

CHAPTER 112

CABLE TELEVISION FRANCHISE

112.01 Definitions	112.07 Franchise Fees and Insurance Provisions
112.02 Franchise Required	112.08 Sale, Abandonment, Transfer or Revocation
112.03 General Provisions for Grant of Authority	112.09 Subscriber Privacy
112.04 Construction Standards	112.10 Unauthorized Connections and Modifications
112.05 Operations Provisions	112.11 Franchise Renewal and Amendment
112.06 Services Provisions	

112.01 DEFINITIONS. The following words and phrases, when used herein, shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

1. “Basic cable service” means 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 service” means 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.
3. “Cable communications system” or “system” means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in the City 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).
4. “Cable programming service” means 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).

5. "Cable service" means:
 - A. The one-way transmission to subscribers 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. "Converter" means 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.
7. "Drop" means the cable that connects the ground block on the subscriber's residence to the nearest feeder cable of the system.
8. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
9. "Grantee" is Triax Midwest Associates, L.P., its agents and employees, lawful successors, transferees, or assignees.
10. "Gross revenues" means all revenue 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.
11. "Installation" means the connection of the system from feeder cable to the point of connection, including standard installations and custom installations.
12. "Lockout device" means 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.
13. "Pay television" means 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.
14. "Standard installation" means any residential installation which can be completed using a drop of 150 feet or less.
15. "Street" means 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.
16. "Subscriber" means 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.

112.02 FRANCHISE REQUIRED. It is unlawful for any person to construct, operate or maintain a cable communications system in the 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. It is also unlawful for any person to provide cable service in the City unless such person shall have first obtained and shall currently hold a valid franchise. All cable

communications franchises granted by the City shall contain the same substantive terms and conditions.

112.03 GENERAL PROVISIONS FOR GRANT OF AUTHORITY.

1. Grant of Franchise. The franchise is granted pursuant to the terms and conditions contained herein.
2. Grant of Nonexclusive Authority. 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 City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable communications system as herein defined. The 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 of the franchise, provided, however, that any additional franchises granted shall contain the same substantive terms and conditions as this franchise.
3. Franchise Term. Franchise shall be in effect for a period of five (5) years from the effective date, unless renewed, revoked, terminated, shortened or extended as herein provided; however, upon completion of the upgrade allowed by Section 112.05(1) herein, the term shall automatically be extended for an additional ten (10) years for a total of fifteen (15) years.[†]
4. Previous Franchises. Upon acceptance by Grantee, the 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 the City. Ordinance No. 563-98 is hereby expressly repealed.
5. 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 the franchise.
6. Territorial Area Involved. The franchise is granted for the corporate boundaries of the City as such boundaries exist from time to time. In the event of annexation by the City, 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 forty-five (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. Grantee shall be give a reasonable period of time to construct and activate cable plat to service annexed or newly developed areas.
7. Written Notice. All notices, reports or demands required to be given in writing under this chapter shall be deemed to be given when delivered personally to any officer of the Grantee or the City's administrator of the franchise forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with

[†] **EDITOR'S NOTE:** Ordinance No. 565-99, adopting a cable television franchise for the City, was passed and adopted on July 6, 1999.

registered or certified mail postage prepaid thereon, properly addressed to the party to whom notice is being given.

8. 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. Riverside Elementary School
- B. Community Center
- C. City Hall
- D. The Fire Station

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 the City. Grantee shall have one year from the date of City designation of additional institutions to complete construction and the drop and outlet.

112.04 CONSTRUCTION STANDARDS.

1. Construction Codes and Permits. Grantee shall obtain all necessary permits from the 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. 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 streets or public property or private property which is 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 the 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. In all areas of the City where all other utility lines are placed underground, the Grantee shall construct and install its cables, wires and other facilities underground. In any area of the City 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.

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.

112.05 OPERATIONS PROVISIONS.

1. Technical Standards. Grantee hereby reserves the right to upgrade the system to a minimum of 60-channel capacity in the future in addition to the technical improvements implemented during 1998. 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.

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

112.06 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 24 hours a day, seven (7) days a week.

2. Refund Policy. In the event a subscriber establishes or terminates service and receives less than a full month's service, Grantee shall pro rate 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.

3. Credit Policy. For service interruptions of 24 hours or more, the Grantee shall provide, at the subscriber's request, a credit of 1/30 of one month's fees for each 24-hour period of affected service. For purposes of this subparagraph, any service interruption for four or more hours after the service has been interrupted for 24 hours shall constitute an additional 24-hour period.

112.07 FRANCHISE FEES AND INSURANCE PROVISIONS.

1. Franchise Fee. Upon six months' prior written notice by the City, Grantee shall pay to the City a franchise fee in an annual amount equal to five percent (5%) of its annual gross revenues. Grantee reserves its right to itemize and pass through the franchise fee pursuant to 47 USC 542(f). Payments due the City under this provision shall be payable annually. The payment shall be made within 90 days after the end of Grantee's fiscal year, together with a brief report showing the basis for the computation.

2. Insurance. Upon request, Grantee shall file with its acceptance of the 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 City 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, and \$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. 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.

112.08 SALE, ABANDONMENT, TRANSFER OR REVOCATION.

1. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate or cancel the franchise, and all rights and privileges pertaining thereto, if after the hearing required herein, it is determined that:

- A. Grantee has violated any material provision of the franchise; or
- B. Grantee has practiced fraud or deceit upon the City or subscribers.

2. Procedures for Revocation.

A. The City shall provide the 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, the City 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 City Council prior to revocation, which public hearing shall follow the 60-day notice provided in paragraph A above. The 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 the City 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.

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

112.10 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS.

1. It is 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. It is 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. 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 (\$20.00) and the costs of the action nor more than five hundred dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

112.11 FRANCHISE RENEWAL AND AMENDMENT. Any renewal of the franchise shall be done in accordance with applicable Federal, State and local laws and regulations. The Grantee and the City may agree, from time to time, to amend the franchise. Such written amendments may be made at any time if the 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. The City shall act pursuant to local law pertaining to the ordinance amendment process.

[The next page is 625]