



July 30, 1999

Ms. Debra Renner  
Acting Secretary  
NYS Public Service Commission  
Three Empire State Plaza, 19th Floor  
Albany, NY 12223

Re: Application for Order Approving Renewal  
Town of Ogden

Certified Mail

Dear Ms. Renner:

Pursuant to Section 822 of Executive Law, Time Warner Entertainment-Advance/ Newhouse Partnership, herewith submits its application for an Order Approving Renewal in the above referenced matter.

As required by Part 591 of the Rules and Regulations of the New York State Public Service Commission, enclosed please find the following:

1. A copy of the Town of Ogden legal notice along with the corresponding affidavit of publication.
2. A copy of the Resolution adopted by the Town of Ogden.
3. A fully executed Franchise Agreement between the Company and the Town.

As always, should you or your staff have any questions regarding the foregoing, please feel free to contact me.

Sincerely,



Brian B. Wirth

Vice President, Government Affairs

BBW: adc

Enclosures

c: Thomas E. Adams, Division President  
Craig D'Agostini, Paralegal  
Lynn A. Bianchi, Town Clerk

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**AFFIDAVIT OF PUBLICATION**

**STATE OF NEW YORK  
COUNTY OF MONROE**

ss.

Keith Ryan being duly sworn, deposes and says, that he is over twenty-one years of age, and the publisher of The Suburban News, a weekly newspaper, printed and published in the ~~village of Spencerport~~ <sup>Parma</sup> Town of ~~Ogden~~ <sup>Parma</sup> County of Monroe, and that the notice, a printed copy of which is annexed, was regularly published in the said Suburban News once in each week, for 1 weeks successively, commencing on the 5th day of July 19 99 and ending on the 5th day of July 19 99.

*Keith Ryan*

Sworn to before me this 5th day of July 19 99.

*Linda C. Michielsen*  
LINDA C. MICHIELSEN  
Notary Public, State of New York  
Appointed in Monroe County  
My Commission Expires February 1, 2001

**Legal Notice  
Town of Ogden**

PLEASE TAKE NOTICE, that Time Warner Entertainment-Advance/Newhouse Partnership, Rochester Division, d/b/a Time Warner Communications, 71 Mt. Hope Avenue, Rochester, New York 14620 has filed an Application for Renewal of its cable television franchise with the Town of Ogden according to the rules of the New York State Public Service Commission, and

PLEASE TAKE FURTHER NOTICE, that the Town Board of the Town of Ogden will hold and conduct a Public Hearing at the Ogden Community Center, 269 Ogden Center Road, on the 14th day of July, 1999, at 7:45 p.m., to consider renewal of this application; at such Public Hearing, all interested persons will be heard concerning the subject matter thereof.

A COMPLETE TEXT of Application for Renewal of Cable Franchise Agreement is presently on file in the Town Clerk's Office where it may be examined by all interested persons during normal business hours.

Lynn A. Bianchi, Town Clerk  
Town of Ogden

Dated: June 23, 1999



TOWN OF  
**Ogden**  
COUNTY OF MONROE  
STATE OF NEW YORK

**Resolution #277-7/99**

Introduced by Councilwoman Holbrook  
Seconded by Councilman Cole

**WHEREAS**, the Town Board of the Town of Ogden did originally enter into a Cable Television Franchise Agreement in January of 1982; and

**WHEREAS**, that Franchise is presently held by Time Warner Entertainment, successor in interest to the original franchise holder; and

**WHEREAS**, the Franchise Agreement, by its terms, expired; and

**WHEREAS**, there has been submitted to the Town Board, a further Franchise Agreement extending the original franchise upon terms acceptable to the Town of Ogden;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Board of the Town of Ogden, Monroe County, New York, as follows:

**SECTION I:** That the Town Board of the Town of Ogden does hereby approve the renewal of the Cable Television Franchise Agreement originally granted; said renewal to be for a period of ten (10) years, the commencement date of such Franchise to be coterminous with the termination of the previously granted franchise rights.

**SECTION II:** That the Supervisor, Gay H. Lenhard, be and she is hereby authorized to execute the said Franchise Agreement for and on behalf of the Town of Ogden.

Vote of the Board:

Ayes: Cole, Holbrook, Hubbard, Lenhard, Uschold

Nays: None

TOWN OF OGDEN

A FRANCHISE GRANTING TO TIME WARNER ENTERTAINMENT-  
ADVANCE/NEWHOUSE PARTNERSHIP, D/B/A TIME WARNER  
COMMUNICATIONS, PERMISSION TO CONSTRUCT, OPERATE AND  
MAINTAIN A DISTRIBUTION SYSTEM FOR TELEVISION, RADIO, AND  
OTHER ELECTRONIC SIGNALS THROUGHOUT THE TOWN OF OGDEN.

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## **FRANCHISE AGREEMENT**

A Franchise granting to Time Warner Entertainment-Advance/Newhouse Partnership, d/b/a Time Warner Communications (hereinafter "Franchisee") permission to construct, operate and maintain a distribution system for television, radio and other electronic signals throughout the TOWN of OGDEN (hereinafter "Town") and setting terms and conditions herein.

WHEREAS, TIME WARNER COMMUNICATIONS' technical ability, financial condition and character were considered in a full public proceeding of the Town Board (hereinafter Board) affording due process and culminating in a public hearing on July 14, 1999, and

WHEREAS, following a full public proceeding affording due process, the plans of the Franchisee for constructing, maintaining and operating its Cable Television System have been considered by the Board and found adequate and feasible, and

WHEREAS, this Franchise is subject to and complies with all applicable Federal and State laws and regulations, including without limitation, the rules of the New York State Public Service Commission concerning Franchise standards, and

WHEREAS, the Franchisee desires to obtain a franchise with the Town for a term of ten (10) years, and

WHEREAS, this Franchise is non-exclusive,

NOW THEREFORE, BE IT RESOLVED THAT the Board hereby grants to the Franchisee, its successors and assigns, a Franchise to construct, own, operate and maintain a Cable Television System pursuant to the terms and conditions set forth herein.

### **SECTION ONE: DEFINITIONS**

For the purpose of this Franchise, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular number; and words used in the singular include the plural number. The word "shall" is always mandatory and not merely directory. Such meaning or definition of terms found in this agreement shall be interpreted consistent with the definitions of the Federal Communications Commission, FCC Rules and Regulations, 47 CFR Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 CFR 521 et. seq., as amended and shall in no way be construed to broaden, alter or conflict with the Federal or State definitions.

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

**1.2** "Cable System," "Cable Television 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 Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only subscribers in one or more multiple unit dwelling under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; or (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of Section 621 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.

**1.3** "Channel" means a designated frequency band in the electromagnetic spectrum which is capable of carrying video, audio, digital, or other electronic signals, or some combination thereof.

**1.4** "FCC" means the Federal Communications Commission.

**1.5** "Franchise" or "Franchise Agreement" or "Agreement" means this Franchise Agreement as approved by the Town Board.

**1.6** "Franchisee" means the Cable System Operator, to whom a Franchise is hereby granted for the construction, operation, maintenance, and reconstruction of a Cable System and its lawful successors, transferees, or assigns.

**1.7** "Gross Subscriber Revenues" means all service fees, installation charges, and all other fees or charges collected from the provision of Cable Service to subscribers of this franchised municipality. Gross Subscriber Revenues shall not include (1) excise taxes; or (2) sales taxes; or (3) bad debt; or any other taxes or fees, including franchise fees, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental unit.

**1.8** "Public Service Commission" means the State of New York Public Service Commission.

**1.9** "Person" means any individual, trustee, partnership, association, corporation or other legal entity.

**1.10** "Section" means any section, sub-section, line, or provision of this Franchise.

**1.11** "Subscriber" means any person(s), firm, corporation, or other legal entity who, or which, elects to receive, for any purpose, a service provided by the Franchisee in connection with the Cable System.

**1.12** "Town" means all the territory within the present and future boundaries of the Town of Ogden.

## **SECTION TWO: GRANT OF AUTHORITY**

**2.1** There is hereby granted by the Town to the Franchisee the non-exclusive right and privilege to construct, erect, operate, and maintain in, on, upon, along, across, above, over and under streets, roads, alleys, bridges, public ways, and public places now laid out or dedicated, and all extension thereof, and additions thereto, poles, wires, cables, underground conduits, manholes, and other cable television conductors and fixtures necessary for the maintenance and operation of a Cable Television System in the Town, and the interception, sale, and redistribution of television, radio, digital, and other electronic signals in order to provide Cable Service to its Subscribers within the Town.

**2.2** The Town agrees that it shall not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of the Franchisee without the prior written consent of the Franchisee. The Town shall indemnify the Franchisee against any damages or expenses incurred by the Franchisee as a result of any such removal, damage, penetration, replacement or interruption of the services of the Franchisee caused by the Town.

**2.3** Any grant of a subsequent franchise shall be on terms and conditions which are not more favorable or less burdensome than those imposed on Franchisee hereunder.

**2.4** The rights and privileges of this Franchise shall continue for a period of ten (10) years effective January 8, 1997, and following approval by the NYS Public Service Commission.

## **SECTION THREE: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

**3.1** The Franchisee shall conform to all applicable laws, rules and regulations of the United States and the State of New York in the construction and operation of its Cable Television System.

**3.2** The terms and conditions of this Franchise are subject to the approval of the Public Service Commission.

**3.3** Acceptance of the terms and conditions of this Franchise shall not be construed as a waiver by the Franchisee of any existing or future right to challenge the legality of any provision of this Franchise. Nothing herein, nor the Franchisee's acceptance hereof, shall be construed to deny Franchisee the right to administrative and/or judicial review of any action or threatened action by the Town under, or arising out of, this Franchise.



**3.4** The Franchisee shall not refuse to hire or employ nor bar nor discharge from employment nor discriminate against any person in compensation or terms, conditions or privileges of employment because of age, race, creed, color, national origin, disability or gender.

#### **SECTION FOUR: TERRITORIAL AREA OF FRANCHISE**

This Franchise is granted to Franchisee to serve all of the territory within the present boundaries of the Town, as shown on the map attached hereto as Appendix A. The "Primary Service Area", as such term is defined by Section 595.5 of the Rules of the Public Service Commission, is identified on said Appendix A. Areas outside the Primary Service Area will be served in accordance with Section 17 of this Franchise.

#### **SECTION FIVE: LIABILITY AND INDEMNIFICATION**

**5.1** Franchisee shall indemnify and hold harmless the Town from all liability, damage and reasonable cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of Franchisee, its employees or agents undertaken pursuant to the Franchise. The Town shall promptly notify Franchisee of any claim for which it seeks indemnification: afford the Franchisee the opportunity to fully control the defense of such claim and any compromise, settlement, resolution or other disposition of such claim; and fully cooperate with Franchisee in the defense of such claim, including by making available to Franchisee all relevant information under its control.

**5.2** Notwithstanding any provision contained within this Franchise, the Town and Franchisee hereby expressly agree that the Franchisee shall not be liable for and shall not indemnify the Town in any manner and in any degree whatsoever from and against any action, demand, claims, losses, liabilities, suits or proceedings arising out of or related to any (i) programming carried over or transmitted by or through the Cable Television System, or (ii) the negligent or intentional wrongdoing of the Town or any of its employees, agents or officers.

**5.3** By its acceptance of the Franchise, the Franchisee specifically agrees that it will maintain, through the term of this Franchise, and any renewals thereof, liability insurance protecting the Franchisee and the Town as an additional insured with regard to all damages and/or penalties mentioned in Sub-section 5.1 in the following minimum amounts:

**5.3.1** One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person within the limit, however, of Two Million Dollars (\$2,000,000.00) for bodily injury or death resulting from any one (1) accident or occurrence.

**5.3.2** Five Hundred Thousand Dollars (\$500,000.00) for property damage resulting from any one (1) accident, and One Million Dollars (\$1,000,000.00) for property damage in the aggregate.

**5.3.3** Franchisee shall maintain and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of this Franchise, Worker's Compensation and Employer's Liability Insurance, in the minimum amount of:

- (a) Statutory limit for Worker's Compensation.
- (b) One Hundred Thousand Dollars (\$100,000.00) for Employer's Liability

**5.4** A certificate evidencing the insurance coverage herein provided shall be filed by the Franchisee with the Town Clerk as soon as practicable, but in no event more than thirty (30) days after the date of execution of this Franchise Agreement, and annually thereafter, together with written evidence that all such policies contain a thirty-day notice of cancellation provision requiring notice to the Town of the intention to cancel at least thirty (30) days prior to such cancellation.

## **SECTION SIX: RIGHTS RESERVED BY THE TOWN**

**6.1** The right is hereby reserved by the Town to adopt such additional general regulations in the exercise of its police power as it shall find necessary, provided that such regulations shall be reasonable and not materially in conflict with the rights and privileges herein granted, nor which shall impose any additional material or unreasonable economic or technical burden on Franchisee.

**6.2** The Town, upon reasonable notice and during normal business hours, shall have the right to inspect all books, records, maps, plans, financial statements and other like materials of the Franchisee which are pertinent to Franchisee's compliance with the terms and conditions of this Franchise.

**6.3** The Town and the Franchisee agree that Franchisee's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding subscribers. The Town will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided the Franchisee has advised the Town of the confidential nature of the information. In the event that the Town receives a request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Town will give Franchisee notice of such request as soon as possible prior to disclosure in order to allow the Franchisee to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

**6.4** The Town, or its officially designated representatives or agents, upon reasonable notice, shall have the right to observe and review all construction or installation work performed subject to the provisions of this Franchise, and to make such inspections as it may find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.

6.5 None of the Town officers, employees, executives, elected officials, agents nor any other person shall have any right to inspect or review “personally identifiable information” of or concerning any Subscriber, as that term is now or hereafter defined pursuant to Section 631 of the Communications Act. In the event of the improper collection or disclosure of personally identifiable information under either the Communications Act or other applicable laws by the Town of any of its employees or agents, and notwithstanding any other provision to the contrary in the Franchise, the Town shall be fully liable for any and all damages, costs, and expenses arising out of such improper collection or disclosure and shall reimburse, indemnify and hold harmless the Franchisee therefrom.

6.6 Continuing administration of the provisions of this Franchise shall be the responsibility of the Town through its Supervisor or duly appointed designee.

6.7 If any section, sub-section, sentence, clause, or phrase of this Franchise is held to be unconstitutional or invalid by a court or a regulatory agency of competent jurisdiction, then the remaining portions of the Franchise shall remain in full force and effect.

#### **SECTION SEVEN: FILING AND COMMUNICATIONS WITH REGULATORY AGENCIES**

7.1 The Franchisee shall, upon request, submit copies to the Town of all petitions, applications and communications relating to the Town submitted by the Franchisee to the FCC, the Public Service Commission, or any other Federal, State or Local regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications authorized pursuant to this Franchise.

7.2 Franchisee shall file requests for all necessary operating authorizations with the Public Service Commission and the Federal Communications Commission, as required, within sixty (60) days from the date this Franchise is approved by the Town Board.

#### **SECTION EIGHT: TRANSACTIONS AFFECTING OWNERSHIP OF THE FRANCHISE**

The Franchisee shall not transfer this Franchise to any other person, firm, company, corporation or entity other than to a parent corporation or an entity controlling, controlled by, or under the same common control as the Franchisee, without the prior approval of the Town as to the financial and technical ability of such transferee to operate the System pursuant to Federal and State law(s). Such permission shall not be unreasonably withheld.

## **SECTION NINE: TERMINATION OF FRANCHISE**

**9.1** The Town shall have the right to revoke this Franchise for substantial breach by the Franchisee of any of the material terms and conditions of this Franchise pursuant to existing and applicable law. Written notice of the violation(s) constituting ground for revocation must be served upon the Franchisee by certified mail, return receipt requested. Said revocation will not be effective until sixty (60) days after receipt of such written notice, and the Franchisee shall have failed to correct such violation(s) or failed to commence to cure such violation(s) within said sixty (60) day period. If by reason of an Act of God, the Franchisee is unable in whole or in part to correct said violations within such sixty (60) day period as provided for above, then the period of time to correct such violation(s) shall be extended. Notwithstanding the above, should the Franchisee cure, or take reasonable steps to comply within sixty (60) days of such notice, the right to revoke this Franchise shall immediately be extinguished.

**9.2** Prior to any such revocation, the Franchisee shall have the right to challenge the Town's allegations before an impartial administrative fact finder or court of competent jurisdiction. In any such proceeding, both the Franchisee and the Town shall have the right to introduce evidence, to require production of evidence and to question witnesses in accordance with the standards of due process and fair hearing applicable to administrative hearings in the State of New York. The cost of the administrative proceedings shall be borne by the party incurring such costs. Either party may thereafter seek judicial review.

**9.3** The Franchisee shall not be in violation of this Franchise and no revocation shall be effected if the Franchisee is prevented from performing its duties and obligations or observing the terms and conditions of this Franchise by "Acts of God", labor disputes, manufacturers' or contractors' inability to timely provide personnel or material or other causes of like or different nature beyond the control of the Franchisee, collectively referred to as "Acts of God". However, this provision shall not excuse failures to comply with applicable state and federal law without the consent of the commissions or agencies enforcing such law.

## **SECTION TEN: FRANCHISE RENEWAL**

**10.1** Upon the expiration of the term hereof, this Franchise may be renewed by the Town pursuant to the procedures established in this Section and applicable Federal and State law and regulations.

**10.2.1** During the six-month period which begins with the 36th month before the expiration of the Franchise, the Town may on its own initiative, and shall at the request of Franchisee, commence proceedings which afford the public in the Franchise area appropriate notice and participation for the purposes of identifying future cable-related community needs and interests; and reviewing the performance of Franchisee under the Franchise during the then current Franchise term.

**10.2.2** Upon completion of such proceedings, Franchisee may submit a proposal for renewal. Upon the request of the Town, Franchisee shall submit a proposal for renewal. Any such proposal shall contain such material as the Town may require, including proposals for an upgrade of the cable system. The Town may establish a date by which any such proposal shall be submitted.

**10.2.3** Upon submittal of the proposal for renewal, the Town shall provide prompt, public notice of such proposal and, during the four-month period which begins on the submission of a proposal under Subsection 10.2.2, shall either renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed and commence at the request of Franchisee or on its own initiative, an administrative proceeding to consider whether:

- (a) Franchisee has substantially complied with the material terms of the existing Franchise Agreement and with applicable law;
- (b) The quality of Franchisee's Cable Service, except for the mix, quality and level of programming or other services provided over the system, has been reasonable in light of community needs;
- (c) Franchisee has the financial, legal and technical ability to provide the cable services, facilities, and equipment as set forth in the proposal;  
and
- (d) The proposal is reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

**10.2.4** In any administrative proceeding, Franchisee and the public shall be afforded notice, and Franchisee and the Town shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding. At the completion of an administrative proceeding, the Town shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and shall transmit a certified copy of such decision to Franchisee. Such decision shall state the reasons therefor.

**10.2.5** Any refusal to renew a Franchise or denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors set forth in Sub-section 10.2.3, based upon the record of the proceeding. The Town may not base a refusal to renew or a denial of renewal upon factors (a) and (b) unless the Town has given Franchisee notice of and an opportunity to cure violations or problems, or has waived its right to object to, or effectively acquiesced in, such violations and problems.

**10.2.6** If Franchisee's proposal for renewal has been denied by a final decision of the Town made pursuant to this Section, or if Franchisee has been adversely affected by a failure of the Town to act in accordance with the procedural requirements of this Section, Franchisee may seek review of such final decision or failure within one hundred twenty (120) days of the issuance of the decision either in the United States District Court for the Western District of New York, Rochester Division, or in New York State Supreme Court, Monroe County. The court shall grant appropriate relief if it finds that any action of the Town is not in compliance with the procedural requirements of this Section or that the denial of the renewal proposal by the Town is not supported by a preponderance of the evidence based on the record of the proceeding conducted under this Section.

**10.2.7** Any decision of the Town on a proposal for renewal shall not be considered final unless all administrative review by the State of New York has occurred, or the opportunity therefore has lapsed.

**10.2.8** Notwithstanding the provisions of this Section, Franchisee may submit a proposal for the renewal of a Franchise at any time, and the Town 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 Sections 10.2.1 through 10.2.7 shall not apply to a decision to grant or deny a proposal to this sub-section. The denial of a proposal for renewal pursuant to this Sub-section shall not affect action on a renewal proposal that is submitted in accordance with Sections 10.2.1 through 10.2.7.

**10.2.9** If the current Franchise Agreement expires by its own terms before the Town and Franchisee have reached agreement on the terms and conditions of a renewal franchise or before the completion of the renewal procedures set forth above, subject to the approval of the NYS Public Service Commission, if required, the Town shall extend the expiration date of the current Franchise Agreement until either a new Franchise has been granted or the Franchisee has exhausted all appeals.

## **SECTION ELEVEN: RATES**

**11.1** The Franchisee may establish charges for cable television service, installations, and equipment as it deems appropriate in the area served. If permitted by law, the Town may apply for certification to regulate rates.

**11.2** The initial schedule of rates utilized by the Franchisee is attached hereto for informational purposes only, and shall be referred to as Appendix B.

**11.2.1** The rates set forth in Appendix B and the regulation thereof are subject to the provisions of the Cable Communications Policy Act of 1984, Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and the rules and regulations of the Federal Communications Commission promulgated thereunder.

**11.3** Changes in subscriber service rates or charges shall be announced by the Franchisee by written notice which may be contained with or on the subscriber's bill at least thirty (30) days prior to the effective date of the change.

**11.4** The Franchisee may require subscribers to pay for each month of service in advance at the beginning of the subscriber's assigned cycle billing period.

**11.5** In the event a subscriber terminates service in advance of any period for which a prepayment has been made, the Franchisee shall refund all of the unused prepayment.

**11.6** Nothing contained in this Franchise shall be deemed to restrict or prohibit the Franchisee from pursuing such legal remedies to collect past due debts owed to it by subscribers, including the reasonable costs and expenses incurred in pursuing such remedies, such as collection fees, attorneys' fees, and trip charges.

**11.7** The Franchisee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of race, creed, national origin, religion, color, gender, age or disability. Nothing in this Section shall be construed to prohibit the reduction or waiving of charges for the purpose of attracting or retaining subscribers.

## **SECTION TWELVE: SYSTEM REQUIREMENTS**

**12.1** The Franchisee shall construct the Cable Television System using materials of good and durable quality and all work involved in construction, installation, maintenance, and repair of the Cable Television System shall be performed in a safe, thorough, and reliable manner.

**12.2** The Franchisee shall provide, without charge, the installation of one drop, one outlet, and Standard service to municipally owned buildings and accredited public or private elementary and secondary schools located within the Primary Service Area and which are within one hundred and fifty feet (150') of the Company's feeder lines. The locations of the existing municipal and educational buildings which are to receive free service are identified in Appendix C.

**12.2.1** No more than one (1) drop shall be provided without charge to any one (1) location specified in Appendix C. Additional cable distribution at these locations shall be at cost plus 15% and the responsibility of the municipality or school. There shall be no commercial use of the drops.

**12.2.2** There shall be no charge incurred by any school or municipal building should such school or municipal building be relocated within the Company's service area and such is within one hundred fifty feet (150') of the Company's existing cable television facilities. Should a municipal building or school who previously received Cable Service at no charge move to a new location outside of the Company's service area, then and only then shall the municipality or school be responsible for the cost of installing Cable Service at the new location.

**12.3** Franchisee shall designate channel capacity for public, educational and governmental access in accordance with the standards for Public, Educational and Governmental (PEG) Access as set forth in Section 595.4 of the Regulations of the Public Service Commission. The Franchisee shall provide access channel(s) designated for non-commercial, educational and governmental use by the public on a first come, first served, non-discriminatory basis. Such access channels may be shared by other municipalities.

### **SECTION THIRTEEN: PHYSICAL FACILITIES**

The Franchisee shall provide and maintain appropriate technical hardware such that the technical quality of the signals shall meet the FCC and the Public Service Commission minimum standards. Additionally, the system shall be designed to provide a capacity of 550 MHZ.

### **SECTION FOURTEEN: CONSTRUCTION STANDARDS**

**14.1** The Franchisee shall provide written notification to the Town of all major construction, reconstruction or relocation of any part of the Cable Television System within the Town, including placement of any poles.

**14.2** All poles, cables, wires, antennae, conduit, or appurtenances shall be constructed and erected in a workmanlike manner pursuant to the then current National Electric Safety Code.

**14.2.1** Any poles erected by the Franchisee are to be slightly in appearance and so placed as to not obstruct travel upon the public streets of the Town. The Town shall not be held liable for any disturbances of Franchisee's installations resulting from the altering, repairing, or installation of streets, roads, alleys, sewers, water lines, fire alarm systems, burglar alarm systems, sidewalks, driveways, bridges, or any other municipal installations, unless caused by the negligence of the Town, its officers, agents or employees. Should any installation of the Franchisee be found by the Town to be hazardous to the public safety in keeping with all applicable sections of either the National Electric Code (NEC) or National Electric Safety Code (NESC) then, said installation shall be brought into conformance by the Franchisee at its expense.

**14.2.2** The Franchisee shall, at its own expense, move or relocate any of its installations, at the request of the Town, whenever or wherever the installation is found to interfere with the Town's streets, roads, street grade, sewer or water installations, or other public conveniences, or any proposed changes thereof or extensions thereto, unless the Town's request is initiated as part of a project funded in whole or in part by grants from county, state or federal governments or agencies, in which case Franchisee shall be entitled to such reimbursement or payment as is authorized by the terms of such grants.

**14.2.3** In all newly installed underground installation in the Town's right-of-way, the Franchisee's cable shall be installed at a depth consistent with the then current National Electric Safety Code. Additionally, all wires shall be grounded and all necessary safeguards against lightning, contact with live wires or interference with Town or public utilities or facilities shall be taken as required by the National Electric Safety Code and/or the National Electric Code.

**14.3** This Franchise shall not be construed as to deprive the Town of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets or right-of-way areas.



14.4 All construction of the Franchisee, including installations, shall conform to the National Electric Safety Code (NESC) and the National Electric Code (NEC). Any opening, obstructions, or other safety hazard in streets, sidewalks, public ways, or other municipal or public property made by the Franchisee or its agent, shall be guarded and protected at all times by the placement of adequate barriers, fences, or other protective and/or warning devices at the sole expense of the Franchisee.

14.5 The Franchisee will repair all damage to Town property caused by the installation and operation of the Cable Television System and replace and/or restore said property to as good condition as existed prior to such damage occurring. Repairs and/or restoration shall be completed within a reasonable time, not to exceed thirty (30) days from the date such damage occurred or notice was received by the Franchisee from the Town. Such thirty (30) day period shall be extended due to weather conditions which may interfere with said restoration and/or repair. The Town may extend such time within which the Franchisee may complete such restoration and/or repair upon written request by the Franchisee to the Town.

14.6 The Franchisee shall, on request of any private party holding a valid permit from the appropriate Town authority, temporarily raise or lower its cables to permit moving of any building or other large structure, providing that the party making the request pays the expense of such raising or lowering of the cables and renders such payment at least 24 hours in advance of the requested action.

14.7 In the event that the Franchisee determines the necessity of making emergency repairs to insure uninterrupted service to all or part of the System, it shall not be required to obtain any permit or prior approval from the Town, for such repairs.

14.8 The Franchisee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wire and cables of the Franchisee.

14.9 In view of the fact the Franchisee has already constructed its Cable Television System, Franchisee shall post with the Town a security deposit in the amount of \$1 in compliance with the rules of the New York State Public Service Commission.

#### **SECTION FIFTEEN: OPERATION AND SYSTEM MAINTENANCE**

15.1 The Franchisee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest reasonably possible time. Planned interruptions, insofar as possible, shall be preceded by notice to affected subscribers, and shall occur, insofar as possible, during periods of minimum system use.

15.2 The Franchisee shall give credit for every service outage in excess of four (4) continuous hours to any subscriber who applies for it either by written or oral notice. Such credit shall be calculated in accordance with Section 590.65 of the Regulations of the Public Service Commission.

**15.3** The Franchisee shall comply with all Federal and State laws and regulations, as well as with all industry codes of good practice, that regulate the Franchisee's consumer protection and customer service standards.

**15.4** The signal of any television or radio station carried on the Cable System shall be carried without material or foreign EMF degradation as required by the FCC and the Public Service Commission. The Cable System shall be operated so that there will be no undue interference with over-the-air-television reception, radio reception, telephone communication, microwave communications, or other installations now in use in the Town.

**15.5** Investigative action shall be initiated on the same day a trouble or complaint call is received at the Franchisee's office, if possible, but in no case later than the following business day. The Franchisee shall provide full-time service week days between the hours of 9:00 a.m. and 5:00 p.m. and standby emergency service on Saturdays, Sundays and legal holidays.

**15.5.1** The Franchisee shall annually inform all subscribers, of its procedures for the reporting and resolving of subscriber complaints.

**15.6** The Franchisee shall keep local telephones available twenty-four (24) hours a day, seven (7) days a week, for repair calls and complaints. During some of this time, the telephone may be manned by an automatic answering device.

#### **SECTION SIXTEEN: FRANCHISE FEE**

**16.1** As a franchise fee herewith, the Franchisee shall pay, annually on or before March 31 of each year hereof, five percent (5%) of Gross Subscriber Revenues received by the Franchisee in the preceding calendar year. Any and all such fees may be passed through subscribers by the Franchisee as permitted by law, and shall be reduced by any fees paid to the New York State Public Service Commission.

**16.2** The Franchisee shall have the right to apply franchise fees paid as a credit against special franchise assessments pursuant to Sec 626 of the New York State Real Property Tax Law.

**16.3** In the event that the Federal Communications Commission removes its ceiling on Franchise Fees, the Franchisee shall notify the Town in writing of the change. Upon the written request by the Town, the amount payable to the Town under this Section shall be increased to the maximum permitted by law and in accordance with Sections 16.1 and 16.2 herein. In no event shall the payment of any increase in the Franchise Fee be retroactive.

## SECTION SEVENTEEN: LINE EXTENSIONS

17.1 With respect to those parts of the Town which are not presently served as part of the Primary Service Area, service shall be extended in accordance with the rules of the Public Service Commission line extension policy as set forth herein.

17.2 Primary Service Area shall include each of the following within the franchised area:

- (a) Those areas where cable television plant has been built without a contribution in aid of construction by subscribers;
- (b) Those areas, if any, where the Franchisee is obligated by the terms of its Franchise to provide cable television service without a contribution in aid of construction by subscribers;
- (c) Any area adjoining an area described in Sub-section (a) or (b) of this Section 17.2 and which contains dwelling units at a minimum of 35 dwelling units per linear mile of aerial cable;
- (d) Any area adjoining an area described in Sub-sections (a) and (b) of this Section 17.2 and which contains at least the same number of dwelling units per linear mile of aerial cable as is the average number of dwelling units per linear mile of cable in areas described in Sub-sections (a) and (b) of this Section 17.2. The average is to be determined by dividing the number of dwelling units in areas described in Sub-sections (a) and (b) of this Section 17.2 by the number of linear miles of cable in the same areas.

17.3 Line extension area shall be any area within the Franchised area which is not the Primary Service Area.

17.4 Within five (5) years after the receipt of all necessary operating authorizations, cable television service will be offered throughout the Franchise area to all subscribers requesting service in any Primary Service Area.

- (a) Cable television service will not be denied to potential subscribers located in line extension areas who are willing to contribute to the cost of construction in accordance with the following formula:

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

C equals the cost of construction of new plant; CA equals the average cost of construction per mile in the Primary Service Area; P equals the minimum number of dwelling units per mile which would require the Franchisee to provide service in the Primary Service Area; LE equals the number of dwelling units requesting service in the line extension area; SC equals subscriber contribution in aid of construction in the line extension area.

(i) Whenever a potential subscriber located in a line extension area requests a service, the Franchisee will, within thirty (30) days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area and shall inform each of the potential subscribers of the contribution in aid of construction that may be charged. The Franchisee may require pre-payment of the contribution in aid of construction. The Franchisee will provide line extensions within ninety (90) days after all necessary agreements, easements, and pole licenses have been issued, subject to special circumstances justifying a waiver by the Public Service Commission.

(ii) The contribution in aid of construction shall be in addition to the installation rate set forth in this Franchise Agreement.

(iii) During the five-year period commencing at the completion of a particular line extension, a pro-rata refund shall be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. The Franchisee shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at either the address where service was provided, or the billing address, and who has not informed the Franchisee of the subscriber's address.

(b) Cable television services will be provided to any subscriber who demands service and who is located within 150 feet of aerial feeder cable, and the charge for the installation for any subscriber so situated will not be in excess of the installation charge specified in the Franchise.

**17.5** Notwithstanding the above, within ninety (90) days of this Franchise being adopted by the Town Board and accepted by the Franchisee, the Franchisee shall be required to survey the residents located on Cardinal Forest Lane and Parkwood Lane in order to determine their level of interest in receiving cable television service. Based on that survey, should a majority of the residents on either of these streets wish to subscribe to cable television service then, the Franchisee shall extend its service lines in order to provide service to these homes at no additional charge to those residents above the normal residential installation charges. Such construction required to extend the Franchisees lines shall be completed within six (6) months subsequent to receiving the results of the above required survey and upon receipt of any permits or approvals required by utility companies.

### **SECTION EIGHTEEN: NEW SUBDIVISIONS**

In all new subdivisions constructed within the Town, the Franchisee shall, whenever possible, construct the system in common trenches with utilities, including any construction necessary to serve said subscribers. At such time as a section of the subdivision meets the minimum density required as described in Section 17 above, the system shall be energized so as to provide service to those who request it. If common trenching is not feasible at the time of development of the subdivision, the Franchisee shall construct and energize the cable system in keeping with the above line extension policy.

### **SECTION NINETEEN: ABANDONMENT**

Franchisee shall continue to provide Cable Service to all subscribers who meet their obligations to the Franchisee with respect to such service. Franchisee shall not, without the written consent of the Town abandon its Cable Television System or any portion thereof in such a way as would limit its ability to continue to provide Cable Service to all subscribers.

### **SECTION TWENTY: EFFECTIVE DATE**

This Franchise shall be binding on the parties immediately following approval by the Town Board, execution by the appropriate authorities of the Town and the Franchisee, and approval by the New York State Public Service Commission.

Signed this 15<sup>th</sup> day of July, 1999

By: Gay H. Lenhard  
Town of Ogden  
Gay H. Lenhard, Supervisor

By: Thomas E. Adams  
Time Warner Entertainment-Advance/Newhouse  
Partnership, d/b/a Time Warner Communications  
Thomas E. Adams, President

## Appendix A

### TOWN OF OGDEN STREETS

Adams Trail  
Airy Drive  
Alana Drive  
Allandale Drive  
Amanda Drive  
Ashford Circle  
Barkwood Drive  
Barkwood Lane  
Beaman Road  
Big Ridge Road  
Blue Heron Drive  
Brewerton Drive  
Brockport Road  
Brockport Spencerport Rd  
Brower Road  
Buffalo Road  
Bunny Run  
Canal Road  
Caraway Lane  
Cedar Circle  
Chambers Street  
Clearview Drive  
Colby Street  
Council Fire Lane  
Creekside Lane  
Davey Crescent  
Denishire Drive  
Dewey Street  
Donlin Drive  
Dresser Road  
Eagle Feather Circle  
Euler Road  
Forest Meadow Trail  
Gallup Road  
Gillette Road  
Grey Wolf Drive  
Harvey Lane  
Hawthorne Drive  
Hiawatha Trail

Highview Drive  
Highview Terrace  
Hill Road  
Hobbes Lane  
Holley Circle  
Hubbell Road  
Hutchings Road  
Jordache Lane  
Kay Avenue  
Kaylin Drive  
Knollwood Drive  
Kress Hill Drive  
Kresswood Drive  
Kristin Drive  
Lansmere Way  
Linda Lane  
Lisa Lane  
Lorric Lane  
Lyell Avenue  
Lyell Road  
Lyell Street  
Maida Drive  
Manitou Road  
Marli Way  
Matthew Circle  
MCCleary Road  
MCIntosh Road  
McLain Drive  
Meadow Drive  
Mondavi Circle  
Nichols Street  
Northwind Way  
Norwich Drive  
Ogden Center Road  
Ogden Parma TL Road  
Ogden Sweden TL Road  
Osage Trail  
Pinewood Drive  
Quail Lane

Reddick Lane  
Rene Drive  
Ridge Meadows Drive  
Rolling Acre Drive  
Ronald Circle  
Ryans Run  
Sagewood Drive  
Sandstone Drive  
Scenic Circle  
Shannon Crescent  
Sheldon Drive  
Sheldon Terrace  
Shepard Road  
Sias Lane  
Southwind Way  
Spencerport Road  
Statt Road  
Stoney Point Road  
Teaberry Drive  
Thistlewood Lane  
Timber Ridge Drive  
Town Pump Circle  
Trimmer Road  
Trobridge Court  
Union Point Drive (part)  
Union Street  
Valerie Trail  
Vroom Road  
Washington Street  
Westside Drive  
Westwind Drive  
Whittier Road  
Widger Road  
Windmill Trail  
Windsorshire Drive  
Windway Circle  
Wood Duck Run

## Appendix B

**Prices and Packages****Cable Service Monthly Rates**

Basic Service	\$ 6.76
Standard Service	<u>26.72</u>
Full Standard Service	33.48

**Optional a-la-carte Services**

**A-la-carte channels may be purchased individually. There is no requirement to purchase the entire Select Plus package to receive any of these channels:**

WGN, TBS, Animal Planet,	.95 ea.
Turner Classic Movies, Encore, ESPN2, Country Music Television, The	.80 ea.
History Channel, Sci-Fi Channel, CNNfn, CNNSI -----	

**Select Plus Package**

The above eleven channels may be purchased as a package ----- \$6.49

**Optional Services**

HBO, Cinemax, Showtime,	
The Disney Channel, TMC --	\$12.95 ea
Any 2 Premium Services ----	\$19.95
Any 3 premium -----	\$26.95
Any 4 premium -----	\$33.95
Any 5 premium -----	\$40.95
Movieplex -----	\$19.95
Music Choice (residential)	
With AXS System	\$ 3.95
Without AXS System	\$ 5.95
The Cable Guide	\$ 2.00

**Pay-Per-View**

Movies -----	\$3.95 ea.
Playboy TV (4 hour block) ----	\$5.95
AdulTVision -----	\$6.95
Special Events -----	per event

**Channel Selector (s) & Equipment**

8600X Addressable	\$ 2.92
Standard	.82
Remote Control	.37

**Other Charges**

Optional Service Protection Plan	\$1.00 mn.
Wallfish (per wall)	65.00
Transfer	19.95
Office Transaction	1.99
Returned check charge	20.00
Late charge	5.00
Lost stolen, damaged	\$177.50/\$62.80/\$500 equipment, depending on model.
Lost, stolen, damaged	\$16.91/\$8.20 remote, depending on model.
Vacation disconnect	5.00 per mn (eligible once during a 12 mn period)
Discount rate	10%
(Must be at least 62, participate in HEAP or receive Medicaid and food stamps)	
Installation	\$99.00
Service call	50.00

**Primary Trip**

Primary Installation (unwired)	\$34.63
Prewired Home	23.90
Additional Outlet (unwired)	13.82 ea.
Additional Outlet (pre-wired)	5.95 ea.
VCR Connection	5.43

**Special Trip**

Installation of Each Outlet	\$21.59
VCR Connection	9.95
Field Transaction	9.95
Aerial Drop Replacement	19.95
Underground Drop Replacement	39.95
Non-cable service call	21.56

**Road Runner Online Service**

Monthly Service	\$39.95 with cable
	\$44.95 without cable
Additional IP addresses (2)	\$5.95 ea. per mn

Rates subject to change.

Franchise fees, FCC regulatory fees and sales tax not included in rates.

Franchise fees vary by community.

Other charges, restrictions or requirements may apply.

Basic Service is required to receive Standard Service.

Standard Service is required to receive a-la-carte services.

An 8600X Terminal is required to receive some a la carte services.

Rates effective 1/1/99

Appendix C

**TOWN OF OGDEN  
SERVICE AT NO CHARGE**

**MUNICIPAL BUILDINGS**

Ogden Parma Fire District  
2588 South Union St  
Spencerport, NY 14559

Ogden Town Hall  
269 Ogden Center Road  
Spencerport, NY 14559

Ogden Library  
269 Ogden Center Road  
Spencerport, NY 14559

Ogden Police Department  
269 Ogden Center Road  
Spencerport, NY 14559

Ogden Recreation Center  
269 Ogden Center Road  
Spencerport, NY 14559

Ogden Highway Department  
2432 South Union Street  
Spencerport

**SCHOOLS**

Edcom Center  
3599 Big Ridge Road  
Spencerport, NY 14559

Wemoco  
3589 Big Ridge Road  
Spencerport, NY 14559

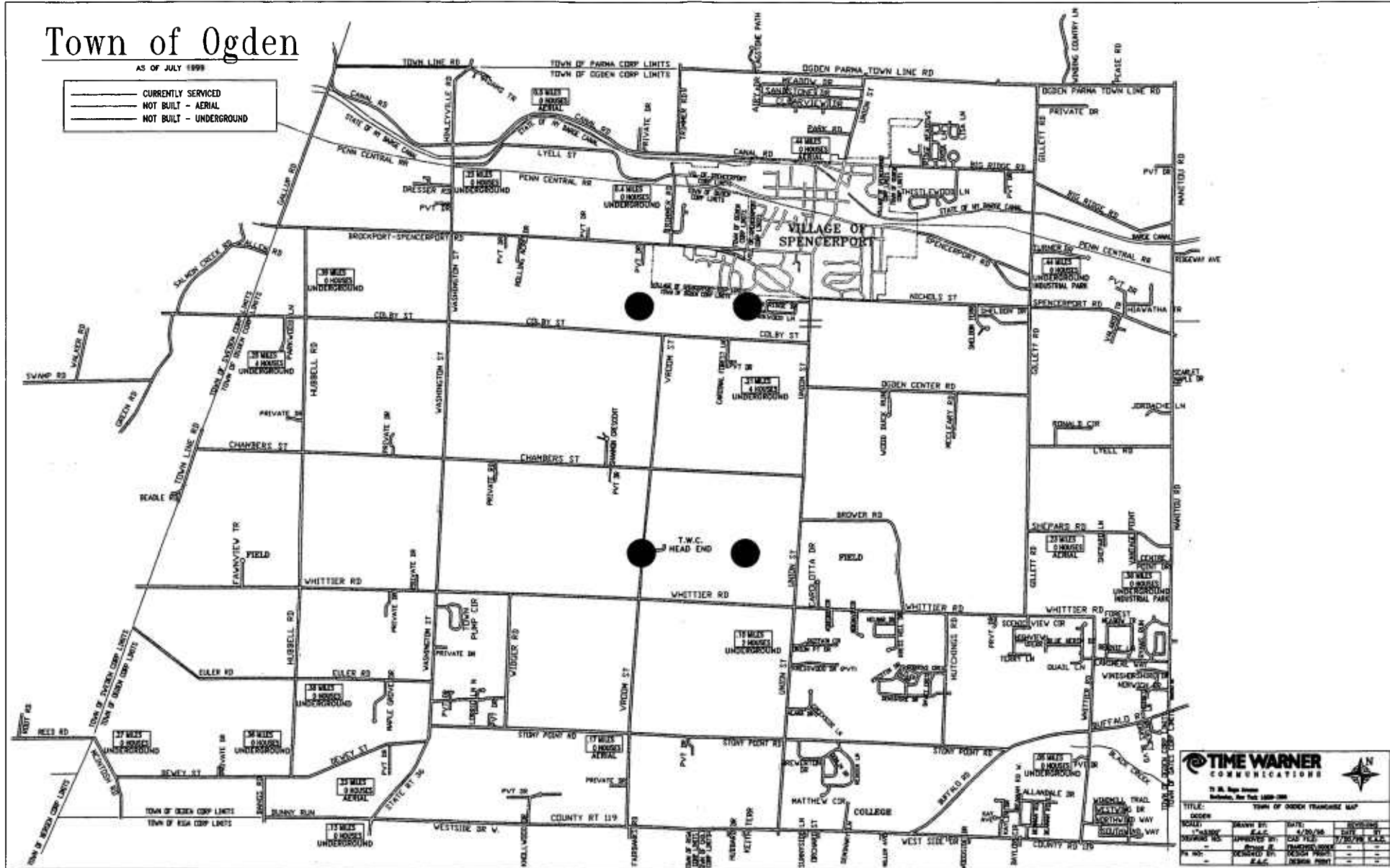
Town Line School  
399 Ogden Parma Town Line Road  
Spencerport, NY 14559



# Town of Ogden

AS OF JULY 1999

	CURRENTLY SERVICED
	NOT BUILT - AERIAL
	NOT BUILT - UNDERGROUND



**TIME WARNER**  
COMMUNICATIONS



TOWN OF OGDEN TRANSMISSION MAP			
TITLE:	OGDEN	DATE:	7/99
DESIGNED BY:	THOMAS	DESIGNED BY:	THOMAS
CHECKED BY:	THOMAS	CHECKED BY:	THOMAS
IN CHARGE:	THOMAS	IN CHARGE:	THOMAS
DATE:	7/99	DATE:	7/99
SCALE:	1" = 1/4" AS SHOWN	SCALE:	1" = 1/4" AS SHOWN