

ORDINANCE # 36

AN ORDINANCE GRANTING A FRANCHISE TO TIME WARNER CABLE, A DIVISION OF TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF UHLAND, TEXAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF PORTIONS OF THIS ORDINANCE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR THE EFFECT OF THIS ORDINANCE UPON OTHER ORDINANCES AND RESOLUTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF UHLAND, TEXAS:

SECTION 1 - TITLE

This ordinance shall be known and may be cited as "Cable TV Franchise Ordinance,"

SECTION 2 - PREAMBLE

This ordinance was passed after a full, open, and public hearing upon prior notice and opportunity of all interested parties to be heard and upon careful consideration of Time Warner Cable, a division of Time Warner Entertainment Company-advance/Newhouse qualification, including its legal, character, financial, and technical qualifications, and the adequacy and feasibility of its construction arrangements.

SECTION 3 - DEFINITIONS

The following terms and phrases, as used herein, shall be given the meaning set forth below:

(A) • Cable Service • means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(B) • Cable 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 broadband telecommunications services including Cable Service and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of 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 1934 Communications Act, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video

programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems:

(C) "City" is the City of Uhland, Texas, a municipal corporation under the laws of the State of Texas.

(D) "City Council" is the City Council of the City of Uhland, Texas, or its designated representatives.

(E) "Federal Communications Commission" or "FCC" is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(F) "Grantee" is Time Warner Cable, a division of Time Warner Entertainment Company-Advance/Newhouse a partnership organized and existing under the laws of the State of New York, and it is the grantee of rights under this franchise.

(G) "Gross Subscriber Revenues" shall mean all revenues collected by Grantee from the operation of a cable television system pursuant to this ordinance including, but not limited to, basic subscriber service fees, optional subscriber service fees, pay cable fees, and converter rentals. • Gross Subscriber Revenues • shall not include late fees and nonsufficient funds check charges assessed to customers, any taxes or fees, including the franchise fee paid by a subscriber, on services furnished by Grantee paid to the state, city or other governmental unit or bad debt.

(H) • Franchise Area • means all of the geographic area within the present or future city limits of the city.

(I) "Person" is any individual, firm, partnership, association, corporation, company or organization of any kind.

SECTION 4 - GRANT OF AUTHORITY

There is hereby granted by the City to Grantee the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a Cable System for the provision of cable television service and such other services as Grantee may choose to provide. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right to install, erect, operate or in any way acquire the use of, as by leasing or licensing all lines and equipment necessary to a Cable System in, over, under, and upon the streets, sidewalks, alleys, easements, and public grounds and places in the City and the right to repair, replace, enlarge and extend said lines, equipment and connections and the right to make connections to subscribers. Grantee will comply with city requirements regarding construction on city's right-of-ways. The City's approval and issuance of permits shall not be unreasonably denied or delayed.

SECTION 5 - INDEMNIFICATION

(A) Grantee shall hold the City harmless from all loss sustained by the City on account of any suit, judgement, execution, claim or demand whatsoever against the City resulting from the Grantee's construction, operation or maintenance of the Cable System in the City; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Texas. The amounts of such insurance to be carried for liability due to property shall be \$100,000.00 as to any one occurrence; and against liability due to injury to or death of persons, \$100,000.00 as to any one person and \$300,000.00 as to any one occurrence.

(B) In order for the Franchise Authority to assert its rights to be indemnified, defended, and held harmless, the Franchise Authority must:

(1) 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 or other resolution or disposition of such claim or proceeding, unless, however, the Franchise Authority in its sole discretion, determines that its interests cannot be represented in good faith by Grantee; and

(3) Fully cooperate with the reasonable requests of Grantee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceedings.

(4) Act reasonably under all circumstances so as to protect the Grantee against liability and refrain from compromising any of Grantee's rights.

SECTION 6 - CONSTRUCTION AND MAINTENANCE

(A) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force. Existing poles, posts, conduits, and other such structures or any electric power system, telephone company, or other public utility located in the City shall, when possible, be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall actively assist Grantee in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits.

(B) In case of any disturbance by Grantee of pavements, sidewalk, driveway, or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed to as good a condition as before said work was commenced.

(C) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any street, alley, easement, or other public way requiring the relocation of Grantee's facilities, then in such event, Grantee, upon reasonable notice by the City, shall remove, relay, and relocate the same at its own expense; provided, however, if the utilities are compensated for the removal or relocation of their facilities then the Grantee shall be similarly compensated.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's facilities.

(F) All poles, lines, structure and other facilities owned by Grantee in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places in the City shall be kept by Grantee at all times in a safe and substantial condition.

(G) Grantee shall extend its Cable System and make Cable Service available to every existing residential area within the Franchise Area which is unserved by another Cable System whenever density of at least thirty (30) Residential Dwelling Units per cable mile (or any proportionate amount thereof measured over a shorter or longer distance) is realized, as measured from the existing facilities of Grantee's Cable System in the Franchise Area.

(H) Grantee shall extend its Cable System necessary for the provision of Cable Service and make cable service available to any business in the Franchise Area when the business Subscriber agrees to pay for the labor costs incurred and materials used in making the extension.

SECTION 7 - TECHNICAL STANDARDS

Grantees shall comply with the cable television technical standards set by the Federal Communications Commission.

SECTION 8 - APPLICABLE RULES

This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission, other federal agencies and by the laws of the State of Texas.

SECTION 9 - FRANCHISE TERM

This franchise shall take effect and be in full force from and after acceptance by Grantee as provided in Section 13, and the same shall continue in full force and effect for a term of fifteen (15) years.

SECTION 10 - NONEXCLUSIVE FRANCHISE

This franchise is nonexclusive and the City may issue additional further cable television franchises as it deems necessary or appropriate. No company will be authorized to provide cable television service within the City without a franchise. The City specifically reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person, firm or corporation, at any time, provided that if the City grants to another party a similar use to that granted herein on terms more favorable to that other party whether by the grant of greater benefits, the imposition of lesser obligations or otherwise then the terms of this grant shall be amended to include such more favorable terms.

SECTION 11 - TRANSFERS

All of the rights and privileges and all of the obligations, duties, and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of the franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise to any entity controlling, controlled by or under the same common control as the Grantee shall be permitted without the prior approval of the City Council.

SECTION 12 - FRANCHISE FEE

(A) In consideration of the terms of this franchise, Grantee agrees to pay the City a sum of money equal to three percent (3%) of Grantee's Gross Subscriber Revenues per year as set out in Section 3(g). Such annual sum shall be payable at the end of each annual period. The annual anniversary shall be the last day of December of each year, and each annual payment shall be paid within sixty (60) days thereafter.

SECTION 13 - ACCEPTANCE

This ordinance shall become effective when accepted by Grantee and shall then be and become a valid and binding contract between the City and Grantee; provided that this ordinance shall be void unless Grantee shall, within fifteen (15) days after the final passage of this ordinance, file with the City Secretary of the City a written acceptance of this ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this ordinance.

SECTION 14 - STANDARDS OF SERVICE

Grantee shall comply with the customer service standards set by the Federal Communications Commission. The Grantee shall render efficient service, make repairs promptly and interruptions insofar as possible shall be preceded by notice and shall occur during minimum use of the system.

SECTION 15 - UNLAWFUL ACTS

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of Grantee's Cable System for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's Cable System without payment to Grantee or its lessee.

(B) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's Cable System.

(C) Unauthorized use of Cable Service is a violation of the Texas Penal Code.

SECTION 16 - SAVINGS CLAUSE

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a federal or state court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 17 - FORCE MAJEURE

Any obligation or duty imposed by this Franchise Agreement upon either party shall be subject to excuse by reason of circumstances beyond the reasonable control of each party, such as - force majeure -, as well as Acts of God, riots or other civil disturbances, strikes or other labor disputes, emergencies declared by the President of the United States of America, the Governor of Texas, or the Mayor of the City of Umland, or other causes or circumstances beyond the control of either party.

SECTION 18 - CONFLICTING ORDINANCES AND RESOLUTIONS

All ordinances or resolutions in conflict herewith are expressly repealed to the extent of such conflict.

SECTION 19 - EFFECTIVE DATE

This ordinance shall become effective upon acceptance by Grantee as provided in Section 13. The effective date shall be the date upon which the written acceptance provided for in Section 13 is received by the City Secretary.

READ, PASSED, AND ADOPTED this 5th day of May, 1999.

ATTEST:

Judy Busse
City Secretary

APPROVED:

Dan Sorrells
Mayor, City of Umland, Texas

I certify the above Ordinance to be a true and correct copy of the original Ordinance passed by the City of Umland, Texas, Council on May 5, 1999.

Judy Busse
City Secretary, City of Umland

ACCEPTANCE OF FRANCHISE
Ordinance No. _____

To The City Council Of The City Of Uhland:

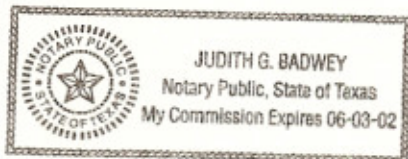
This will advise you that Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN") and its successors and assigns, hereby accept the Franchise for the purpose of constructing, maintaining, operating and using a cable system in public streets, alleys, and rights of way in the City of Uhland to provide cable service, being Ordinance No. 36 passed by the City Council of Uhland on June 2, 1999.


The Grantee, Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN"), acting by it's undersigned official hereunto duly authorized, hereby accepts the attached ordinance granting a franchise to Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN").



William C. Carey, III
on behalf of
Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN")

Subscribed and sworn to before me, the undersigned authority, on this 8 day
of ~~June~~, 1999.
July 99





Notary Public
State of Texas



February 10, 2000

Honorable Dan T. Sorrells
Mayor
City of Umland
17 Cotton Gin Road
Umland TX 78640

Dear Mr. Sorrells:

As you know, the City of Umland has granted a franchise to provide cable service to a subsidiary of Time Warner Inc. ("TWI") (which subsidiary does business as Time Warner Cable. I am writing to inform you of certain developments regarding TWI.

As you may have read, America Online, Inc. ("AOL") and TWI have announced a stock-for-stock merger in which each of TWI and AOL will merge with subsidiaries of a newly formed holding company. As a result of the mergers, both TWI and AOL will become wholly owned subsidiaries of the new holding company, AOL Time Warner Inc ("AOL Time Warner"). Under the terms of the definitive merger agreement, TWI and AOL stock will be converted to AOL Time Warner stock at fixed exchange ratios.

As explained above, both AOL and TWI will continue to exist as wholly owned subsidiaries of AOL Time Warner. It also should be noted that Time Warner Cable and indirect subsidiaries and affiliates of TWI and Time Warner Cable, including the current franchisee in your community, will continue to exist as subsidiaries of AOL Time Warner, Inc. While we do not believe this transaction requires any action on your part, we wanted you to be aware of this exciting development.

I would like to take this opportunity to assure you that the merger of AOL and TWI will have absolutely no adverse impact upon our franchise with your community or the service that we provide.

- The franchise will continue to be held by the same entity. There will be no transfer of the franchise.
- Time Warner Cable will continue to be solely and exclusively responsible for the day-to-day management and operation of the cable television system.
- There will be no change in our commitment to provide our customers with the best in

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programming choices and customer service at a competitive rate.

- The local management and staff will remain the same.
- Local management will continue to report to the same executives of Time Warner Cable.

We believe this unique new enterprise, the premier global company delivering branded entertainment and information across rapidly converging media platforms can only benefit our customers. AOL Time Warner's creative and journalistic talent, technology assets and expertise, and management experience will enable us to enhance consumer's access to the broadest selection of high quality entertainment and information.

Please do not hesitate to contact me should you have any questions or if I can be of any assistance. We certainly value the fine relationship we have with your community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lidia".

Lidia Graciela Agraz
Vice President of Public Affairs

LGA:sd