

Chapter 101

CABLE TELEVISION

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[HISTORY: Adopted by the Village Board of the Village of Iola 11-9-1998 by Ord. No. 5-4-26. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 233.

§ 101-1. **Statement of intent and purpose.**

The village intends, by the adoption of this franchise, to bring about the development of a cable communications system, and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of many.

§ 101-2. **Findings.**

In the review of the renewal proposal and application of Triax (“grantee”), and as a result of a public hearing, the Village Board makes the following findings:

- A. The grantee’s technical ability, financial condition, legal obligations, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- B. The grantee’s plans for constructing, upgrading, and operating the system were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- C. The franchise granted to the grantee by the village complies with the existing applicable state and federal laws and regulations.

§ 101-3. Short title and definitions.

- A. Short title. This franchise ordinance shall be known and cited as the "Cable Communications Franchise."
- B. Definitions. For the purposes of this franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

BASIC CABLE SERVICE — Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).

CABLE COMMUNICATIONS SERVICE — The provision of television reception, communications and/or entertainment services distributed over a cable communications system. This definition shall not include telecommunications services regulated pursuant to federal and state law as may be amended from time to time.

CABLE COMMUNICATIONS SYSTEM or SYSTEM — A system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in the village, and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in the village. "System" as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 522(6) (1993).

CABLE PROGRAMMING SERVICE:

- (1) Any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:
- (a) Video programming carried on the basic service tier;
 - (b) Video programming offered on a pay-per-channel or pay-per-program basis; or
 - (c) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - [1] Consists of commonly identified video programming; and
 - [2] Is not bundled with any regulated tier of service.
- (2) "Cable programming service" as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) (1993) and 47 CFR 76.901(b) (1993).

CABLE SERVICE:

- (1) The one-way transmission to subscribers of video programming, or other programming service; and

- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CONVERTER — An electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber and by an appropriate selector permits a subscriber to view all cable communications services which the subscriber is lawfully authorized to receive.

DROP — The cable that connects the ground block on the subscriber's residence to the nearest feeder cable of the system.

FCC — The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

GRANTEE — Triax Midwest Associates, L.P., its agents and employees, lawful successors, transferees or assignees.

INSTALLATION — The connection of the system from feeder cable to the point of connection, including standard installations and custom installations.

LOCKOUT DEVICE — An optional mechanical or electrical accessory to a subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the cable communications system.

PAY TELEVISION — The delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

PERSON — Any person, firm, partnership, association, corporation, company, or other legal entity.

STANDARD INSTALLATION — Any residential installation which can be completed using a drop of 150 feet or less.

STREET — The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by the village.

SUBSCRIBER — Any person who lawfully receives cable service. In the case of multiple office buildings or multiple dwelling units, the "subscriber" means the lessee, tenant or occupant.

VILLAGE — The Village of Iola, a municipal corporation, in the State of Wisconsin, acting by and through its Village Board.

VILLAGE BOARD — The Iola, Wisconsin, Village Board.

§ 101-4. Grant of authority; general provisions.

- A. Franchise required. It shall be unlawful for any person to construct, operate or maintain a cable communications system in the village, unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise ordinance. It shall also be unlawful for any person to provide cable service in the

village unless such person shall have first obtained and shall currently hold a valid franchise ordinance. All cable communications franchises granted by the village shall contain the same substantive terms and conditions.

- B. Grant of franchise. This franchise is granted pursuant to the terms and conditions contained herein.
- C. Grant of nonexclusive authority.
 - (1) The grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the village, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the village of a cable communications system as herein defined.
 - (2) This franchise shall be nonexclusive, and the village reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this franchise; provided, however, that any additional franchises granted shall contain the same substantive terms and conditions as this franchise.
- D. Franchise term. The franchise shall be in effect for a period of 15 years from the effective date, unless renewed, revoked or terminated sooner as herein provided.
- E. Previous franchises. Upon acceptance by the grantee as required by § 101-15 herein, this franchise shall supersede and replace any previous ordinance or agreement granting a franchise to the grantee to own, operate and maintain a cable communications system within village. Ordinance No. 5-4-1 is hereby expressly repealed.
- F. Rules of grantee. The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said grantee to exercise its rights and perform its obligation under this franchise.
- G. Territorial area involved. This franchise is granted for the corporate boundaries of the village, as it exists from time to time. In the event of annexation by the village, or as development occurs, any new territory shall become part of the area covered; provided, however, that the grantee shall not be required to extend service beyond its present system boundaries unless there is a minimum of 45 homes per cable mile. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. The grantee shall be given a reasonable period of time to construct and activate a cable plant to service annexed or newly developed areas.
- H. Written notice.
 - (1) All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when delivered personally to any officer of the grantee or the village's Administrator of this franchise or 48 hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to village:
P.O. Box 336

Village of Iola

Iola, WI 54945
Attn: Daniel Johnson

If to grantee:

Triax Midwest Associates, L.P.
212 15th Avenue NE, Suite 2010
Waseca, MN 56093
Attn: Director of Operations

With copies to:

Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Norwest Financial Center
7900 Xerxes Avenue South
Bloomington, Minnesota 55431
Attention: Jane E. Bremer, Esq.

- (2) Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

I. Drops to public buildings.

- (1) The grantee shall provide installation of one cable drop, one cable outlet, and monthly basic cable service without charge to the following institutions.¹
- (2) Additional drops and/or outlets in any of the above locations will be provided by the grantee at the cost of the grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets the grantee's standards and provided that any fees for cable services are paid. Nothing herein shall be construed as requiring the grantee to extend the system to serve additional institutions as may be designated by the village. The grantee shall have one year from the date of Village Board designation of additional institution(s) to complete construction of the drop and outlet.

§ 101-5. Construction standards.

A. Construction codes and permits.

- (1) The grantee shall obtain all necessary permits from the village before commencing any construction upgrade or extension of the system, including the opening or disturbance of any street, or private or public property within the village.
- (2) The village shall have the right to inspect all construction or installation work performed pursuant to the provisions of the franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the franchise and applicable provisions of local, state and federal law.

B. Repair of streets and property. Any and all streets or public property or private property which are disturbed or damaged during the construction, repair, replacement, relocation,

¹ Editor's Note: Said list of institutions is on file in the village offices.

operation, maintenance or reconstruction of the system shall be promptly and fully restored by the grantee, at its expense, to a condition as good as that prevailing prior to the grantee's work.

- C. Building movers. The grantee shall, on request of any person holding a moving permit issued by the village, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the grantee shall be given not less than 10 days' advance notice to arrange for such temporary changes.
- D. Tree trimming. The grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of the village so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.
- E. No waiver. Nothing contained in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities.
- F. Undergrounding of cable.
 - (1) In all areas of the village where all other utility lines are placed underground, the grantee shall construct and install its cables, wires and other facilities underground.
 - (2) In any area of the village where one or more public utilities are aerial, the grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- G. Safety requirements. The grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- H. Poles and wires on private property without owner's consent. The grantee shall abide by the provisions of Wisc. Stat. § 134.41 in erecting poles(s), wire(s), or cable(s) on privately owned property.

§ 101-6. Operations provisions.

- A. System design and channel capacity. The grantee shall provide a 450 MHz system which has the capability to deliver a minimum of 60 channels within 36 months of the effective date of this franchise.
- B. Technical standards. The technical standards used in the operation of the system shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission's rules and regulations and found in Title 47, Sections 76.601 to 76.617.
- C. Lockout device. Upon the request of a subscriber, the grantee shall provide by sale or lease a lockout device.

§ 101-7. Services provisions.

- A. Subscriber inquiries. The grantee shall have a publicly listed toll-free telephone number and be operated so as to receive subscriber complaints and requests on a twenty-four-hour-a-day, seven-days-a-week basis.
- B. Refund policy. In the event a subscriber established or terminates service and receives less than a full month's service, the grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

§ 101-8. Franchise fees.

- A. The grantee shall pay to the village a franchise fee in an annual amount equal to 3% of its annual basic revenues.
- B. Payments due the village under this provision shall be payable quarterly. The payment shall be made within 30 days of the end of the grantee's fiscal quarter together with a brief report showing the basis for the computation.

§ 101-9. Sale, abandonment, transfer and revocation of franchise.

- A. Village's right to revoke.
 - (1) In addition to all other rights which the village has pursuant to law or equity, the village reserves the right to revoke, terminate or cancel this franchise, and all rights and privileges pertaining thereto, if after the hearing required by Subsection B herein, it is determined that:
 - (a) The grantee has violated any material provision of this franchise; or
 - (b) The grantee has practiced fraud or deceit upon the village or subscriber.
- B. Procedures for revocation.
 - (1) The village shall provide the grantee with written notice of a cause for revocation and the intent to revoke and shall allow the grantee 60 days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the franchise. Together with the notice required herein, the village shall provide the grantee with written findings of fact which are the basis of the revocation.
 - (2) The grantee shall be provided the right to a public hearing affording due process before the Village Board prior to revocation, which public hearing shall follow the sixty-day notice provided in Subsection B(1) above. The village shall provide the grantee with written notice of its decision together with written findings of fact supplementing said decision.
 - (3) After the public hearing and upon written determination by the village to revoke the franchise, the grantee may appeal said decision with an appropriate state or federal court or agency.

- (4) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.
- (5) Upon satisfactory correction by the grantee of the violation upon which said notice was given as determined, the initial notice shall become void.

C. Sale or transfer of franchise.

- (1) No sale or transfer of this franchise or system shall take place until the parties to the sale, transfer, or fundamental corporate change file a written request with the village for its approval; provided, however, that said approval shall not be required where the grantee grants a security interest in its franchise and assets to secure an indebtedness.
- (2) The village shall have 30 days from the time of receipt of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse effect on the grantee's subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by council resolution within 30 days of receipt of said request, or the request shall be deemed approved as a matter of law.
 - (a) If a public hearing is deemed necessary pursuant to Subsection B above, such hearing shall be commenced within 30 days of such determination and notice of any such hearing shall be given in accordance with local law or 14 days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the village. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by the village.
 - (b) Within 30 days after the closing of the public hearing, the village shall approve or deny in writing the sale or transfer request. The village shall set forth in writing with particularity its reason(s) for denying approval. The village shall not unreasonably withhold its approval.
 - (c) The parties to the sale or transfer of the franchise only, without the inclusion of the system in which substantial construction has commenced, shall establish that the sale or transfer of only the franchise will be in the public interest.
 - (d) Any sale or transfer of equity in the grantee so as to create a new controlling interest in the system shall be subject to the requirements of this section. The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
 - (e) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the village.
 - (f) In the event of any proposed sale or assignment pursuant to Subsection C(2)(a) of this section, the village shall have the right of first refusal of any bona fide offer to purchase the system. "Bona fide offer," as used in this section, means an offer received by the grantee which it intends to accept subject to the village's rights under this section. This written offer must be conveyed to the village along

with the grantee's written acceptance of the offer contingent upon the rights of the village provided for in this section.

- (g) The village shall be deemed to have waived its rights under this section in the following circumstances:
- [1] If it does not indicate to the grantee in writing, within 30 days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or
 - [2] It approves the assignment or sale of the franchise as provided within this section.

§ 101-10. Indemnification of village.

- A. The village, its officers, boards, committees, commissions, employees and agents shall not be liable for any loss or damage to any real or personal property of any person, or for any injury to or death of any person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to, the system.
- B. The grantee shall indemnify, defend, and hold harmless the village, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, attorneys' fees and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of public, educational, governmental access programming.
- C. Nothing in this franchise relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantee's facilities while performing work connected with grading, regrading, or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system. The village shall be liable only for the cost of replacing or repairing any damage to the grantee's property or equipment caused by tortious acts by the village, or its officers, boards, commissions, committees, elected officials, employees, and agents acting within the scope of their employment, consistent with Wisconsin state law.
- D. In order for the village to assert its rights to be indemnified, defended, and held harmless, the village must with respect to each claim:
 - (1) Promptly notify the grantee in writing of any claim or legal proceeding which gives rise to such right;
 - (2) Afford the grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and
 - (3) Fully cooperate with reasonable requests of the grantee, at the grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of, such claim or proceeding subject to Subsection D(2) above.

§ 101-11. Insurance.

- A. Upon request, the grantee shall file with its acceptance of this franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the village in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policies of insurance shall be in the sum of not less than \$1,000,000 for personal injury or death of any one person, \$2,000,000 for personal injury or death of two or more persons in any one occurrence, \$1,000,000 for property damage to any one person and \$2,000,000 for property damage resulting from any one act or occurrence.
- B. A certificate of insurance in a form and substance acceptable to the village, together with written evidence of payment of required premiums, shall be filed with the village at the time of acceptance of this franchise.
- C. Neither the provisions of this section nor any damages recovered by the village or any individual shall be construed to or shall limit the liability of the grantee.
- D. No recovery by the village of any sum by reason of the security fund or bond required in this franchise shall be any limitation upon the liability of the grantee to the village under the terms of this section, except that the sum so received by the village from such security fund or bond shall be deducted from a recovery by the village under this section, if for the same act or occurrence.
- E. The policy or policies of insurance shall be maintained by the grantee in full force and effect during the entire term of the franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the grantee or for other reasons, except after 30 days' advance written notice have been provided to the village.

§ 101-12. Protection of individual rights; subscriber privacy.

The grantee shall comply with the terms of 47 U.S.C. § 551 relating to the protection of subscriber privacy.

§ 101-13. Unauthorized connections and modifications; theft of cable television services.

As defined by Wisc. Stat. § 943.46, the theft of cable television service is unlawful and the grantee shall seek penalties for violations as set forth in Wisc. Stat. § 943.46, Subd. 4.

§ 101-14. Renewal and amendment of franchise.

- A. Franchise renewal. Any renewal of this franchise shall be done in accordance with applicable federal, state and local laws and regulations.
- B. Amendment of franchise ordinance. The grantee and the village may agree, from time to time, to amend this franchise. Such written amendments may be made at any time if the village and the grantee agree that such an amendment will be in the public interest or if

such an amendment is required due to changes in federal, state or local laws. The village shall act pursuant to local law pertaining to the ordinance amendment process.

§ 101-15. Publication; effective date; acceptance.

- A. Publication; effective date. This franchise shall be published in accordance with applicable Wisconsin law. The effective date of this franchise shall be the date of acceptance by the grantee.
- B. Acceptance.
- (1) The grantee shall accept this franchise within 60 days of its enactment by the Village Board, unless the time for acceptance is extended by the village. Such acceptance by the grantee shall be deemed the grant of this franchise for all purposes. Upon acceptance of this franchise, the grantee shall be bound by all the terms and conditions contained herein.
 - (2) The grantee shall accept this franchise in the following manner:
 - (a) This franchise will be properly executed and acknowledged by the grantee and delivered to the village.
 - (b) With its acceptance, the grantee shall also deliver the insurance certificate required herein that has not previously been delivered.

