT&T Illinois' IP video service is not subject to franchising under Illinois law because, like federal law, Illinois law permits the Village to impose a video franchise requirement only upon the provision of "cable service," and AT&T Illinois's service is not "cable service"; and

(7) AT&T Illinois' IP video service is not subject to franchising under the Village's ordinances because, like federal law, those ordinances impose a video franchise requirement only upon the provision of "cable service," and AT&T Illinois's service is not "cable service."

## COUNT I

### **The Village's Attempt To Stop AT&T Illinois From Deploying Its Facilities Is Preempted By Federal Law**

20. AT&T Illinois repeats paragraphs 1 through 19 as though fully set forth herein.

21. Through the federal Telecommunications Act of 1996, Congress imposed strict limitations on municipal authority over telecommunications carriers such as AT&T Illinois. The Village's attempt to prevent AT&T Illinois from deploying its facilities is prohibited by federal law.

22. The 1996 Act established a pro-competitive, deregulatory national policy framework. Since the Act's inception, Congress and the Federal Communications Commission ("FCC") consistently have stressed the importance of reducing regulation and encouraging the rapid deployment of new telecommunications technologies. Those policy objectives are paramount, for the federal courts have recognized that with regard to the matters addressed by the 1996 Act and the FCC's implementing regulations, Congress unquestionably has taken the regulation of local telecommunications competition away from state and local governments.

23. In accord with these principles, Section 253 of the 1996 Act (47 U.S.C. § 253) prohibits state and local governments from creating legal requirements that prohibit or have the effect of prohibiting a telephone company like AT&T Illinois from providing telecommunications services. Section 253 grants AT&T Illinois and other telecommunications providers an absolute right to provide telecommunications services and to compete in the local marketplace and prohibits state and municipal governments from interfering with that right.

24. The Village's actions go far beyond the Village's limited power to engage in reasonable and ordinary management of the public rights-of-way. The Village instead seeks to prevent AT&T Illinois from accessing the public rights-of-way altogether. Under Section

253(a), the Village's actions do not constitute legitimate rights-of-way regulation, but rather amount to an unlawful attempt to stop AT&T Illinois's deployment in the public rights-of-way of facilities that will be used to provide telecommunications services.

25. By purporting to exercise authority to exclude AT&T Illinois from the Village's streets and public rights-of-way and to prohibit AT&T Illinois from installing additional facilities that will be used to provide telecommunications services to the Village's residents, the Village's actions violate Section 253 of the 1996 Act.

26. Pursuant to the Supremacy Clause of the United States Constitution, the Village's actions are thus preempted by federal law.

27. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

## COUNT II

### **The Village Is Violating AT&T Illinois's Statutory Right Under The Illinois Telephone Company Act To Deploy Its Facilities In The Public Rights Of Way**

28. AT&T Illinois realleges and incorporates paragraphs 1 through 27 as though fully set forth herein.

29. Under Illinois's Telephone Company Act, "every telecommunications carrier is authorized to construct, maintain, alter and extend its poles, wires, and other appliances as a proper use of highways, along, upon, under and across any highway, street, alley, public right-of-way dedicated or commonly used for utility purposes, or water in this State, but so as not to incommode the public in the use thereof." 220 ILCS 65/4.

30. Illinois municipalities may not prevent telecommunications carriers from constructing and maintaining their lines and associated facilities upon and across any public

roads, streets and waters of Illinois as long as the telecommunications carrier does so in a manner as not to incommode the public in the use of such roads, streets and waters.

31. AT&T Illinois is a "telecommunications carrier" within the meaning of the Telephone Company Act. Accordingly, AT&T Illinois has a statutory right to use the public ways to install its facilities.

32. AT&T Illinois's network upgrade in the public rights-of-way within the Village will not obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

33. The Village's attempt to block AT&T Illinois's placement of its facilities in the public rights-of-way violates AT&T Illinois's statutory rights under the Telephone Company Act and is contrary to Illinois law.

34. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

### COUNT III

#### **The Village's Attempt to Prohibit AT&T Illinois From Deploying Its Facilities Violates The First Amendment to the United States Constitution**

35. AT&T Illinois realleges and incorporates paragraphs 1 through 34 as though fully set forth herein.

36. The First Amendment to the Constitution of the United States rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public and that a reduction in the volume of available speech harms not only speakers themselves but society as a whole which is deprived of an uninhibited marketplace of ideas.

37. The information transmitted through the services that AT&T Illinois will provide over the facilities that it seeks to lay and upgrade in the Village's rights-of-way is entitled to protection under the First Amendment.

38. The Village's decision to prohibit AT&T Illinois from upgrading its facilities with additional fiber optic cable and associated equipment and cabinets that will be used to provide telephone and telecommunications services and IP-based services constitutes an unlawful abridgement of AT&T Illinois's First Amendment rights.

39. The Village's attempt to prohibit AT&T Illinois's First Amendment activity in the face of the federal government's policy objective of expanding advanced and interactive services unfettered from federal or state regulation does not further – and, indeed, runs directly counter to – an important or substantial governmental interest.

40. Even if the Village's prohibition on AT&T Illinois's First Amendment activity did further an important or substantial governmental interest, the Village's absolute ban on AT&T Illinois's access to the rights-of-way for the purpose of deploying additional fiber optic cable and associated equipment and cabinets is far greater than is essential to the furtherance of any such interest.

41. 42 U.S.C. § 1983 provides in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42. The Village is a "person" within the meaning of 42 U.S.C. § 1983, and at all times relevant to this action the Village has acted under color of state law.

43. The Village's refusal to allow AT&T Illinois to access rights-of-way to upgrade its facilities with additional fiber optic cable and associated equipment and cabinets that will be used to provide telephone and telecommunications services and IP-based services deprives AT&T Illinois of its rights, privileges, and immunities under the Constitution of the United States.

44. 42 U.S.C. § 1988 provides in relevant part that "[i]n any action or proceeding to enforce a provision of section[] \* \* \* 1983 \* \* \* of this title, \* \* \* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

45. Accordingly, this Court should declare that the Village's actions violate 42 U.S.C. § 1983 by depriving AT&T Illinois of the rights, privileges, and immunities afforded to it by the Constitution of the United States, and hold that the Village's actions violate the First Amendment and that AT&T Illinois is entitled to injunctive and other relief as described in the prayer for relief at the end of this Complaint. Furthermore, this Court should award attorneys' fees to AT&T Illinois pursuant to 42 U.S.C. § 1988.

#### COUNT IV

##### **AT&T Illinois's IP Video Service Is Not Subject To Franchising Under Federal Law**

46. AT&T Illinois realleges and incorporates paragraphs 1 through 45 as though fully set forth herein.

47. The "cable" provisions of federal law are contained in the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) ("Cable Act"), which is Title VI of the federal Communications Act. Title VI provides that "a cable operator may not provide cable service without a franchise" granted by a local franchising authority. 47 U.S.C. § 541(b)(1).

48. AT&T Illinois's IP video service is not "cable service" within the meaning of Title VI, and AT&T Illinois's provision of IP video service does not make AT&T Illinois a "cable operator."

49. Title VI's franchise requirement does not apply to AT&T Illinois's IP video service because that service is not a "cable service."

(a) Title VI defines a "cable service" as "(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service." 47 U.S.C. § 522(6).

(b) AT&T Illinois's planned IP video service is not a "cable service" because it involves customized two-way video transmission, not "one-way transmission." Unlike traditional cable service, which provides one-way transmission of the very same video signal to all subscribers at all times, AT&T Illinois's IP video service is a switched, interactive two-way service provided via a point-to-point, interactive network architecture. The two-way, customized nature of AT&T Illinois's IP video service places it outside of Title VI's definition of "cable service," and hence outside of Title VI's cable franchise requirement.

50. Title VI's franchise requirement also does not apply to AT&T Illinois's IP video service because AT&T Illinois is not a "cable operator."

(a) Title VI defines a "cable operator" as "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls

or is responsible for, through any arrangement, the management and operation of such a cable system.” 47 U.S.C. § 522(5).

(b) AT&T Illinois is not a “cable operator” within the meaning of this provision because its IP video service is not a “cable service.”

51. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

#### COUNT V

**The Village’s Attempt To Require AT&T Illinois To Obtain A Franchise To Provide Its IP Video Service Is Preempted By The Federal Cable Act And Other Provisions Of The Federal Communications Act of 1934 As Amended**

52. AT&T Illinois realleges and incorporates paragraphs 1 through 51 as though fully set forth herein.

53. The federal Cable Act expressly defines the class of entities upon which municipalities may impose cable franchise requirements – *i.e.*, cable operators that provide cable service over a cable system. AT&T Illinois’s IP video service is not a cable service, nor is it provided over a cable system. Rather, AT&T Illinois’s IP video service is an interstate, advanced service that will be provided over an advanced broadband network.

54. The purpose of the Cable Act is to “establish a *national* policy concerning cable communications” and “franchise procedures and standards.” 47 U.S.C. § 521(1), (2) (emphasis added). Accordingly, Congress specifically mandated that “any provision of law of any State, political subdivision, or agency thereof, or franchising authority . . . which is inconsistent with this Act shall be deemed to be preempted and superseded.” *Id.* § 556(c).

55. The Village’s attempt to impose a franchise requirement upon AT&T Illinois’s provision of IP video services is not consistent with the Cable Act, because Congress chose not

to authorize any local franchise requirements for non-cable services. The federal definitions of “cable system” and “cable service” – and in particular the term “one-way transmission” (47 U.S.C. § 522(6) (defining “cable service”)) – reflect traditional cable television technology, whereby a cable company simultaneously transmits to all subscribers a one-way package of all the video programming offered by the cable company. In overhauling communications law in the 1996 Act, Congress was well aware of the promise of “advanced telecommunications capability,” including “high-speed, switched, broadband telecommunications capability” that can be used to provide, among other things, “video telecommunications” in competition with traditional cable video services. 47 U.S.C. § 157(nt). However, Congress chose to (i) retain the traditional definition of “cable service” as a “one-way transmission” (*see* Pub. L. No. 104-104, Sec. 301(a), 110 Stat. 56, 114 (1996)), and (ii) take a completely different tack for broadband services, expressly directing all regulators to “remov[ ]e barriers to infrastructure investment and . . . promote competition” for all broadband services, including “video telecommunications.” 47 U.S.C. § 157(nt) (Section 706 of 1996 Act). These choices reflect Congress’s objectives of establishing “reduced” and “lighter regulatory burdens,” choosing to rely on “the operation of market forces” to achieve its pro-competitive goals, and of providing “multiple entry options to promote competition, to encourage investment in new technologies and to maximize consumer choice of services.” H.R. Rep. No. 104-458 at 172, 177-78.

56. These choices preempt attempts by local governments to subject these advanced services, such as AT&T Illinois’s IP video service, to franchising requirements. “[W]here failure of . . . federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute,” state action that seeks to alter that “ruling” is preempted. *Ray v. Atlantic Richfield Co.*, 435 U.S.

151, 178 (1978) (quoting *Bethlehem Steel Co. v. New York State Labor Relations Bd.*, 330 U.S. 767, 774 (1947)).

57. Congress also established a federal policy of encouraging the rapid deployment of advanced broadband capabilities through “regulatory forbearance” and “other regulating methods that remove barriers to infrastructure investment.” 47 U.S.C. § 157(nt). Implementing and building upon this federal policy, the FCC has identified “encourag[ing] the ubiquitous availability of broadband to all Americans” as its “primary goal” (*Cable Modem Order*, ¶ 4),<sup>1</sup> and has adopted a “minimal regulatory framework” for “broadband deployment” (*Broadband Framework Order*, ¶ 44).<sup>2</sup> The FCC also has made clear that this federal policy encompasses “advanced facilities” with the “capability for providing advanced services, including . . . multi-channel video” services. *FTTC Reconsideration Order*, ¶ 13 & n.45.<sup>3</sup>

58. While consistently removing barriers to broadband deployment under federal law, the FCC also has confirmed that states are not permitted to erect regulatory barriers that “undermine the effectiveness of the [FCC’s] incentives for deployment [of broadband facilities], including the advancement of section 706 goals.” The Village’s attempt to impose a franchise requirement on AT&T Illinois’s facilities for IP-based video services directly conflicts with, undermines, and thwarts the well-established federal policy of promoting broadband services and deployment through non-regulation and removal of barriers to investment.

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<sup>1</sup> Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 FCC Rcd. 4798 (2002) (“*Cable Modem Order*”).

<sup>2</sup> Report and Order and Notice of Proposed Rulemaking, *In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket Nos. 02-33 *et al.*, FCC 05-150 (FCC rel. Sep. 23, 2005) (“*Broadband Framework Order*”).

<sup>3</sup> Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd. 20293, 20299 (2004) (“*FTTC Reconsideration Order*”).

59. Pursuant to the Supremacy Clause of the United States Constitution, the Village's actions are thus preempted by federal law.

60. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

## COUNT VI

### **State Law Does Not Authorize The Village To Require AT&T Illinois To Obtain A Franchise In Order To Provide Its IP Video Service**

61. AT&T Illinois realleges and incorporates paragraphs 1 through 60 as though fully set forth herein.

62. Illinois law grants to municipalities with a population of less than 1,000,000 the authority to "license, franchise and tax more than one *cable operator* to provide community antenna television services." 65 ILCS 5/11-42-11(e). A "cable operator" "is defined as that term is defined under Section 602(4) of the Cable Communications Policy Act of 1984, Public Law 98-549 [47 U.S.C. § 522(5)]." *Id.*

63. AT&T Illinois is not a "cable operator" within the meaning of Section 602(4) of the Cable Communications Policy Act of 1984 (47 U.S.C. § 522(5)), and hence is not a "cable operator" within the meaning of 65 ILCS 5/11-42-11(e), because its IP video service is not a "cable service."

64. Accordingly, Illinois law does not authorize the Village to require AT&T Illinois to obtain a video franchise and the Village's denial of AT&T Illinois' permit applications is *ultra vires*.

65. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

## COUNT VII

### **The Village's Cable Franchise Ordinance Does Not Apply To AT&T Illinois's IP Video Service**

66. AT&T Illinois realleges and incorporates paragraphs 1 through 65 as though fully set forth herein.

67. Chapter 5.20 of the Village's ordinances, titled "Cable Television Systems," requires a franchise to operate a "cable system" within the Village. Section 5.20.050(C). Chapter 5.20 defines a "cable system" as "a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service, which includes video programming and which is provided to multiple subscribers within a community" (Section 5.20.010), and further defines "cable service" as "[t]he one-way transmission to subscribers of video programming or other programming services" and "[s]ubscriber interaction, if any, which is required for the selection of such video programming or other programming service" (*id.*).

68. AT&T Illinois's IP video service is not a "cable service" within the meaning of the Village's Cable Television Systems ordinance, and hence AT&T Illinois is not subject to franchising under that ordinance. Among other things, AT&T Illinois's IP video service does not involve the "one-way transmission to subscribers of video programming."

69. AT&T Illinois therefore is entitled to declaratory, injunctive and other relief as described in the prayer for relief at the end of this Complaint.

### **PRAYER FOR RELIEF**

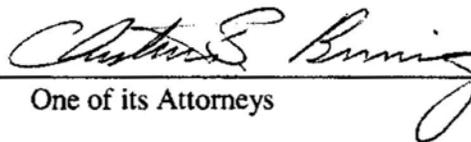
THEREFORE, AT&T Illinois respectfully requests that this Court grant it the following relief:

- (a) Enjoin the Village from blocking AT&T Illinois's planned system upgrade;
- (b) Issue an injunction and a writ of mandamus requiring the Village to grant AT&T Illinois permission to undertake its requested network upgrade projects;
- (c) Declare that AT&T Illinois is not required under the federal Cable Act to obtain a franchise in order to provide its IP video service;
- (d) Declare that any attempt to require AT&T Illinois under state or local law to obtain a franchise in order to provide its IP video service is preempted by federal law;
- (e) Declare that AT&T Illinois is not required under the state or local law to obtain a franchise in order to provide its IP video service;
- (f) Enjoin defendants from acting in any manner inconsistent with the declaratory relief sought herein, including attempting to require AT&T Illinois to obtain a franchise in order to provide IP video service;
- (g) Award AT&T Illinois its attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (h) Award AT&T Illinois such other and further relief as the Court deems just and proper.

Respectfully Submitted,

ILLINOIS BELL TELEPHONE COMPANY, INC.

By:

  
One of its Attorneys

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Dated: April 6, 2006

Attorneys for Plaintiff AT&T Illinois

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ILLINOIS BELL TELEPHONE	)	
COMPANY, INC., d/b/a AT&T Illinois,	)	
	)	
Plaintiff,	)	
	)	Case No.
vs.	)	
	)	
VILLAGE OF CARPENTERSVILLE,	)	
ILLINOIS	)	
	)	
Defendant.	)	
	)	

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**Local Rule 3.2 Notification of Affiliates – Disclosure Statement**

Pursuant to Local Rule 3.2, Plaintiff Illinois Bell Telephone Company, Inc. d/b/a AT&T Illinois, by and through its attorneys, discloses the following:

- (1) The full name of the nongovernmental corporate party:

Illinois Bell Telephone Company, Incorporated

- (2) Identification of all its parent corporations:

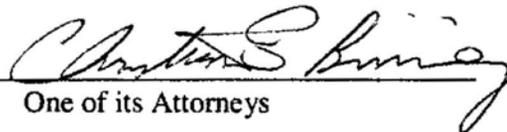
Illinois Bell Telephone Company is a wholly-owned subsidiary of SBC Teleholdings, Inc. In turn, SBC Teleholdings, Inc. is a wholly-owned subsidiary of AT&T Inc.

(3) Identification of any publicly held corporation that owns 10% or more of the corporate party's stock:

Illinois Bell Telephone Company is wholly-owned by SBC Teleholdings, Inc. and there is no publicly held corporation that owns 10% or more of the party's stock.

Respectfully Submitted,

ILLINOIS BELL TELEPHONE COMPANY, INC.

By:   
One of its Attorneys

Ronald F. Labedz  
AT&T Services, Inc.  
225 W. Randolph Street  
Chicago, Illinois 60606  
Telephone: (312) 727-2552  
Facsimile: (312) 845-8976

Stephen M. Shapiro  
Christian F. Binnig  
Robert M. Dow, Jr.  
Hans J. Germann  
MAYER, BROWN, ROWE & MAW, LLP  
71 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: (312) 782-0600  
Facsimile: (312) 701-7711

Dated: April 6, 2006

Attorneys for Plaintiff  
Illinois Bell Telephone Company





AT&T Illinois  
Design Engineering  
255 E. Chicago Ave.  
FLR 1  
Elgin, IL 60120

Date: 3/6/06

**RECEIVED**  
MAR 09 2006

Project #: 5801149

Mr. Rob Cole  
Director of Public Works  
1200 Besinger Drive  
Carpentersville, IL. 60110

Dear Sir:

In accordance with the terms of the ordinance granting certain rights to SBC permission is hereby requested to perform work as indicated on the attached sketch.

Bring fiber to within 3,000 feet of homes being served by existing interface cabinet (as shown on attached sketch) to drive fiber optic technology deeper into the network. This will result in greater reliability of the network and meet the customers demands for higher access speeds.

1. Place conduit to transport the fiber optics and handhole .
2. Place electronics outdoor cabinet (63"H x 44"W x 20"D)
3. Install underground electric service from pole to the electronics outdoor cabinet.

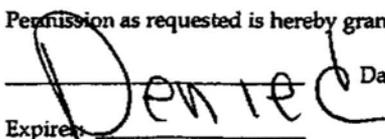
If you have any questions regarding this work, will you please contact the engineer specified at listed number on the attached page.

Sincerely, 

*FOR PAM SUMMERS*

Pam Summers  
Project Manager - Project Lightspeed

Permission as requested is hereby granted:

 Date: \_\_\_\_\_  
Expires: \_\_\_\_\_

# Project Lightspeed

Supplement to Attached Permit Sketch

Project No.: 5801149

Proposed by: Pam Summers, Engineer  
255 E. Chicago Avenue, Elgin, Illinois 60120  
Phone: 847-888-6855 Fax: 847-742-1631  
Email: ps3521 @att.com

Located in the City/Village of: Carpentersville  
NW QTR. SEC. 13  
Dundee Township, Kane County, Illinois

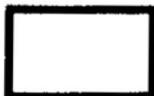
## Code & Symbol Explanation (Proposed Work if Applicable Indicated by Heavy Lines)



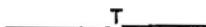
PROPOSED FIBER OPTIC HANDHOLE 30"Wx48"Lx46"D



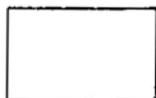
PROPOSED CONDUIT (4" Plastic)



PROPOSED 90"L x 68"W x 5"D CONCRETE PAD W/CABINET  
CABINET DIMENSIONS 63"H x 44"W X 20"D



EXISTING CONDUIT/CABLE AS INDICATED



EXISTING AT&T/SBC MANHOLE



ELECTRIC TRANSFORMER or PEDESTAL



PROPOSED ELECTRIC (IN 2" CONDUIT)



UTILITY POLE



EXISTING AT&T/SBC PEDESTAL





AT&T Illinois  
Design Engineering  
255 E. Chicago Ave.  
FLR 1  
Elgin, IL 60120

Date: 3/7/06

**RECEIVED**  
**MAR 09 2006**

Project #: 5800548

Mr. Rob Cole  
Director of Public Works  
1200 Besinger Drive  
Carpentersville, IL. 60110

Dear Sir:

In accordance with the terms of the ordinance granting certain rights to SBC permission is hereby requested to perform work as indicated on the attached sketch.

Bring fiber to within 3,000 feet of homes being served by existing interface cabinet (as shown on attached sketch) to drive fiber optic technology deeper into the network. This will result in greater reliability of the network and meet the customers demands for higher access speeds.

1. Place conduit to transport the fiber optics from existing Handhole at 96 Hazard to new Handhole at 612 Hazard. ( 1-4" PVC )
2. Place electronics outdoor cabinet (63"H x 44"W x 20"D)
3. Install underground electric service from pole to the electronics outdoor cabinet. 1-2" galvanized steel pipe.

If you have any questions regarding this work, will you please contact the engineer specified at listed number on the attached page.

Sincerely,

*FOR PAM SUMMERS*

Pam Summers  
Project Manager - Project Lightspeed

Permission as requested is hereby granted:

~~Denied~~ Date: \_\_\_\_\_  
Expires: \_\_\_\_\_

**Project Lightspeed**  
Supplement to Attached Permit Sketch  
Project No.: 5800548

Proposed by: Pam Summers, Engineer  
255 E. Chicago Avenue, Elgin, Illinois 60120  
Phone: 847-888-6855 Fax: 847-742-1631  
Email: ps3521 @att.com

Located in the City/Village of: Carpentersville  
NW QTR. SEC. 14  
Dundee Township, Kane County, Illinois

Code & Symbol Explanation (Proposed Work if Applicable Indicated by Heavy Lines)



PROPOSED FIBER OPTIC HANDHOLE 30"Wx48"Lx46"D



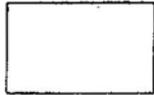
PROPOSED CONDUIT (4" Plastic)



PROPOSED 90"L x 86"W x 5"D CONCRETE PAD W/CABINET  
CABINET DIMENSIONS 63"H x 44"W X 20"D



EXISTING CONDUIT/CABLE AS INDICATED



EXISTING AT&T/SBC MANHOLE



ELECTRIC TRANSFORMER or PEDESTAL



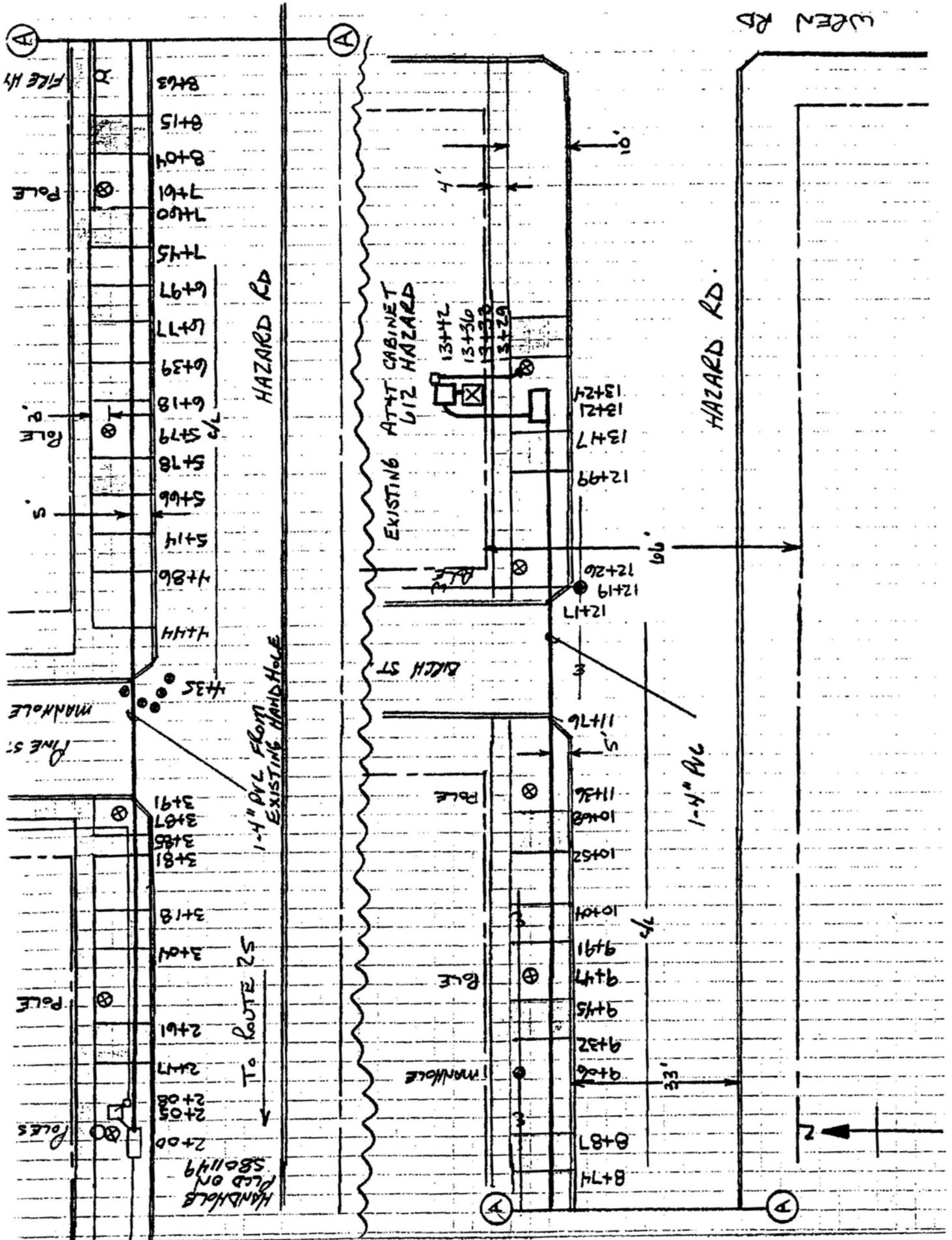
PROPOSED ELECTRIC (IN 2" CONDUIT)



UTILITY POLE



EXISTING AT&T/SBC PEDESTAL





AT&T Illinois  
Design Engineering  
255 E. Chicago Ave.  
FLR 1  
Elgin, IL 60120

Date: 3/8/06

Project #: 5807300

Mr. Rob Cole  
Director of Public Works  
1200 Besinger Drive  
Carpentersville, IL. 60110

Dear Sir:

In accordance with the terms of the ordinance granting certain rights to SBC permission is hereby requested to perform work as indicated on the attached sketch.

Bring fiber to within 3,000 feet of homes being served by existing interface cabinet (as shown on attached sketch) to drive fiber optic technology deeper into the network. This will result in greater reliability of the network and meet the customers demands for higher access speeds.

1. Place conduit and 2 handholes to transport the fiber optics. Splice into existing conduit at AT&T controlled environmental vault.
2. Place electronics outdoor cabinet (63"H x 44"W x 20"D) on concrete pad.
3. Install underground electric service from existing COMED transformer to the electronics outdoor cabinet.

If you have any questions regarding this work, will you please contact the engineer specified at listed number on the attached page.

Sincerely,

FOR PAM SUMMERS

Pam Summers  
Project Manager - Project Lightspeed

Permission as requested is hereby granted:

Denied Date: \_\_\_\_\_  
Expires: \_\_\_\_\_

# Project Lightspeed

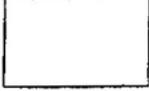
Supplement to Attached Permit Sketch

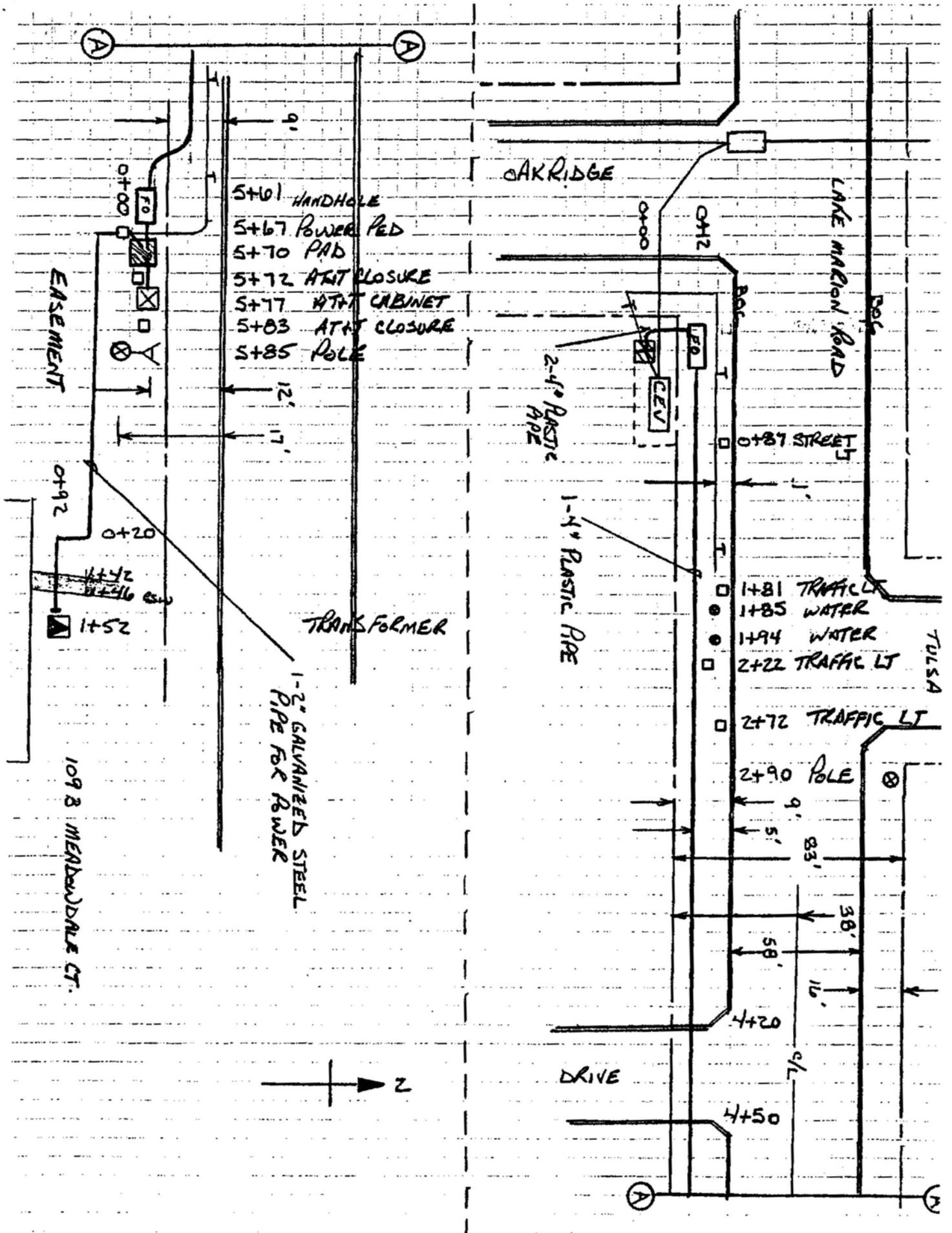
Project No.: 5807300

Proposed by: Pam Summers, Engineer  
255 E. Chicago Avenue, Elgin, Illinois 60120  
Phone: 847-888-6855 Fax: 847-742-1631  
Email: ps3521 @att.com

Located in the City/Village of: Carpentersville  
NE QTR. SEC. 14  
Dundee Township, Kane County, Illinois

## Code & Symbol Explanation (Proposed Work if Applicable Indicated by Heavy Lines)

	PROPOSED FIBER OPTIC HANDHOLE 30"Wx48"Lx16"D (2)
	PROPOSED CONDUIT (4" Plastic)
	PROPOSED 90"L x 68"W x 5"D CONCRETE PAD W/CABINET CABINET DIMENSIONS 63"H x 44"W X 20"D
	EXISTING CONDUIT/CABLE AS INDICATED
	EXISTING AT&T/SBC MANHOLE
	ELECTRIC TRANSFORMER or PEDESTAL
	
	PROPOSED ELECTRIC (IN 2" CONDUIT)
	UTILITY POLE
	EXISTING AT&T/SBC PEDESTAL



# **Exhibit 11**

AGENDA ITEM

G-6 4-3-06

*Village of Carol Stream*  
INTER-DEPARTMENTAL MEMO

**TO:** Mayor & Trustees

**FROM:** Joseph E. Breinig, Village Manager 

**DATE:** March 30, 2006

**RE:** Project Lightspeed

The accompanying materials from DuPage Mayors and Managers contain information about Project Lightspeed, an initiative of AT&T (formerly SBC) to provide an IP-based network to deliver TV, broadband and voice services over fiber. While competition in these markets might be welcome, AT&T has demonstrated a desire to implement Project Lightspeed without negotiation of a franchise agreement. In a number of area communities AT&T has submitted permit applications as if Project Lightspeed were a maintenance activity. As a telecommunications provider AT&T is not covered by a franchise agreement. Conversely, other things regulate its use of the right-of-way. To date Carol Stream has not been approached by AT&T.

The memorandum identifies several actions to be taken. Staff, upon consultation with the Village Attorney, recommends the following:

1. Send a letter to AT&T advising that no facilities relating to cable television type services are to be installed without a franchise agreement.
2. Send a letter to other units of government in the Village advising them of Project Lightspeed and requesting their assistance in denying AT&T use of their property until a franchise agreement has been granted.
3. Careful review of any and all permit applications submitted by AT&T. Staff has confirmed that AT&T has not applied for a permit in Carol Stream for work related to Project Lightspeed. Upon receipt of a permit application from AT&T request additional information.
4. Refuse to issue permits for work in the right-of-way until a franchise agreement is in place.

5. Monitor the effectiveness of moratoriums and ordinances requiring franchises for cable and multi-channel systems. Staff will monitor these efforts through participation in the regional collaboration and the workshop.

As noted in the materials, this is a rapidly changing situation that will require continued attention.

The Village went to great pains to ensure that cable television was available throughout the community. AT&T's demonstrated intent to cherry pick areas for service may make good business sense, but could leave parts of the community underserved and could further the inability of some community members to have access to broadband services. This, together with the need to have orderly use of the right-of-way, necessitates franchising. Lastly, franchising levels the playing field between AT&T and Comcast and does not give one provider unfair advantage.

Attachments

# **Exhibit 12**

ROSS FERRARO

MAYOR



## Village of Carol Stream

OFFICE OF THE MAYOR

500 N. GARY AVENUE • CAROL STREAM, ILLINOIS 60188-1899

(630) 871-6251 • FAX (630) 665-1064

TDD (630) 668-5785

EMAIL: rferraro@carolstream.org



March 29, 2006

### Local Taxing Bodies

AT&T (formerly SBC) has been attempting to implement Project Lightspeed in various communities in the Chicago area. In some cases they have attempted to obtain permission for installation of infrastructure through direct contact with schools, park districts and other taxing bodies. While competition for the local cable company may be welcome, it is the position of the Village of Carol Stream that the services contemplated by Project Lightspeed require a local franchise. A franchise agreement will ensure orderly use of the right-of-way and development of Project Lightspeed in our community in a fair and equitable manner.

To our knowledge, AT&T has yet to attempt development in Carol Stream. If you have been contacted please notify me immediately. Should you be contacted by AT&T in the future, please contact me prior to taking any action. In some cases AT&T appears to have been less than forthcoming in their dealings with communities. Additional inquiry may be needed to determine their intent. Our staff is prepared to work with yours on this matter.

Thank you for your cooperation on this issue of community importance.

Sincerely,

Ross Ferraro  
Mayor

Attachment

cc: Board of Trustees