Ordinance No 88

AN ORDINANCE OF THE TOWN OF MOUNT CARMEL, TENNESSEE, HEREINAFTER CALLED LICENSOR, GRANTING TO WARNER CABLE COMMUNICATIONS INC., HEREINAFTER CALLED LICENSEE, PERMISSION TO SUPPLY CABLE TELEVISION AND COMMUNICATION SERVICES AND PROVIDING THE CONDITIONS UNDER WHICH SUCH SERVICE MAY BE RENDERED: REGULATING THE ERECTION, MAINTENANCE AND OPERATION OF CABLE TELEVISION AND COMMUNICATION SERVICES AND SETTING FOR THE TERMS AND CONDITIONS THEREFORE.

BE IT ENACTED AND ORDAINED BY THE TOWN OF MOUNT CARMEL AS FOLLOWS:

SECTION I

SHORT TITLE

This Ordinance shall be known and may be cited as the Warner Cable Communications Inc. Cable Television Franchise Ordinance.

SECTION II

DEFINITIONS

For the purpose of this Ordinance, 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, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(1) Licensor is the Town of Mount Carmel.

(2) "Community antenna television system" hereinafter referred to as "CATV system" or "system" means a system of cables or electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off the air and transmit them to subscribers for a fee, and to originate television programs and other communication services from its own facilities and transmit the same.

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

(4) Licensee is Warner Cable Communications Inc., its successors and assigns.

SECTION III

GRANT OF NON-EXCLUSIVE AUTHORITY

(1) There is hereby granted to the Licensee by the Licensor the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under streets, alleys, public ways and public places now laid out or dedicated,

and all extensions thereof, and additions thereto, in the Town of Mount Carmel, poles, wires, cable, underground conduits, manholes and other television and communications conductors and fixtures necessary for the maintenance and operation in the Town of Mount Carmel of a CATV system for the interception, sale and distribution of television and other communication signals, and to use poles leased from utility companies now or in the future erected so as to accomplish said rights and privileges, subject to the safety regulations of said utility companies.

(2) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the Licensor reserves the right to grant a similar use of said streets, alleys, public ways and places to any person or firm at any time during the period of this Franchise.

SECTION IV

COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Licensee shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power of the Licensor and to such reasonable regulation as the Licensor shall hereafter provide pursuant thereto.

SECTION V

TERRITORIAL AREA INVOLVED

This Franchise relates to the territorial limits of the Town of Mount Carmel and to any area henceforth added thereto during the term of this Franchise.

SECTION VI

LIABILITY AND INDEMNIFICATION

(1) The Licensee shall pay, and by its acceptance of this Franchise, Licensee specificaly agrees that it will pay all damages and penalties which the Licensor may legally be required to pay as a result of granting this Franchise. These damages shall include, but shall not be limited to, damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, allowed or prohibited by this Franchise.

(2) The Licensee shall pay and by its acceptance of this Franchise specifically agrees that it will pay all expenses incurred by the Licensor in defending itself with regard to damages and penalties mentioned in Subsection (1) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Licensor.

anticipated ability and competence to render the public service contemplated by this Agreement. Notwithstanding the above provisions, this section shal not apply if the transfer of ownership interest involves the sale or transfer of stock to a wholly-owned subsidiary or to an entity under the same ultimate ownership or control as the Licensee.

SECTION XIV

FREE SERVICE

The Licensee shall continue to furnish one (1) free connection and service for all charitable institutions and schools, which are currently served.

SECTION XV

TECHNICAL STANDARDS

The facilities used by Licensee shall be capable of distributing cable television signals in accordance with the technical standards established by the Federal Communications Commission. Licensee shall limit failure to a minimum, and shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.

SECTION XVI

TERM

This Franchise shall be in force and effect for a period of fifteen (15) years from December 10, 1989.

SECTION XVII

FEE

The Licensee shall pay to the Licensor a license fee annually equal to three percent (3%) of the Licensee's basic service receipts per year derived from operations in the franchise area.

SECTION XVIII

FORCE MAJEURE

If for any reasons of force majeure either party is unable in whole or in part to carry out is obligations, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herin shall have the following meaning: strikes; acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of Tennessee or any of their departments, agencies, political subdivisions; riots, epidemics, landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the disabled party.

system equal to or greater than the average density of occupied homes per linear mile for the existing system. All installations to areas not now having service and which do not meet the standard described above, will be on a time plus material basis.

(c) It is expressly understood that all intallation rates may be adjusted at the Licensee's discretion.

SECTION XII

VIOLATION OF TERMS

In the event that Licensee shall violate any material terms of this ordinance, written notice thereof shall be given the Licensee together with reasonable time to correct the same, but in the event that Licensee does not correct the same, Licensor shall have the right to terminate this Agreement by ordinance.

SECTION XIII

ASSIGNMENT

The rights herein granted shall not be assigned by the Licensee without written notice the the Licensor. No assignment shall become effective until the assignee has filed with the Licensor evidence of the assignee's financial responsibility and

SECTION X

RATES

With 20 days' notice to the Licensor, the Licensee may adjust rates at the Licensee's discretion.

SECTION XI

NON-DISCRIMINATION

The Licensee shall provide service to all subscribers willing and prepared to pay therefore without discrimination for any reason, provided the same comply with the following:

(a) Licensee agrees, except as noted herein, to provide service via aerial lines in accordance with normal installation rates to any location serviced on the effective date of this ordinance, provided that such location requires a cable drop of no more than 150 feet from existing distribution lines. All such installations of greater than 150 feet or requiring underground work will be on a time plus material basis.

(b) Licensee further agrees to extend its service via aerial lines, in accordance with normal installation rates, to any locations within the franchise area of this Franchise not now having service available which has an average density of occupied homes per linear mile of distribution

Subject to Federal subscriber privacy laws, Licensor reserves the right to inspect each new installation of Licensee and to make periodic inspections, semi-annually or more often as conditions may warrant. Such inspection, whether made or not, shall not relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

SECTION VIII

REMOVAL UPON TERMINATION

Upon the termination as herein provided, Licensee shall forthwith remove all of its said attachments and wires from poles used as authorized herein, and upon its failure to do so, Licensor may make such removal at Licensee's cost and expense.

SECTION IX

MAP

Upon request, Licensee shall file with Licensor a map or blue print of the network of attachments and cable proposed to be installed in the or installed at the date hereof, and in the event of additions or deletions thereto, shall provide new maps or blue prints at the date thereof, if requested to do so by the Licensor.

(3) The Licensee shall maintain, and by its acceptance of this Franchise specifically agrees that it will maintain, throughout the term of the Franchise liability insurance insuring the Licensor and the Licensee with regard to all damages mentioned in Subparagraph (1) above in the minimum amounts.

(a) $100,000.00 for bodily injury or death to any one person, within the limit, however, of $300,000.00 for bodily injury resulting from any one accident.

(b) $100,000.00 for property damages resulting from any one accident.

(c) $100,000.00 for all other types of liability.

Upon request, certificates of insurance shall be submitted to the Licensor for approval.

(5) Licensee shall carry workmen's compensation insurance to protect its own employees, and the indemnification provisions set out in Section VI hereof shall apply also to the employees of the Licensee and of the Licensor.

SECTION VII

INSPECTION

SECTION XVIX

SEVERABILITY

If any section of this ordinance, or any portion thereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such section, or any portion thereof, shall be deemed a separate, distant and independent provision and such decision shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by causing the signatures of its duly designated agents to be affixed hereon.

WARNER CABLE
COMMUNICATIONS INC.

P.O. Box 3608, 1221 North Eastman Road
Kingsport, Tennessee 37664 615-247-2183

July 7, 1987

The Honorable Gary Lawson
Mayor, Town of Mount Carmel
City Hall
Mount Carmel, Tennessee 37645

Dear Mayor Lawson:

Warner Cable is proud to have served the Town of Mount Carmel for over 20 years, and we believe we have served the Town well. We have been an active member of the business community and have contributed to the economic development of the area.

Our record demonstrates that Warner Cable is committed to providing our Mount Carmel customers with the highest quality cable service possible and to continuing to be a good community partner with the Town.

As you may know, on December 29, 1984, the Cable Communications Policy Act of 1984 became effective. The Act establishes a procedure governing the renewal of cable franchises which can be initiated either by the cable operator or by the franchising authority. Consistent with the federal legislation, Warner Cable hereby notifies the Town of its intent to renew its cable television franchise.

At the present time, we are in the process of upgrading our cable television system which services Mount Carmel, Kingsport, and other local communities. When the upgrade is completed, the new cable system will have a maximum capacity of fifty-four (54) channels. We plan to offer an expanded BASIC service of thirty-five (35) channels and six (6) PREMIUM (PAY) services to our customers. The upgrade of the system will also improve picture quality and technical reliability. Warner plans to invest over $10 Million in the upgrade of the cable system.

In order to enable our Company to recover the substantial upfront investment of upgrading the system, we are requesting our franchise with Mount Carmel be renewed for a period of fifteen (15) years from the expiration date of the current franchise (December 10, 1989). I have attached a draft of a comprehensive franchise ordinance which functions well as an operating agreement between the Town and Warner, and which offers more than adequate protections for both parties.

Our new General Manager, Don Jensen, will be arriving in a couple of weeks. He will be contacting you for a meeting date.

In the meantime, if you have any questions or comments concerning this or any other matter, please do not hesitate to contact me directly.

Sincerely,

Mike Burns

Mike Burns
Business Manager

MB/cb