

Chapter A274

CABLE TELEVISION FRANCHISE

ARTICLE I Intent and Purpose; Findings

- § A274-1. Statement of intent and purpose.
- § A274-2. Findings.

ARTICLE II Short Title and Definitions

- § A274-3. Short title.
- § A274-4. Definitions and word usage.

ARTICLE III Grant of Authority and General Provisions

- § A274-5. Franchise required.
- § A274-6. Grant of franchise.
- § A274-7. Grant of nonexclusive authority.
- § A274-8. Franchise term.
- § A274-9. Previous franchises.
- § A274-10. Rules of grantee.
- § A274-11. Territorial area involved.
- § A274-12. Written notice.
- § A274-13. Drops to public buildings.

ARTICLE IV Construction Standards

- § A274-14. Construction codes and permits.
- § A274-15. Repair of streets and property.
- § A274-16. Building movers.
- § A274-17. Tree trimming.
- § A274-18. No waiver.
- § A274-19. Undergrounding of cable.
- § A274-20. Safety requirements.

ARTICLE V Operations Provisions

- § A274-21. Public, educational and government access.
- § A274-22. Technical standards.
- § A274-23. Lockout device.

ARTICLE VI Services Provisions

- § A274-24. Subscriber inquiries.
- § A274-25. Refund policy.

ARTICLE VII Franchise Fees and Insurance Provisions

- § A274-26. Franchise fee.
- § A274-27. Insurance.

ARTICLE VIII Sale, Abandonment, Transfer and Revocation of Franchise

- § A274-28. Village's right to revoke.
- § A274-29. Procedures for revocation.

ARTICLE IX Protection of Individual Rights

- § A274-30. Subscriber privacy.

ARTICLE X Unauthorized Connections and Modifications

- § A274-31. Unauthorized connections or modifications prohibited.
- § A274-32. Removal or destruction prohibited.
- § A274-33. Violations and penalties.

ARTICLE XI
Miscellaneous Provisions

§ A274-34. Franchise renewal.
§ A274-35. Amendment of franchise ordinance.

ARTICLE XII
**Publication Effective Date;
Acceptance and Exhibits**

§ A274-36. Publication; effective date.
§ A274-37. Acceptance.

[HISTORY: Adopted by the Village Board of the Village of Albany 9-14-1998 by Ord. No. 03-98. Amendments noted where applicable.]

ARTICLE I
Intent and Purpose; Findings

§ A274-1. 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.

§ A274-2. 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.

ARTICLE II
Short Title and Definitions

§ A274-3. Short title.

This franchise ordinance shall be known and cited as "The Cable Communications Franchise."

§ A274-4. Definitions and word usage.

A. For the purposes of this franchise, the following terms, phrases, words and their derivations shall have the meanings given herein:

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 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 -- 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:

- (1) Video programming carried on the basic service tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) 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:
 - (a) Consists of commonly-identified video programming; and
 - (b) Is not bundled with any regulated tier of service. 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 C.F.R. 76.901(b) (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 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 communication system.

PAY TELEVISION -- The delivery over the system of pay-per-channel or pay-per-program audiovisual 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 -- Village of Albany, a municipal corporation, in the State of Wisconsin, acting by and through its Village Board.

VILLAGE BOARD -- The Albany, Wisconsin Village Board.

B. Word usage. 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.

ARTICLE III Grant of Authority and General Provisions

§ A274-5. 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.

§ A274-6. Grant of franchise.

This franchise is granted pursuant to the terms and conditions contained herein.

§ A274-7. Grant of nonexclusive authority.

A. 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.

B. 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.

§ A274-8. Franchise term.

This franchise shall be in effect for a period of 15 years from the effective date, unless renewed, revoked or terminated sooner as herein provided.

§ A274-9. Previous franchises.

Upon acceptance by the Grantee as required by Article XII 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. _____ is hereby expressly repealed.

§ A274-10. 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.

§ A274-11. 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 cable plant to service annexed or newly developed areas.

§ A274-12. Written notice.

A. 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: Village of Albany
206 N. Water Street
P.O. Box 342
Albany, WI 53502
Attn: Clerk

If to Grantee: Triax Midwest Associates, L.P.
212 15th Avenue NE, Suite 2010
Waseca, MN 56093

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

B. Such addresses may be changed by either party upon notice to the other party given as provided in this section.

§ A274-13. Drops to public buildings.

A. The Grantee shall provide installation of one cable drop, one cable outlet and monthly basic cable service without charge to the following institutions:

Municipal Building
Public School
Public Library
Public Works Building

B. 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.

ARTICLE IV
Construction Standards

§ A274-14. Construction codes and permits.

A. 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.

B. 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.

§ A274-15. 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, 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.

§ A274-16. 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.

§ A274-17. 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.

§ A274-18. 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.

§ A274-19. Undergrounding of cable.

A. 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.

B. 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.

§ A274-20. 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.

ARTICLE V Operations Provisions

§ A274-21. Public, educational and government access.

The Grantee shall dedicate one channel for public, educational and government (herein "PEG") access use. The village or its designee is hereby designated to operate, administer, promote and manage access to the cable system established pursuant to this section. The Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this section.

§ A274-22. 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, Section 76.601 to 76.617.

§ A274-23. Lockout device.

Upon the request of a subscriber, the Grantee shall provide by sale or lease a lockout device.

ARTICLE VI Services Provisions

§ A274-24. Subscriber inquiries.

The Grantee shall have a publicly listed tollfree 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.

§ A274-25. 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.

ARTICLE VII Franchise Fees and Insurance Provisions

§ A274-26. Franchise fee.

A. The Grantee shall pay to the village a franchise fee in an annual amount equal to 3% of its annual basic cable service and pay television revenues.

B. Payments due the village under this provision shall be payable annually. The payment shall be made within 90 days of the end of the Grantee's fiscal year, together with a brief report showing the basis for the computation.

§ A274-27. 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 coverage, in protection of the village in its capacity as such. 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, \$3,000,000 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 \$3,000,000 for property damage resulting from any one act or occurrence.

B. 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 village.

ARTICLE VIII

Sale, Abandonment, Transfer and Revocation of Franchise

§ A274-28. Village's right to revoke.

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 § A274-29, 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.

§ A274-29. Procedures for revocation.

A. 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.

B. 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 A above. The village shall provide the Grantee with written notice of its decision, together with written findings of fact supplementing said decision.

C. 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.

D. During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

E. Upon satisfactory correction by the Grantee of the violation upon which said notice was given as determined, the initial notice shall become void.

ARTICLE IX Protection of Individual Rights

§ A274-30. Subscriber privacy.

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

ARTICLE X Unauthorized Connections and Modifications

§ A274-31. Unauthorized connections or modifications prohibited.

It shall be unlawful for any firm, person, group, company, corporation or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the system.

§ A274-32. Removal or destruction prohibited.

It shall be unlawful for any firm, person, group, company, corporation or government body or agency to willfully interfere, tamper, remove, obstruct or damage, or assist thereof, any part or segment of the system for any purpose whatsoever.

§ A274-33. Violations and penalties.

Any firm, person, group, company, corporation or government body or agency found guilty of violating this chapter may be fined not less than \$20 and the costs of the action nor more than \$500 and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

ARTICLE XI Miscellaneous Provisions

§ A274-34. Franchise renewal.

Any renewal of this franchise shall be done in accordance with applicable federal, state and local laws and regulations.

§ A274-35. Amendment of franchise ordinance.

The Grantee and village may agree, from time to time, to amend this franchise. Such written amendments may be made at any time if the village and 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.

ARTICLE XII

Publication Effective Date; Acceptance and Exhibits

§ A274-36. 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.

§ A274-37. Acceptance.

A. 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.

B. The Grantee shall accept this franchise in the following manner:

(1) This franchise will be properly executed and acknowledged by the Grantee and delivered to the village.

(2) With its acceptance, the Grantee shall also deliver the insurance certificate required herein that has not previously been delivered.