

PENDING PETITION MEMO

Date: 1/28/97

TO : Communications Division  
FROM: CENTRAL FILES Original  
UTILITY: CABLEVISION INDUSTRIES, INC.  
SUBJECT: 97-V-0105

Notice of Intent of Cablevision Industries, Inc. as Time Warner Communications to Negotiate Renewal of their Franchise with the Village of Lyons, Wayne County.



Received  
Public Service Commission  
OSEC - Files - Albany

'97 JAN 27 P3:13

January 22, 1997

John C. Crary  
Secretary  
NYS Public Service Commission  
Agency Building Three  
Empire State Plaza  
Albany, NY 12223

Wayne

97-V-0105

Dear Mr. Crary,

Enclosed are copies of the 36 month notification letters that have been mailed to the following municipalities:

m32275 Village of Alden 11333	Town of Fayette m31236 (10585)
m32202 City of Canandaigua 10510	Village of Lyndonville m32288 (11064)
m32285 Town of Canandaigua 10581	Village of Lyons m32297 (10167)
m32296 Village of Clyde 10146	Village of Middleport m32282 (11334)
m32279 Town of Conesus 11313	Village of Nunda Nonopen (11258)

If you have any questions, please contact me.

Sincerely,

Liz Vega  
Vice President, Communications

LV:adc  
Enclosures  
cc: Ann Burr



January 6, 1997

Mr. Gabriel Vardabash, Mayor  
Village of Lyons  
76 William Street  
Lyons, NY 14489

VIA Certified Mail

Dear Mayor Varabash:

By virtue of the Cable Communications Policy Act of 1984 (the "Act"), The Cable Television Consumer Protection and Competition Act of 1992 as well as Part 591 of the rules of the State of New York Public Service Commission (PSC), an orderly process has been established for the renewal of cable television franchises. In that regard, Cablevision Industries Inc., By: Time Warner Entertainment-Advance/ Newhouse Partnership, Manager, hereinafter referred to as Time Warner Communications, hereby requests that the Village of Lyons commence proceedings in order to afford its residents such appropriate notice and participation for the purpose of identifying the future cable-related needs of your community and to review the past performance of Time Warner Communications under the existing franchise granted.

Time Warner Communications current Certificate of Confirmation issued by the PSC on behalf of the Village of Lyons expires on December 19, 1999. In order to comply with both Federal and State requirements, we are requesting that you begin the ascertainment and fact finding process at your earliest convenience. Pursuant to Section 626 of the Act, you are required to commence such proceedings no later than six months subsequent to the date you receive this letter.

At the same time, we respectfully call your attention to Section 626 (h) of the Act, which permits the municipality to adopt a less formal renewal procedure wherein we would submit a proposal for renewal of the franchise without the necessity of the proceedings described in Section 626 (a). For your review, a copy of Section 626 of the Act is enclosed. We will be happy to comply with whichever procedure the municipality elects to follow, and would gladly discuss the above options with you at your convenience.

We look forward to working with you during the renewal process and continuing to provide your residents and our customers with quality cable television service at reasonable rates.

Sincerely,

Ann Burr  
President

AB:adc

Enclosure

cc: Liz Vega, Vice President, Communications

Brian B. Wirth, Director of Government and Regulatory Affairs

Lou McGuigan, General Manager

Anne Dalton, Public Service Commission

*Gabe,*  
*I hope things are going well for you! I certainly enjoyed our meeting and will look forward to seeing you again in the near future.*  
*Best regards.*

### Franchise Renewal

**Sec. 626.** (a) (1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless —

(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b) (1) Upon completion of a proceeding under subsection (a), a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to section 624, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c)(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding after providing prompt public notice of such proceeding in accordance with paragraph (2) to consider whether —

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of operator's service including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchising authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence [including evidence related to issues raised in the proceeding under subsection (a) of this section], to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of this section shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c) of this section. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) of this section or on events considered under subsection (c)(1)(B) of this section in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) of this section occur after the effective date of this title unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e) (1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 635.

(2) The court shall grant appropriate relief if the court finds that —

(A) any action of the franchising authority other than harmless errors, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

(f) Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on October 30, 1984.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.