

ORDINANCE NO. 0082

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO TEXAS AND KANSAS CITY CABLE PARTNERS, L.P., DOING BUSINESS AS TIME WARNER CABLE, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE TOWN; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

BE IT ORDAINED BY THE TOWN OF INDIAN LAKE, TEXAS, AS FOLLOWS:

SECTION I.
DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A) "Cable Service" means (1) the one-way transmission to subscribers of video programming (i.e., programming provided by, or generally comparable to programming provided by, a television broadcast station) 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.
- B) "Town" means the Town of Indian Lake, a Town in the State of Texas.
- C) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Texas or any of their departments, agencies, political subdivision; riots, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, strikes, failure of suppliers, or any other cause or event not reasonably within the control of the disabled party.
- D) "Grantee" means Texas and Kansas City Cable Partners, L.P., its lawful successors, transferees or assignees.
- E) "Grantor" means the Town of Indian Lake, Texas.

- F) "Gross Revenues" means all service fees, installation charges, and all other fees or charges collected from the provision of cable services to subscribers of the System. Gross Revenues shall not include: (1) late fees; (2) excise taxes; (3) sales taxes; or (4) any other taxes or fees, including the franchise fee, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental unit.
- G) "Person" means any corporation, partnership, proprietorship or organization authorized to do business in the State or any natural person.
- H) "Public Property" means any real property other than a street owned by any governmental unit.
- I) "Street" means the surface of and the space above and below any street, road, highway, freeway, lane, path, way, alley, court, sidewalk, boulevard, parkway, drive, or any public easement or right-of-way now or hereafter held by the Grantor which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- J) "Cable Communications System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Services and which is provided to multiple subscribers within the territorial boundaries of Grantor.

SECTION II. GRANT OF AUTHORITY

For the purposes of constructing, operating and maintaining a System within the territorial boundaries of the Grantor, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets, including over public right-of-way and through easements, within the Grantor such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other operating equipment as are necessary and pertinent to the operation of the System.

SECTION III. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- A) This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of State and federal laws, rules and regulations.

- B) Grantee's rights are subject to the police powers of the Grantor to adopt and enforce ordinances necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise.

SECTION IV.
TERRITORIAL AREA INVOLVED

This Franchise is granted for the territorial boundary of the Grantor.

SECTION V.
FRANCHISE TERM

This Franchise shall commence upon the effective date of this Ordinance, which is September 27, 2004, and shall expire twenty five (25) years thereafter unless renewed, revoked or terminated sooner as herein provided.

SECTION VI.
FRANCHISE NON-EXCLUSIVE

The Franchise granted herein is non-exclusive. The Grantor specifically reserves the right to grant, at any time, one or more additional franchises for a System in accordance with State and federal law; provided, however, no such future franchise shall be granted on terms more favorable or less burdensome than those contained herein. In the event a future franchise is granted on terms more favorable or less burdensome than those contained herein, then this Franchise shall be deemed amended as of the effective date of the future franchise to incorporate the more favorable or less burdensome term(s) or condition(s) herein.

SECTION VII.
WRITTEN NOTICE

All notices or demands required to be given under this Franchise shall be deemed to be given when delivered personally to the persons designated below or upon the date actually received as evidenced by registered or certified mail receipt addressed as follows:

If to the Grantor: Mayor
Town of Indian Lake
62 South Aztec Cove
Los Fresnos, TX 78566

If to Grantee: General Manager
Time Warner Cable
2921 S. Expressway 83
Harlingen, TX 78551

and

Division President
Time Warner Cable
300 Parker Square, Suite 210
Flower Mound, TX 75028

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

SECTION VIII
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 repaired by Grantee, at its expense, and to a condition as good as that prevailing prior to Grantee's work.

SECTION IX.
DAMAGES AND DEFENSES

- A) Grantee shall indemnify, defend and hold harmless the Grantor for all damages and penalties, at all times during the term of this Franchise, as a result of or due to Grantee's construction or operation of the System.
- B) In order for the Grantor to assert its rights to be indemnified and held harmless, the Grantor must:
 - 1) Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
 - 2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
 - 3) Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

SECTION X.
LIABILITY INSURANCE

- A) Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the Grantor and the Grantee with regard to all damages mentioned in Section IX. above in the following minimum amounts:

- 1) One Hundred Thousand Dollars (\$100,000) for bodily injury or death to any one person.
 - 2) Three Hundred Thousand Dollars (\$300,000) for bodily injury or death resulting from any one accident.
 - 3) Three Hundred Thousand Dollars (\$300,000) for all other types of liability.
- B) Upon request of the Grantor, Grantee shall furnish to the Grantor certificates of insurance documenting that an insurance policy has been obtained and is in full force and effect.

SECTION XI.
TRANSFER OR ASSIGNMENT OF FRANCHISE

The Franchise granted herein shall not be transferred or assigned by the Grantee without written notice to the Grantor.

SECTION XII.
FRANCHISE RENEWAL

This Franchise shall be renewed in accordance with applicable state and federal law.

SECTION XIII.
GRANTOR'S RIGHT TO REVOKE

In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this Franchise and all rights and privileges pertaining thereto in the event that:

- A) Grantee violates any material provision of this Franchise; or
- B) Grantee practices any fraud upon the Grantor; or
- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

SECTION XIV.
REVOCAION PROCEDURES

- A) The Grantor shall notify the Grantee of its intention to revoke, terminate or cancel this Franchise. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation.

- B) Grantee shall have ninety (90) days or such additional period of time as may be reasonably necessary subsequent to receipt of the notice in which to correct the violation before the Grantor may formally revoke, terminate or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the Grantor that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the Grantor shall stay the ninety (90) day period described above.
- C) The Grantor shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event that Grantor shall determine that a default or violation has occurred the Grantor shall supplement the decision with written findings of fact.
- D) If after hearing the dispute Grantee has been found to be in default, Grantee shall then have ninety (90) days from such a determination to remedy the violation or failure. At any time after that ninety (90) day period the Grantor may, by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke, terminate or cancel this Franchise.

SECTION XV.
REMOVAL UPON REVOCATION

Upon the revocation of this Franchise as herein provided, Grantee shall remove all of its attachments and wires from poles used as authorized herein.

SECTION XVI.
FORCE MAJEURE

If by reason of a Force Majeure any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

SECTION XVII.
SERVICE AREA

- A) Residents in those areas with an average density of at least forty (40) homes per aerial mile or eighty (80) homes per underground mile, as measured from the nearest point of usable trunk, shall be provided service upon payment of the standard installation charge and applicable monthly fees; except that installations requiring underground drops or aerial drops in excess of one hundred-fifty (150) feet shall be considered a non-standard installation to be charged to the subscriber at Grantee's actual cost of installation.
- B) Service to subscribers not meeting those density requirements of paragraph (A) above shall be provided on a time plus material basis.

SECTION XVIII.
SEVERABILITY

If any term, condition or Section of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or Section to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, conditions and Sections hereof shall, in all other respects, continue to be effective and to be complied with.

SECTION XIX.
FRANCHISE FEE

The Grantee shall pay to the Grantor a franchise fee in the amount of five (five) percent of the Gross Revenues. Payment shall be due and payable on March 1 of each year for the previous calendar year. The Grantor shall have the right to review, at reasonable times and places, the books and financial records of the Grantor to verify franchise fee payments; provided, however, Grantor's right to review, and Grantee's obligations to retain records related to the franchise fee review, shall expire two (2) years from the date on which each Franchise Fee payment by the Grantee is due.

SECTION XXI.
PASSAGE AND EFFECTIVE DATE

This Franchise, having been published as required, shall take effect and be in force from and after thirty (30) days following its final passage and approval.

APPROVED AND ADOPTED THIS 11TH DAY OF OCTOBER, 2004.

ATTEST:

BY: Jeanne Minton

ITs: Town Secretary

BY: Stanley L. Buckley

ITs: Mayor

Texas and Kansas City Cable Partners, L.P.

BY: William C. Carey III

ITs: Southwest Division President