

CHAPTER 16

CABLE COMMUNICATIONS FRANCHISE
(ord. am. #99-1)

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The City Council of the City of Darlington ordains (am. ord. #99-1):

STATEMENT OF INTENT AND PURPOSE. The City 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.

FINDINGS. In the review of the Renewal Proposal and application of Triax ("Grantee"), and as a result of a public hearing, the City Council makes the following findings:

(1) 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;

(2) 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;

(3) The Franchise granted to Grantee by the City complies with the existing applicable state and federal laws and regulations.

16.01 SHORT TITLE. This Franchise Ordinance shall be known and cited as the Cable Communications Franchise.

16.02 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.

(1) **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).

(2) **CABLE COMMUNICATIONS SYSTEM OR "SYSTEM".** A system of antennas, cables, wires, lines, towers, waveguides, or other conductors, Converters, equipment, or facilities located in Darlington and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in City.

System as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §522(6) (1993).

(3) 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:

- (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.

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).

(4) 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.

(5) CABLE SERVICE. (a) The one-way transmission of video programming or 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.

(6) CITY. City of Darlington, a municipal corporation, in the State of Wisconsin, acting by and through its City Council.

(7) CITY COUNCIL. The Darlington, Wisconsin City Council.

(8) 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.

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(9) DROP. The cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.

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

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

(12) GROSS REVENUES. All revenues received from Cable Service directly by the Grantee from the operation of its System within City. The term Gross Revenues shall not include franchise fees, advertising revenues, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.

(13) INSTALLATION. The connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.

(14) 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.

(15) 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 Services or Cable Programming Services.

(16) PERSON. Any person, firm, partnership, association, corporation, company, or other legal entity.

(17) STANDARD INSTALLATION. Any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.

(18) 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 City.

(19) 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.

16.03 GRANT OF AUTHORITY AND GENERAL PROVISIONS. (1) FRANCHISE REQUIRED. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in City 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 City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by City shall contain the same substantive terms and conditions.

(2) GRANT OF FRANCHISE. This Franchise is granted pursuant to the terms and conditions contained herein.

(3) 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 City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable Communication System as herein defined.

(b) This Franchise shall be nonexclusive, and City 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 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.

(4) FRANCHISE TERM. The Franchise shall be in effect for a period of five (5) years from the effective date, unless renewed, revoked, or terminated sooner as herein provided. If within the Franchise Term the Grantee completes the System Upgrade and provides the grants as per sec. 16.05 herein, the Term will automatically be extended an additional seven (7) years from the Effective Date, unless renewed, revoked, or terminated sooner as herein provided.

(5) PREVIOUS FRANCHISES. Upon acceptance by Grantee as required by sec. 16.12 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate, and maintain a Cable Communications System within City Ordinance No. 1-97 is hereby expressly repealed.

(6) 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.

(7) TERRITORIAL AREA INVOLVED. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of thirty (30) 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. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed area.

(8) WRITTEN NOTICE. 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 Grantee or City's Administrator of this Franchise or forty-eight (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:

- (a) If to City: City of Darlington
 P.O. Box 207
 627 Main Street
 Darlington, WI 53530
 Attn: Phil Risseuw

- (b) If to Grantee: Triax Midwest Associates, L.P.
 212 15th Avenue NE, Suite 2010
 Waseca, MN 56093
 Attn: General Manager

- (c) With copies to: Larkin, Hoffman, Daly & Lindgren, Ltd.
 1500 Norwest Financial Center
 7900 Xerexes Avenue South
 Bloomington, MN 55431
 Attn: Jane E. Bremer, Esq.

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

(9) DROPS TO PUBLIC BUILDINGS. Grantee shall provide Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service without charge to the following institutions:

- (a) Darlington Municipal Building
627 Main Street
Darlington, WI 53530
- (b) Darlington Public Library
525 Main Street
Darlington, WI 53530
- (c) Darlington Fire Department Firehouse
135 E. Ann Street
Darlington, WI 53530

Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of 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 Grantee's standards and provided that any fees for Cable Services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional Institutions as may be designated by City. Grantee shall have one (1) year from the date of City Council designation of additional institution(s) to complete construction of the Drop and outlet.

16.04 CONSTRUCTION STANDARDS. (1) CONSTRUCTION CODES AND PERMITS. (a) Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City.

(b) The City 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.

(2) 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 Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work.

(3) BUILDING MOVERS. The Grantee shall, on request of any Person holding a moving permit issued by the City, 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 ten (10) days advance notice to arrange for such temporary changes.

(4) TREE TRIMMING. The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(5) 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 Grantee's facilities.

(6) UNDERGROUNDING OF CABLE. (a) In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires, and other facilities underground.

(b) In any area of City where one or more public utilities are aerial, Grantee may construct and install its cables, wires, and other facilities from the same pole with the consent of the owner of the pole.

(7) 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.

16.05 DESIGN, PUBLIC ACCESS AND OPERATIONS PROVISIONS. (1) SYSTEM UPGRADE. Grantee shall provide a System with a capacity of at least 550 MHz bandwidth and have at least a 60-channel capacity and two-way capability within thirty-six (36) months of the Effective Date of this Franchise. Upon completion of the system upgrade, the City may request written confirmation that the system meets the technical performance requirements stated herein.

(2) LOCAL ACCESS. (a) City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG Access") to the cable system established pursuant to sec. 16.07 of this chapter. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in sec. 16.07.

(b) Upon request, Grantee shall dedicate two (2) channels for PEG access use. City shall provide ninety (90) days prior written notice to Grantee in order to activate each channel.

(c) City shall implement rules for use of the specially designated PEG access channels. The initial access rules and any amendments thereto shall be maintained on file with City and available for public inspection during normal business hours.

(d) Prior to the cablecast of any program on a PEG access channel established herein, City shall require any Person who requests PEG access to the System to provide written certification in a form and substance acceptable to Grantee and City which released, indemnifies, and hold harmless City, Grantee and their respective employees, offices, agents, and assigns from any liability, cost damages and expenses, including reasonable expenses for legal fees, arising or connected in any way with said program.

(3) TECHNICAL STANDARDS. The technical standards used in the operation of the System shall comply, at a 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.

(4) LOCKOUT DEVICE. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

16.06 SERVICES PROVISIONS. (1) SUBSCRIBER INQUIRIES. 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 (24) hour-a-day, seven (7) days-a-week basis.

(2) REFUND POLICY. In the event a Subscriber established or terminated service and receives less than a full month's service, 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.

16.07 FRANCHISE FEES AND INSURANCE PROVISIONS. (1) FRANCHISE FEE. (a) Grantee shall pay to City a Franchise Fee in an annual amount equal to three (3%) percent of its annual Gross Revenues.

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

(2) INSURANCE. (a) Upon request, 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 City in its capacity as such. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000)

for property damage to any one person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

(b) The policy or policies of insurance shall be maintained by 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 Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to City.

16.08 SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE. (1) CITY'S RIGHT TO REVOKE. In addition to all other rights which City has pursuant to law or equity, City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by sec. 16.08 (2) herein, it is determined that:

(a) Grantee has violated any material provisions of this Franchise; or

(b) Grantee has attempted to evade any of the material provisions of the Franchise; or

(c) Grantee has practiced fraud or deceit upon City or Subscriber.

(2) PROCEDURES FOR REVOCATION. (a) City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (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, City shall provide Grantee with written findings of fact which are the basis of revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. City shall provide 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 City to revoke the Franchise, 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 Grantee of the violation upon which said notice was given as determined, the initial notice shall become void.

16.09 PROTECTION OF INDIVIDUAL RIGHTS. (1) SUBSCRIBER PRIVACY. Grantee shall comply with the terms of 47 U.S.C. §551 relating to the protection of Subscriber privacy.

16.10 UNAUTHORIZED CONNECTIONS AND MODIFICATIONS. (1) 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.

(2) 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.

(3) PENALTY. Any firm, Person, group, company, corporation, or government body or agency found guilty of violating this section may be fined not less than Twenty Dollars (\$20) and the costs of the action nor more than Five Hundred Dollars (\$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.

16.11 MISCELLANEOUS PROVISION. (1) FRANCHISE RENEWAL. Any renewal of this Franchise shall be done in accordance with applicable federal, state, and local laws and regulations.

(2) AMENDMENT OF FRANCHISE ORDINANCE. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if City 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. City shall act pursuant to local law pertaining to the ordinance amendment process.

(3) PERIODIC EVALUATION. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing, and legal changes during the term of this

Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern System, the following evaluation provisions shall apply:

(a) The City may require an evaluation session two (2) years from the Effective Date of this Franchise and upon thirty days written notice to Grantee.

(b) All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice.

(c) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City and Grantee deem relevant.

(d) As a result of a period review or evaluation session, City and Grantee may develop such changes and modifications to the terms and conditions of the Franchise as are mutually agreed upon.

16.12 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS.

(1) PUBLICATION; EFFECTIVE DATE. This Franchise shall be published in accordance with application Wisconsin law. The Effective Date of this Franchise shall be 5-14-99 provided Grantee has accepted this Franchise by that date.

(2) ACCEPTANCE. (a) Grantee shall accept this Franchise within sixty (60) days of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(b) Grantee shall accept this Franchise in the following manner:

1. This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

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