

CITY OF LEROY
COUNTY OF MC LEAN
STATE OF ILLINOIS

RESOLUTION NO. 99-5

FOR THE CITY OF LEROY, ILLINOIS, A MUNICIPAL CORPORATION, REGARDING A
DEFICIENCY BY THE FRANCHISEE IN THE OPERATION OF THE JONES
INTERCABLE/TRIAX/MEDIACOM CABLE TELEVISION OPERATION

ADOPTED BY THE CITY COUNCIL OF THE CITY OF LE ROY
THIS 20th DAY OF December, 1999

PRESENTED: December 20, 1999
PASSED: December 20, 1999
APPROVED: December 20, 1999
RECORDED: December 20, 1999
PUBLISHED: December 20, 1999


In Pamphlet Form

Voting "Aye" 5

Voting "Nay" 0

The undersigned being the duly qualified and acting City Clerk of the City of LeRoy does hereby certify that this document constitutes the publication in pamphlet form, in connection with and pursuant to Section 1-2-4 of the Illinois Municipal Code, of the above-captioned resolution and that such resolution was presented, passed, approved, recorded and published as above stated.

(SEAL)



City Clerk of the City of LeRoy,
McLean County, Illinois

Dated: December 20, 1999

RESOLUTION NO. 99-5

FOR THE CITY OF LEROY, ILLINOIS, A MUNICIPAL CORPORATION, REGARDING A DEFICIENCY BY THE FRANCHISEE IN THE OPERATION OF THE JONES INTERCABLE/TRIAX/MEDIACOM CABLE TELEVISION OPERATION

WHEREAS, the City of LeRoy did grant a franchise renewal to Jones Intercable, Inc., its successors and assigns, to operate and maintain a community antenna cable television system in the City of LeRoy, said franchise having been approved by Ordinance No. 376 adopted and effective September 4, 1990; and

WHEREAS, Section 6 of the aforesaid franchise agreement provides as follows:

Section 6. Liability and Indemnification.

a. The Company shall pay all damages and penalties which the city, its officers, boards, commissions, agents and employees may legally be required to pay as a result of the installation, operation and maintenance of the cable system authorized herein and which results from the negligence, gross negligence or intentional acts of the Company, its agents or employees.

b. The Company shall pay all expenses incurred by the City, its officers, boards, commissions, agents, and employees in defending itself with regard to all damages and penalties mentioned in subsection "a" above. These expenses shall include all out-of-pocket expenses, such as attorney fees. The Company shall be liable for payment of damages and penalties mentioned in "a" above and/or expenses in this Section only if Company has been adequately notified of pending actions and has been allowed, at its own expense, to hire its own counsel.

c. The Company shall maintain throughout the period of this Ordinance liability insurance insuring the City, its officers, boards, commissions, agents, and employees and the Company in the minimum amount of:

- (1) Five Million (\$5,000,000.00) Dollars for Personal Injury or death resulting from any one occurrence; and
- (2) Five Million (\$5,000,000.00) Dollars for property damage resulting from any one occurrence.

The insurance policies mentioned above shall contain an endorsement stating that the policies are intended to cover the liability assumed by the Company under the terms of this Ordinance and shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced without Council approval."

Said insurance coverage will remain in effect throughout the term of the franchise. The Company shall provide to the City Clerk written evidence of payment of required premiums, which shall be filed and maintained with the City Clerk during the term of any franchise granted hereunder or any renewal hereof;

and

WHEREAS, on April 16, 1997, agents of Jones Intercable bored through a water main in the City of LeRoy while installing underground cable near the intersection of South Chestnut Street and East Vine Street in the City of LeRoy, Illinois, and thereby damaged the aforesaid water main, causing the City to have to make emergency repairs, including hiring an independent contractor to make repairs, which repairs included not only repairs to the water main, but also to the street surface above and surrounding areas, for which damages and repairs the City of LeRoy had to pay \$29,801.59; and

WHEREAS, despite repeated demands, and in clear violation of Section 6 of Ordinance No. 376, as aforesaid, the City of LeRoy has not been reimbursed for the aforesaid expenses; and

WHEREAS, Section 16 of the aforesaid ordinance provides as follows:

Section 16. Revocation. The City may revoke any franchise granted hereunder and terminate all rights and privileges associated therewith upon the occurrence of one of the following events:

- a. Failure of the Company to pay all fees due the City, provided that said fees are not subject to a legal dispute;
- b. A breach of the material terms and conditions of this Ordinance; or
- c. Bankruptcy, insolvency, or assignment for the benefit of creditors by Company.

Company shall be notified in writing fully explaining the details of any such deficiency and Company will be allowed no less than sixty (60) days to correct any

such deficiency. If during the 60 day period, the cause shall be cured, the notice and right to terminate shall be null and void. The Company shall be given an opportunity to be heard before the Council regarding termination, and the company shall be afforded all due process rights regarding termination. In the event of termination, the Council shall provide a written summary of its reasons for termination. A public hearing to consider revocation with a twenty (20) day notice given to Company shall be held prior to termination. Company must be given the opportunity to be heard at such public hearing.

Notwithstanding anything to the contrary herein, the company shall not be liable for any breach, in the event the Company is delayed in or prevented from performing any obligation required of it by this Ordinance, due to war, riot, act of public enemy, insurrection, strike, lockout, labor or material shortage, act of God, fire, flood, storm or other casualty, breakdown of or damage to plant, equipment or facilities, interruption of transportation, orders or acts of civil or military authorities, reasonably beyond the Company's control;

and

WHEREAS, the Mayor and City Council have carefully considered the violation of Section 6 of Ordinance No. 376 and the appropriate action that should be taken by the City under these circumstances,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of LeRoy, in lawful meeting assembled, as follows:

Section 1. The City Council of the City of LeRoy hereby finds there has been a violation of Section 6 of the September 4, 1990, franchise agreement (Ordinance No. 376) and that such violation is a "deficiency" on the part of the franchisee, Jones Intercable, and its successors in interest, and that therefore a deficiency exists in the franchisee's performance under the aforesaid ordinance and franchise agreement. The deficiency is specifically the failure of the franchisee to pay all damages the City of LeRoy has been legally required to pay as a result of the installation, operation and maintenance of the cable system, which damages paid by the City resulted from the negligence, gross negligence or intentional acts of the franchisee, its agents or employees, in regard to the water main damaged on April 16, 1997.

Section 2. The Mayor, City Administrator and City Attorney are hereby directed and authorized to give notice to all necessary and appropriate parties, including Jones Intercable, Triax, and Mediacom, that the franchisee has until March 1, 2000, to cure the deficiency, which deficiency may be cured by payment to the City of all damages previously paid by the City in regard to repair of the damaged water main

(\$29,801.59), interest at the rate of 5% per annum from October 1, 1998, to the date of payment to the City of the damages in full, said interest being as allowed in accordance with 815 Illinois Compiled Statutes 205/2, and reimbursement to the City of all attorney's fees, court costs and other expenses of litigation incurred by the City of LeRoy in regard to the damaged water main and payment of the sums due to the City for repair of the water main.

Section 3. A public hearing is hereby called to be held at 7:15 p.m., February 7, 2000, at 212 East Pine Street, LeRoy, Illinois, the regular meeting place of the Mayor and City Council of the City of LeRoy, said hearing to be held during the course of the regular meeting of the Mayor and City Council of the City of LeRoy scheduled for February 7, 2000, at which hearing the Mayor and City Council shall consider termination of the franchise agreement currently in force in accordance with Ordinance No. 376 of the City of LeRoy. The franchisee, including Jones Intercable, and its successors in interest, TRIAX and Mediacom, shall be given an opportunity to be heard before the Mayor and City Council regarding termination of the franchise agreement and shall be afforded all due process rights regarding termination. Notice is to be given to each of the aforesaid parties and to any other appropriate party more than 20 days prior to the hearing date. At the conclusion of the hearing, the City Council may take such further action in regard to termination of the franchise agreement set forth under Ordinance No. 376 as it may deem appropriate; however, should the City Council determine that termination of the franchise agreement is appropriate, such termination may not be effective earlier than March 1, 2000.

Section 4. This resolution shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as required by law.

PASSED by the City Council of the City of LeRoy, Illinois, upon the motion by _____
Dave McClelland, seconded by Ron Litherland, by roll call
vote on the 20th day of December, 1999, as follows:

Aldermen elected 6 Aldermen present 5

VOYING AYE:

Dave McClelland, Dawn Thompson, Ryan Miles, Steve Dean, Ron Litherland
(full names)

VOYING NAY:

none

(full names)

ABSENT:

Dick Oliver

(full names)

ABSTAIN:

none

(full names)

OTHER:

none

(full names)

and deposited and filed in the office of the City Clerk in said municipality on the 20th day of
December, 1999.

X 

Sue Marcum, City Clerk of the City of LeRoy,
McLean County, Illinois

APPROVED BY the Mayor of the City of LeRoy, Illinois, this 20th day of December,
1999.

X 

Robert Rice, Mayor of the City of LeRoy,
McLean County, Illinois

ATTEST: (SEAL)

X 

Sue Marcum, City Clerk of the City
of LeRoy, McLean County, Illinois

CERTIFICATE

I, Sue Marcum, certify that I am the duly elected and acting municipal clerk of the City of LeRoy, of McLean County, Illinois.

I further certify that on December 20, 1999, the Corporate Authorities of such municipality passed and approved Resolution No. 99-5, entitled:


FOR THE CITY OF LEROY, ILLINOIS, A MUNICIPAL CORPORATION, REGARDING A DEFICIENCY BY THE FRANCHISEE IN THE OPERATION OF THE JONES INTERCABLE/TRIAX/MEDIACOM CABLE TELEVISION OPERATION,

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Resolution No. 99-5, including the Resolution and a cover sheet thereof, was prepared, and a copy of such Resolution was posted at the municipal building, commencing on December 20, 1999, and continuing for at least ten days thereafter. Copies of such Resolution were also available for public inspection upon request in the office of the municipal clerk.

Dated at LeRoy, Illinois, this 20th day of December, 1999.

(SEAL)


Municipal Clerk

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, Sue Marcum, do hereby certify that I am the duly qualified and acting City Clerk of the City of LeRoy, McLean County, Illinois, and as such City Clerk that I am the keeper of the records and files of the Mayor and the City Council of said City.

I do further certify that the foregoing is a true, correct and complete copy of an resolution entitled:

FOR THE CITY OF LEROY, ILLINOIS, A MUNICIPAL CORPORATION, REGARDING A DEFICIENCY BY THE FRANCHISEE IN THE OPERATION OF THE JONES INTERCABLE/TRIAX/MEDIACOM CABLE TELEVISION OPERATION.

I do further certify said resolution was adopted by the City Council of the City of LeRoy at a regular meeting on the 20th day of December, 1999, and prior to the making of this certificate the said resolution was spread at length upon the permanent records of said City where it now appears and remains as a faithful record of said resolution in the record books.

Dated this 20th day of December, 1999.

X 
City Clerk

(SEAL)