

COPY

**TOWNSHIP OF ARMADA
MACOMB COUNTY, MICHIGAN**

ORDINANCE NO. 156

**ARMADA TOWNSHIP
TELECOMMUNICATIONS ORDINANCE**

TITLE

AN ORDINANCE to provide for: the regulation of access to and the ongoing use of public easements and rights-of-way by telecommunication providers for the purpose of protecting public, safety and welfare through reasonable control of public utility easements and rights-of-way, by minimizing disruption to public utility easement and rights-of-way, by regulating access to and ongoing use of the same and the construction, installation, operation, maintenance and use of facilities in such easements and rights-of-way; to require fair and reasonable compensation from telecommunication providers on a competitively neutral and non-discriminatory basis; to provide for payment of non-discriminatory permit fees for use of public rights-of-way by telecommunication providers.

The Township of Armada finds that the public health, safety and welfare is best served and benefitted by establishing regulatory powers as authorized by state and federal law involving telecommunication providers. The Township of Armada finds that telecommunication providers are subject to complex and rapidly changing technology and have an extensive and substantial impact upon Township residents. Regulation at the local municipal level, where authorized by state and federal law, is deemed to benefit public health, safety, welfare.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF ARMADA, MACOMB COUNTY, MICHIGAN, ORDAINS:

SECTION 1. SHORT TITLE.

This Ordinance shall be known and cited as the *Armada Township Telecommunications Ordinance*.

SECTION 2. ENABLING AUTHORITY.

This Ordinance is adopted pursuant to and in accordance with the authority of the Township granted pursuant to the Michigan Telecommunications Act, Act No. 216 of the Public Acts of 1995, as amended, the Telecommunications Act of 1996, amending the Communications Act of 1934, as amended by the Cable Act of 1992; Article VII, Section 29 of the 1963 Michigan Constitution.

SECTION 3. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their abbreviations shall be interpreted in accordance with the following definitions:

- a. Permit shall mean a nonexclusive limited authorization for the construction, maintenance and operation of a telecommunication system on, under, over or across the public rights-of-way in the Township and to transact local business thereon as further defined pursuant to the terms and conditions of the permit. Permits shall be in the form of written agreements granted and approved by resolution of the Township Board of Trustees to use the public rights-of-way of the Township for fiber optics, wires, poles, pipes, conduits, or other telecommunication equipment.

- b. Permittee shall mean the holder of a valid permit granted pursuant to this Ordinance, provided such Permittee is not in default pursuant to the terms and conditions of this Ordinance or the permit issued thereto.

- c. Person shall mean any individual, firm, partnership, association, corporation, limited liability company, company, organization or other such entity.
- d. Subscriber shall mean any person who contracts with the Permittee for, or is in any manner provided with, telecommunication services by Permittee.
- e. Telecommunications Equipment shall mean fiber optics, cables, wires, conduits, poles, access manholes, devices and appertuances used or to be used to provide telecommunication services.
- f. Telecommunications Services shall mean and include regulated and unregulated services offering to subscribers the transmission of two-way interactive communications and associated usage under the Michigan Telecommunications Act of 1995, as amended.
- g. Telecommunication System shall mean a system used or to be used to provide telecommunications services including public or private line video, data or voice service to another person using or crossing a street, highway, alley, public rights-of-way, easement, or other public place within the Township. Telecommunication Systems shall not mean cable programming regulated under the Communications Act of 1984, as amended.
- h. Township shall mean the Township of Armada, Michigan.

SECTION 4. PERMIT REQUIRED.

a. Prohibited Conduct. It shall be unlawful for any person to construct, install or operate a telecommunications system in the Township without making application and receiving a permit from the Board of Trustees pursuant to this Ordinance. It shall be unlawful for any person to transact local business on a telecommunications system or telecommunication equipment unless the owner or operator of such system has been granted a permit pursuant to the terms this Ordinance.

b. Non-exclusive Permit. The Township may grant one or more permits for telecommunications services, systems or equipment within the Township subject to this Ordinance. The Township specifically reserves the right to grant, at any time, such

additional permits as it deems appropriate. Additional permits shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Permittee.

c. Non-transferable. Any permit granted by the Township may not be sold, transferred, assumed, assigned or sublet in any manner either directly or indirectly without the prior written consent of the Township Board of Trustees. A substantial change in ownership, either through stock purchase, merger or consolidation shall require a reapplication for a permit.

d. Other Federal, State and Local Requirements. Nothing in this Ordinance shall be construed as waiver of any codes, Ordinances, or regulations of the Township or the Township's right to require Permittee or persons utilizing the telecommunications service to secure appropriate permits or authorizations for such use. Standard fees or charges generally applicable to all persons for such permits or authorizations shall also apply to Permittee. Such standard fee or charge shall not be off-set against the annual permit fee or franchise fee if Permittee is required to pay to the Township. Prior to offering or providing an telecommunications service, Permittee shall obtain any and all regulatory approvals, permits, authorizations or licenses necessary to provide telecommunication services from the appropriate federal, state and local authorities, and shall submit to the Township upon written request of the Township, evidence of all such approvals, authorizations, permits or licenses.

SECTION 5. APPLICATION FOR PERMIT.

- a. Application required. Any person wishing to install, construct and maintain or operate a telecommunications system or telecommunication equipment within the Township shall file a completed application on the form provided and approved by the Township. All applications for a telecommunications permit received by the Township from the applicant will become the sole property of the Township. The Township reserves the right to reject any and all applications and waive informalities and/or technicalities where the best interest of the Township may be served.
- b. Application fee. The applicant shall pay a non-refundable application fee in the amount of Four Thousand (\$4,000.00) Dollars, or an amount otherwise established by a duly adopted resolution of the Township Board of Trustees. This fee shall be utilized to off set the cost of processing of the application by the Township, including review by the Township engineer, Township legal counsel, and all relevant Township Departments.
- c. Denial. Approval may be denied for failure to demonstrate, legal, technical, business, financial qualifications; failure to agree upon the terms and conditions to be imposed for the use the rights-of-way and/or if denial serves the public health, safety and welfare, as determined by the Township Board of Trustees.
- d. Qualifications. In determining whether a permit shall be issued, the Township Board may take into consideration, among other things, the technical qualifications of the applicant, the financial responsibilities of the applicant, the ability of the applicant to perform efficiently the service for which the permit is requested, including the prior experience, if any, of the applicant in providing telecommunication systems or furnishing telecommunications services, the applicant's ability to provide public, educational and governmental facilities or financial support, the nature and scope of the applicant's proposed system and time tables for development of the applicant's proposed system.
- e. Investigation. The Township may make such investigations as it deems necessary to determine the ability of the applicant to perform under the permit agreement, and the applicant shall furnish to the Township all such information and data for this purpose as the Township may request. The Township reserves the right to object any application if the evidence submitted by, or upon investigation of, such applicant fails to satisfy the Township that such applicant is properly qualified to carry out the obligations of the permit and to complete the work contemplated by the permit.
- f. Effective date. A permit shall be effective on the date set by resolution adopted by the Board of Trustees, which resolution shall approve the written

agreement containing terms and conditions pursuant to which the permit is granted, which agreement shall be executed by the supervisor and clerk and filed with the Township Clerk. Prior to the effective date of any permit, all fees must be paid by the Permittee, any bond required must be filed, insurance certificates filed and/or other requirements of the permit must be satisfied.

SECTION 6. COMPENSATION.

The permit required by this Ordinance shall, without limitation, provide for the payment of compensation to the Township for use of rights-of-way, easements, streets, alley, highways, other public places, and shall provide for the services and facilities to the Township, as public interest may require, subject to the limitation of any applicable constitution, federal or state law. Permittee shall provide for services and facilities to the Township as public interest may require, subject to limitation of any applicable state or federal law.

SECTION 7. MAPS.

Permittee shall file with the Township Clerk and Township Engineer a current map and subsidiary plats showing the exact location of transmission and distribution facilities and equipment of the system in the rights-of-way clearly identifying what lines are owned and dedicated solely for public use, a combination of private and public uses and solely for private use.

SECTION 8. CONSTRUCTION AND MAINTENANCE.

All facilities and equipment of any telecommunications system operating with their permit within the Township shall be constructed and maintained at a state-of-the-art level in accordance with the applicable requirements and specifications of the National Electric

Code and National Building Code; shall participate in MISS DIG and shall comply with all applicable rules and regulations of the Michigan Public Service Commission, Federal Communications Commission and all other pertinent Ordinances and Codes of the Township. No construction shall occur which involves cutting or patching or tunneling beneath any paved surface, whether concrete, asphalt or other pavement unless plans have been approved by the Township and any other applicable governmental entity having jurisdiction over such paved surfaces.

SECTION 9. INDEMNIFICATION.

The Permittee, shall, at its sole cost and expense fully indemnify, defend and hold harmless the Township, its Board Members, Officers, Boards, Commissions and employees, against any and all claims, demands, suits, judgments, executions, liability, debt, damages or penalty (including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the Township in connection therewith) resulting from and rising out of, or alleged to arise or result from any act or omission of the Permittee in the construction, operation, maintenance, repair or removal of the telecommunications system and equipment or the issuance of a permit therefore.

SECTION 9. INSURANCE.

- a. Required. Permittee shall at all times or for the term of the permit carry and require contractors and subcontractors to carry public liability, property damage, workers compensation and vehicle insurance in the form and amounts set forth below. All insurance shall provide for a thirty (30) day notice to the Township in the event of

a material alteration or cancellation of coverage prior to the effective date of such alteration or cancellation. Failure to provide or maintain insurance for any period in excess of sixty (60) days shall render any permit issued hereunder null and void. All insurance coverage shall be insurance carriers reasonably acceptable to the Township. Permittee and any contractor or subcontractor hired by Permittee shall procure and maintain during the life of the permit the following coverage:

1. Workers Compensation Insurance in accordance with all applicable statutes in the State of Michigan. Coverage shall include employers liability coverage.
2. Automobile Liability Coverage, including Michigan No-Fault Coverage for all vehicles used in the performance of the permit. Limits of liability shall not be less than One Million (\$1,000,000.00) per occurrence combined single limits bodily injury and property damage.
3. Commercial General Liability Insurance on an "occurrence" basis with limits of liability not less than Two Million (\$2,000,000.00) per occurrence for bodily injury and personal injury, and One Million (\$1,000,000.00) per occurrence for property damage. Coverage shall include the following extensions: contractual liability; products and completed operations; independent contractors coverage; broad form general liability extensions or equivalent; coverage for property damage from perils of explosion; collapse or damage to underground utilities (XCU coverage).

b. Additional Insured. The Township shall be named as an additional insured on all policies. Permittee shall provide Township with a certificate of insurance evidencing such coverage upon the effective date of the permit and maintain on file with the Township a current certificate throughout the life of the permit.

c. Proof of Insurance. Upon written request of the Township, Permittee or any contractor or subcontractor hired by Permittee, shall within ten (10) days of such request, supply a copy of the insurance policy of any of the insurance required under this section.

SECTION 10. CONSTRUCTION AND PERFORMANCE BOND.

a. Required. Permittee shall, at its sole expense, obtain and maintain during the life of the permit, a Corporate Surety Bond with a United States Surety Company authorized to do business in the State of Michigan and found acceptable by the Township Attorney, in the amount of One Hundred Thousand (\$100,000.00) Dollars both to guarantee the timely construction and full activation of the fiber cable and to secure Permittee's performance of its obligations and faithful adherence to all requirements of this Ordinance and the conditions of the permit, including property restoration upon removal of fiber optic. Three (3) months after completion of construction of the fiber cable, the bond requirement shall be reduced to Fifty Thousand (\$50,000.00) Dollars. Permittee shall provide this Corporate Surety Bond to the Township at least thirty (30) days prior to commencement of construction.

b. Rights Reserved. The rights reserved to the Township with respect to the bond are in addition to other rights of the Township, whether reserved by this Ordinance, conditions of the permit, terms of the Agreement or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect any other right the Township may have.

c. Required Endorsement. The bond(s) shall contain the following endorsement:

“It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the Township, by registered mail, of written notice of such intent to cancel or not to renew.”

Receipt of the sixty (60) day notice shall constitute a material breach of the permit agreement, granting the Township the right to call in the bond.

SECTION 11. RELOCATION OR REMOVAL OF SYSTEM OR EQUIPMENT.

No telecommunications system or telecommunications equipment may be relocated or removed unless plans showing the proposed relocation or removal are submitted and filed with the Township and approved by both the Township Board and Township Engineer. The Township shall not unreasonably refuse to approve any such relocation or removal. Any and all rights-of-way shall be restored to substantially the same condition which was existing prior to such relocation or removal, within thirty (30) days of same.

SECTION 12. EMERGENCY SERVICE.

During the life of the permit, Permittee shall at all times provide 9-1-1 emergency telephone service to all customers, including the ability of any person dialing 9-1-1 to be automatically connected to a public service answering point with automatic location identification and automatic number identification.

SECTION 13. BOOKS AND RECORDS.

The Township may review any such books and records belonging to Permittee during normal business hours as reasonably necessary to monitor compliance with this Ordinance, and the permit issued hereunder any agreement entered into with Permittee. Upon written request of the Township, Permittee shall supply a copy of the following reports, within ten (10) days of request of same: any forms, reports or summaries filed with

the FCC, NPSC, or any other federal, state or local regulatory agency, administrative body, court or governmental body, regarding Permittee's operation within the Township; a summary of the previous years activities, including services begun or discontinued during the reported year; a list of Permittee's officers, members of its Board of Directors and other principals of Permittee; a list of stockholders, partners or other investors, with five (5%) percent or more interest in Permittee; information regarding the number of homes where service is available and/or potentially available, and/or the number of subscribers.

All reports, records and summaries required under this Section shall be printed at the sole expense of Permittee. The willful refusal, failure or neglect of Permittee to file any reports required under this section shall be deemed a material breach of the conditions of the permit if such reports are not provided in substantial compliance with this Ordinance within thirty (30) days after written request. False or misleading statements or representations contained in any report shall be deemed a material breach of the conditions of the permit.

SECTION 14. COMPLAINT PROCEDURE; CUSTOMER SERVICE STANDARDS.

Each Permittee shall establish and maintain complaint procedures and customer service standards. The complaint procedure and customer service standards shall be outlined in detail in the Application of Permit To Use Rights-Of-Way. Complaint procedures shall include a method by which to timely address and resolve complaints of Armada Township residents. Customer service standards shall include the establishment or maintenance of a business office in the Township, which is open normal business hours, and adequately staffed accept subscriber payments and explain bills, or a virtual office

consisting of a toll free number which subscribers may access from their home to ask questions and register complaints. Such office must be staffed by trained personal responding to calls and capable of timely responding to service requests and complaints. Failure to establish or maintain complaint procedures or customer service standards as set forth in the application is deemed a material breach of the permit.

SECTION 15. PENALTY.

Any person, who shall violate the provisions of this Ordinance shall, upon conviction thereof, be guilty of a misdemeanor and subject to a penalty not to exceed five hundred (\$500) dollars or imprisonment in the Macomb County Jail not to exceed ninety (90) days, or both such fine and imprisonment.

SECTION 16. REPEAL OF CONFLICTING PROVISIONS.

All resolutions, ordinances or parts thereof conflicting with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

SECTION 17. SEVERABILITY.

If any section, paragraph, clause or provision of this Ordinance is for any reason is held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 18. PUBLICATION.

A true copy of this Ordinance, or summary thereof, shall be published in the Armada Times, a newspaper having a general circulation within the Township of Armada.

SECTION 19. EFFECTIVE DATE.

This Ordinance shall take effect thirty (30) days from and after publication of a true copy or summary thereof as provided in SECTION 18.

CERTIFICATE OF TOWNSHIP CLERK

I certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the Township Board of the Township of Armada, Macomb County, Michigan, at a meeting held on the 10 day of May, 2000.

I further certify that the following Township Board Members were present at said meeting:

Joan Parnagian, Monica Job, Del Wrubel and Margaret Ruthenberg

and the following Township Board members were absent:

Dennis LeMieux

I further certify that Member Wrubel moved for the adoption of the Ordinance, and that motion was supported by Member Job

I further certify that the following Township Board Members voted for the adoption of the Ordinance:

Joan Parnagian, Monica Job, Del Wrubel and Margaret Ruthenberg

and that the following Township Board Members voted against adoption of the Ordinance:

None

MARGARET RUTHENBERG
ARMADA TOWNSHIP CLERK

TOWNSHIP OF ARMADA

MACOMB COUNTY, MICHIGAN

SUMMARY OF ARMADA TOWNSHIP
TELECOMMUNICATIONS ORDINANCE

ORDINANCE NO. 156

An Ordinance to provide for the regulation of access to and the ongoing use of public easements and rights-of-way by telecommunication providers for the purpose of protecting public safety and welfare through reasonable control of public utility easements and rights-of-way; by minimizing disruption to public utility easements and rights-of-way by regulating access to and the ongoing use of the same and the construction, installation, operation, maintenance and use of facilities in such easements and rights-of-way; to require fair and reasonable compensation from telecommunication providers on a competitively neutral and non-discriminatory basis; to provide for payment of non-discriminatory permit fees for use of public rights-of-way by telecommunication providers; declaring it unlawful for any person to construct, install or operate a telecommunications system in the Township without making application and receiving a permit from the Board of Trustees; establishing a penalty for the violation thereof and repealing all provisions in conflict therewith. A true copy of the Ordinance is on file at the Township offices and may be examined, or a copy purchased during regular business hours.

Publish: 5/24/2000


Margaret Ruthenberg
Armada Township Clerk

CERTIFICATE OF PUBLICATION

I, the undersigned Township Clerk of the Township of Armada, do hereby certify that on May 24, 2000, the foregoing Ordinance or Summary thereof was duly published in the Armada Times, a newspaper having general circulation within the Township of Armada.


MARGARET RUTHENBERG
ARMADA TOWNSHIP CLERK