

## **CHAPTER 22**

### **CABLE TELEVISION FRANCHISE- TIME WARNER CABLE**

(CHAPTER REVISED 05/01/2006)

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22.01 **SHORT TITLE**

This ordinance shall be known and cited as the “Time Warner Cable, Cable Television Franchise Ordinance”. Within this document, it shall also be referred to as “this Franchise” or “the Franchise”.

22.02 **DEFINITIONS**

For 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 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) **“Basic Service”** means that service tier which includes the retransmission of local television broadcast signals.
  
- B) **“Cable Television System”** or **“System”** means a facility consisting of a set of closed transmission paths associated signal generation, reception, and control equipment that is designed to provide Cable Services and which is provided to multiple subscribers within the Village. Such term does not include:
  - 1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
  - 2) A facility that serves subscribers without using any public right-of-way;
  - 3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the retransmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services;
  - (4) An open video system that complies with section 653 of the Communications Act of 1934 as amended; or
  - 5) Any facilities of any electric utility used solely for operating its electric utility systems.
  
- C) **“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) and other programming; and
  - (2) subscriber interaction, if any, which is required for the selection or use of such video programming.

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- D) "Village" shall mean the Village of Valders, and any area annexed thereto from time to time.
- E) "FCC" means the Federal Communications commissions or any successor thereto, having jurisdiction over cable television.
- F) "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 or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, labor unrest, shortage of materials or supplies, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party.
- G) "Grantee" means Time Warner Entertainment Company LP, its agents, lawful successors, transferees or assignees.
- H) "Gross Revenue" means revenues derived from the operation of the cable system to provide cable services to customers in the Village by the Grantee. "Gross Revenues" is defined as the following cable service receipts: basic and standard subscriber monthly fees. The sum of these "Gross Revenues" shall be the basis for computing the franchise fee in accordance with Generally Accepted Accounting Principles "GAAP". Gross revenues shall not include (i) any taxes, (ii) late fees, or (iii) fees on services including the franchise fee, which are imposed upon Grantee or any subscriber or user by any governmental unit and collected by Grantee on behalf of said governmental unit.
- I) "Person" means any corporation, partnership, proprietorship or organization authorized to do business in the State or any natural person.
- J) "Public Property" means any real property other than a street owned by any governmental unit.
- K) "State" means the state of Wisconsin.
- L) "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 Village including poles, wires, cables, conductors, ducts, confluents, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- (M) "Subscriber" means a member of the general public who legally receives broadcast programming distributed by a cable television system and does not further distribute it.

22.03 **GRANT OF AUTHORITY**

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

22.04 **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 Village to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise. Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to that power.

22.05 **TERRITORIAL AREA INVOLVED**

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

22.06 **FRANCHISE TERM**

This Franchise shall commence upon the effective date of this Ordinance 22 and shall expire fifteen years thereafter on May 1<sup>st</sup> unless renewed, revoked or terminated sooner as herein provided.

22.07 **FRANCHISE NON-EXCLUSIVE**

The Franchise granted herein is non-exclusive. The Village 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.

22.08 **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 Village: Ms. Lori Bruckner, Village Clerk  
Village of Valders  
PO Box 459  
Valders, WI 54245

If to Grantee: Jack Herbert, Division President  
Time Warner Cable  
1001 W Kennedy Ave.  
P.O. Box 145  
Kimberly, WI 54136-0145

Gary Matz, Vice President and General Counsel  
Time Warner Cable  
290 Harbor Drive  
Stamford, CT 06902-6732

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

22.09 **REPAIR OF STREETS AND PROPERTY**

Any and all Streets or Public Property or private property which are disturbed or damaged by the Grantee during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee to a condition as good as that prevailing prior to Grantee's work.

22.10 **CONSTRUCTION AND USE OF FACILITIES**

A) Subject to the Village's generally applicable permitting procedures, the Grantee shall have the right to erect and maintain its own poles at locations as it may find necessary for the proper construction and maintenance of the Cable Television System. Approval shall be procured by the Grantee from the proper Village department providing for the erection of these poles. The Village agrees that such prior approval shall be granted on a timely basis and will not be unreasonably withheld.

B) The Grantee's transmission and distribution system poles, wires, appurtenances, shall be located, erected, and maintained, so as not to endanger or interfere with the lives of persons or to interfere with any improvements the Village may deem proper to make or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, sidewalks, or other public property. Removal or relocation of poles or equipment when necessary to avoid such interference shall be at the Grantee's expense. However, if any user of the street or right of way is compensated for such removal or relocation, Grantee shall be similarly compensated.

C) Construction and maintenance of the System shall be performed in an orderly and workmanlike manner. Grantee shall at all times comply with the National Electrical Safety Code and such applicable ordinances and regulations of the Village affecting electrical and structural installations which may be presently in effect. The Village acknowledges that as of the effective date of this Franchise, Grantee's existing cables, wires, and other like facilities are in compliance with this provision.

D) The Cable System shall be installed in accordance with good engineering practice, so as not to unreasonably interfere with the right of the public or individual property owner and shall not interfere unduly with the travel and use of public places by the public during the construction, repair, or removal thereof, and shall not unduly obstruct or impede traffic. For all new residential and commercial structures in which undergrounding is required by the Village, the builder, subdivider, or developer of such structure, at his sole cost and expense shall provide, in accordance with Grantee's current specifications, all conduits, trenches to buildings point of entry, from the boundary of the development, back fill and restoration of the trench area.

E) The Grantee shall maintain its System so that poles and other structures of public utilities which are available shall be used to the extent practicable and subject to Grantee's ability to obtain such use on reasonable terms and conditions. Before placing or setting new poles, the Grantee shall file any requested notice of such intention with the Village.

F) Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, lowering of the grade, or vacation of any street by the Village for rehabilitating any section of the Village, it shall be deemed necessary by the Village for the Grantee to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be made by the Grantee, upon reasonable notice by the Village. If there is any compensation to the utilities or other users of the right of way, then the Grantee shall be similarly compensated. In the event the Grantee, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time, the Village shall have the authority, but not the obligation, to remove or abate such structures of facilities and to require the Grantee to pay to the Village the reasonable cost of such relocation, alteration, or modification. If the Grantee fails to complete in a timely manner, any relocation requested by the Village and the Village incurs any costs resulting from such delay, the Grantee shall be liable to the Village for such costs except in case of an emergency. The Grantee shall be given not less than fourteen business days advance notice to arrange for such relocation.

G) The Grantee shall, upon request of any person holding building moving permit or permit to move oversize loads issued by the Village, temporarily raise or lower its wires to permit the moving of buildings or oversize loads. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than fourteen business days advance notice to arrange for such temporary changes.

H) The Grantee shall have the authority to trim trees upon and overhanging the streets of the Village as to prevent the branches of such trees from coming in contact with the Grantee's wires and cables.

- l) All work undertaken in connection with the construction, reconstruction, maintenance, operation or repair of the Grantee's System shall be subject to and governed by all State and Federal laws, rules and regulations including those of the FCC and any other federal agency having jurisdiction.

#### 22.11 **LEGAL OBLIGATIONS**

A) The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the Village, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind arising out of or due to the Grantee's construction or operation of the System in the Village, including but not limited to damages for injury or death or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same. However, Grantee shall not be required to hold harmless and indemnify the Village for any claims arising out of the negligence of the Village, its officers, boards, and commissions, Boards, elected officials, agents or employees. The Village shall indemnify and hold harmless Grantee from any damage or claims resulting from any acts of the Village, its officers, boards, commissions, elected officials, agents or employees, including but not limited to any acts committed by the Village in connection with its use of the System and work performed by the Village on, or adjacent to, the Cable System.

B) The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the Village, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the Village, its officers, boards, commission, agents, or employees, arising out of or due to the Grantee's construction or operation of the System in the Village.

C) The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the Village, its officers, boards, commissions, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, certificate of insurance, deposit, undertaking or other assurance required hereunder or otherwise.

D) In order for the Village to assert its rights to be indemnified, defend and held harmless, the Village 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.



## 22.12 **CUSTOMER SERVICE STANDARDS**

Grantee will comply with the customer service standards of the FCC including without limitation those related to notifications to subscribers, office hours and availability, installations, outages, service calls, billing, refunds, and credits as they may be amended from time to time.

## 22.13 **PRIVACY**

A Grantee shall, at all times, comply with applicable state and federal laws regarding customer privacy.

## 22.14 **LIABILITY INSURANCE**

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

- 1) One Million Dollars (\$1,000,000) for bodily injury or death to any one person;
- 2) One Million Dollars (\$1,000,000) for bodily injury or death resulting from any one accident; and
- 3) One Million Dollars (\$1,000,000) for all other types of liability.

B) Upon request of the Village, Grantee shall furnish to the Village a certificate of insurance evidencing that an insurance policy has been obtained and is in full force and effect.

## 22.15 **PERFORMANCE STANDARDS**

A) The Grantee shall construct, operate and maintain its System according to the specifications of the FCC.

B) The Grantee shall at all times employ a reasonable standard of care to prevent failures or accidents which are likely to cause damages, injuries or nuisances to the public.

C) Subject to the requirements of the FCC, the Grantee shall provide a parental control device capability upon request to any subscriber.

## 22.16 **TRANSFER OR ASSIGNMENT OF FRANCHISE**

The rights granted herein shall not be transferred or assigned by the Grantee without written notice to the Village. Notwithstanding the foregoing, no notice shall be required for any transfer or assignment of the franchise to any entity controlling, controlled by or under the same common control as the Grantee.

## 22.17 **FRANCHISE RENEWAL**

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

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## 22.18 VILLAGE'S RIGHT TO REVOKE

In addition to all other rights which Village has pursuant to law or equity, the Village 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 Village; or
- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt or a receiver is appointed to it.

## 22.19 REVOCAION PROCEDURES

A) The Village 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 subsequent to receipt of the notice in which to correct the violation before the Village may formally revoke, terminate or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the Village that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the Village shall stay the ninety (90) day period described above.

C) Upon receipt of the Grantee's notification of a dispute as to whether a violation has, in fact, occurred pursuant to paragraph (B) above, the Village shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the Village shall determine that a default or violation has occurred, the Village 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 (or such longer period of time as may be reasonably necessary) from such a determination to remedy the violation or failure. At any time after that ninety (90) day period the Village may by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke, terminate or cancel this Franchise if Grantee fails to cure such default.

E) Any such final decision of the Village may be appealed to any court of competent jurisdiction, which filing shall stay any such revocation, termination or cancellation of this Franchise.

## 22.20 REMOVAL UPON REVOCAION

Upon the final revocation, termination or cancellation of this Franchise as herein provided, Grantee shall, upon request of the Village, remove all of its attachments and wires from poles used as authorized herein.

#### 22.21 **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.

#### 22.22 **SERVICE AREA**

A) Residents in those areas with an average density of at least thirty-five (35) homes per aerial mile or thirty-five (35) 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 aerial drops in excess of one hundred and twenty five (125) feet or underground installations shall be considered a non-standard installation to be charged to the subscriber.

B) Service to homes not meeting those density requirements of paragraph (A) above may be provided on the basis of financial viability.

C) Grantee is not required to extend its system or construct plant within private rights-of-way for which Grantee is unable to secure easements or other rights of access on reasonable terms and conditions.

#### 22.23 **UNAUTHORIZED CONNECTIONS OR MODIFICATIONS**

A) It shall be unlawful for any Person, without the expressed consent of the Grantee to make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the System for any purpose whatsoever without the expressed consent of the grantee and proper payment for all services received.

B) It shall be unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the System for any purpose whatsoever.

C) It shall be unlawful for any Person to construct, operate or maintain a System without having first applied for and received a franchise from the Village.

D) Any Person convicted of a violation of this Section shall be subject to all federal, state and local penalty provisions which penalty provision are incorporated herein by reference.

#### 22.24 **LANDLORD/TENANT RELATIONS**

A) Interference with cable service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication Grantee regulated by and lawfully operating under a valid and existing franchise issued by the Village.

B) Gratuities and payments to permit service prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

C) Penalties and charges to tenants for service prohibited. Neither the owner or any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a

Grantee operating under a valid and existing cable communication franchise issued by the Village.

D) Reselling service prohibited. No person shall resell, without the expressed, written consent of the Grantee, any cable service, program or signal transmitted by a cable communication Grantee under a franchise issued by the Village.

E) Protection of property permitted. Nothing in this chapter shall prohibit a person from requiring that cable communication system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

F) Risks assumed by Grantee. Nothing in this chapter shall prohibit a person from requiring a Grantee from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

#### **22.25 FRANCHISE FEE PAYMENTS**

Franchise Fee will be 5% of Gross Revenues. The Franchise fee shall be paid on a semi-annual basis according to the following schedule: revenues for January through June shall be reflected in the August 15<sup>th</sup> payment; revenues for July through December shall be reflected in the Feb. 15<sup>th</sup> payment. The Village shall have the right, consistent with the provision of this ordinance, to inspect the Grantee's cable revenue records for the Village, the right to audit for a 3-year period following submission of any franchise fee payment and to recompute any amounts determined to be payable under this ordinance. The Franchise Fee shall be deemed to reimburse the Village for the rights granted herein and for all costs of regulation and administration of the Franchise.

#### **22.26 SERVICE TO PUBLIC BUILDINGS**

Grantee shall provide, without installation charge and without a monthly fee, one outlet of Basic and Standard Service to governmental and educational buildings detailed in Exhibit A of the ordinance passed by the system as long as no line exceeds 125 aerial feet. Grantee shall be permitted to recover, from any public building owner entitled to free service, the direct cost of installing more than one outlet, or the cost of concealed wiring, or any installations requiring more than one hundred twenty-five (125) aerial feet of drop cable.

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**22.27 CONSENT/APPROVALS**

Where in this document consent and/or approval of the Village is required, such consent or approval shall be timely delivered and not unreasonably withheld.

**22.28 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.

**22.29 CHANGE IN LAW** Notwithstanding any other provision in this Franchise:

A) In the event any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the village to obtain a franchise from the village for the construction, operation or maintenance of a cable system, then, at Grantee's sole option, Grantee shall have the right immediately to terminate this Franchise. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

B) Furthermore, in the event any change to local, state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the village in a way that reduces the regulatory or economic burdens for such persons, then, at Grantee's sole option, Grantee shall have the right immediately to amend this Franchise to take advantage of such regime change to similarly reduce the regulatory or economic burdens on Grantee.

C) It is the intent of this section that, at Grantee's election, Grantee shall be subject to no more burdensome regulation under this Franchise than any other persons that might construct, operate or maintain a cable system in the village.

**22.30 PENALTY** Except as otherwise provided herein, any person found in violation of any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in §25.04 of this Municipal Code.