



KLEIN, THORPE & JENKINS, LTD.
Attorneys at Law

20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

gtsmith@ktjlaw.com
DD 312-984-6436

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

www.ktjlaw.com

October 1, 2010

VIAL ELECTRONIC MAIL

Wendy Farley (wendy_farley@cable.comcast.com)
Daniel Maloney (daniel_maloney@cable.comcast.com)
Comcast
7720 West 98th Street
Hickory Hills, IL 60457

Re: Comcast Undergrounding at 143rd Street and La Grange Road, Orland Park, Illinois

Ms. Farley and Mr. Maloney:

As you are aware, my office represents the Village of Orland Park. It has come to our attention that Comcast has refused to participate in undergrounding of its cable lines in the area of 143rd Street and La Grange Road without payment by the Village. Enclosed is a "Construction Invoice" from Comcast, dated September 17, 2010 requesting \$138,577.36 for relocation of aerial coaxial cable in the aforementioned area. As you are aware, the Village is working with the State on a Permit project to widen La Grange Road and 143rd Street in this area. The poles supporting Comcast's cables will be taken down as part of the road widening project, requiring the overhead cables to be removed or placed underground.

Comcast, through Yohan Fernando, Senior Manager of Government and Community Affairs, stated that Comcast is entitled to this invoice amount due to 220 ILCS 5/21-1001(f)(4), and specifically the last sentence of that statutory provision. Enclosed is a copy of correspondence from Mr. Fernando to this effect. Comcast relies upon the following sentence in § 21-1001(f)(4) for its position:

In the event a holder and other users of a public right-of-way, including incumbent cable operators or utilities, are required to relocate and compensation is paid to the users of such public right-of-way, such parties shall be treated equally with respect to such compensation.

Mr. Fernando stated on September 17, 2010 that Comcast is "aware that ComEd is being compensated by the Village for the work related to the street widening project. As such, we want to be treated equally for the work that Comcast will have to undertake relative to this project."

Be advised that Comcast is owed no compensation from the Village. The Village is contacting you directly because of the sensitive time frame at issue here. As you are

aware, Comcast must fully complete its undergrounding operations in advance of March 1, 2011. Comcast's opportunity to underground at the lowest cost will quickly pass as open trenches will be backfilled without Comcast's cables unless you move to underground them as soon as possible.

Comcast is owed no compensation from the Village for work related to undergrounding of its cables in this matter. The statutory language supplied by Comcast does not apply because: (a) Comcast is not a beneficiary of the statutory provisions upon which it relies, the Village has not paid compensation to any other user of the right-of-way, and (b) the statutory language relied upon does not apply to these circumstances.

First, Comcast is not a beneficiary of the provisions of the Illinois Cable and Video Competition Act upon which it relies. The Cable and Video Competition Act only applies to holders of statewide cable licenses, which does not include Comcast. § 21-1001(f) recognizes this fact, and specifically provides that "In addition to the other requirements in this Section, if the holder installs, upgrades, constructs, operates, maintains, and removes facilities or equipment within a public right-of-way to provide cable service or video service, it shall comply with the following" This provision clearly limits the application of its subsections, including that cited by Comcast, to holders of state-wide licenses. Thus, the Act is inapplicable to Comcast for the proposition it cites in support.

Second, § 21-1001(f)(4) is not applicable to Comcast. This Section of the Act only applies in situations where "a holder and other users of a public right-of-way are required to relocate and compensation is paid" We direct your attention to the word "compensation." The Village has not paid compensation to any other public right-of-way user required to relocate. Be advised that the Village paid ComEd to relocate its facilities underground pursuant to an obligation arising under the franchise agreement between them. The Village did not make a voluntary payment to ComEd. Thus, the money paid to ComEd by the Village cannot be considered because it was required to be paid by the franchise agreement. Under Comcast's interpretation of the Section, any time any payment made by a municipality to any user of the right-of-way to underground, whether the obligation for payment come from statute, regulation, franchise agreement, or by voluntary action, the municipality would have to also treat other right-of-way users equally with regard to pay. Thus, any payment to a right-of-way user to underground would impose a triple, or quadruple, or quintuple obligation (depending on how many other users there are) on the municipality as all other users would have to be treated equally. This interpretation is wrong and cuts against the intent of § 21-1001(f)(4), which is that when a municipality makes a voluntary payment to a right-of-way user to underground, other right-of-way users are entitled to similar payments. The Village made no such voluntary payment, and therefore the Section does not apply and Comcast must bear the cost of undergrounding.

Third, § 21-1001(f)(4) only applies in situations where “compensation is paid to the users of such public right-of-way” We direct your attention to the words “the users.” The Act uses a plural noun, indicating that Comcast is entitled to payment under this Section only in the event that multiple users, as opposed to a single user, receive compensation for relocation. The Act does not state “a user,” “a single user,” “any user,” or some similar singular noun. Be advised that other than ComEd, no other user of the right-of-way has been paid for relocation. Thus, even if the Village’s payment to ComEd is considered to be compensation under the Act, only a single user of the right-of-way has been paid. Where a single user has been paid the Section does not apply, and Comcast is not entitled to compensation thereunder.

Fourth, § 21-1001(f)(4) only applies where a holder has been paid compensation for underground relocation. The plain text, and context, of the Section indicates that § 21-1001(f)(4) it is concerned with equality amongst cable operators. Be advised that AT&T has received no compensation from the Village for underground relocation in this matter. Thus, assuming the Village’s payment to ComEd is considered compensation, because AT&T has received no benefit related to underground costs which the Village refused to give to Comcast, Comcast is equal to AT&T in this case. Comcast has no right to claim compensation simply because ComEd has received payments.

As you can see, Comcast’s position is untenable in light of the statutory text set forth above. Because Comcast must underground its cables at its own cost, and because there is a sensitive timeframe, the Village requires Comcast to agree to the following schedule:

1. Submission of plans for undergrounding, on or before October 15, 2010;
2. Begin undergrounding work, on or before November 15, 2010;
3. Fully complete the cable undergrounding and service reconnection work before March 1, 2011 pole removal date.

Please indicate your agreement with this schedule by signing below. You may contact Edward Wilmes, the Village’s Director of Public Works, at (708) 403-6350 to discuss specific milestone completion dates and the overall project timeframe. Otherwise, direct all comments to myself or Ken Friker at our Orland Park office.

Please contact the undersigned with dates and times for a conference call or face-to-face meeting to be held between Comcast and the Village. If you do not respond by Wednesday October 6, 2010, the Village will assume that you are unwilling to discuss this matter further.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.



Gregory T. Smith

Encls.

cc: Paul Grimes, Village Manager
Ellen Baer, Assistant Village Manager
Edward Wilmes, Direct of Public Works and Engineering
E. Kenneth Friker, Village Attorney

AGREED TO THIS _____ DAY OF OCTOBER, 2010

Comcast

By: _____

Its: _____