ORDINANCE NO. 104

AN ORDINANCE OF THE TOWN OF MT. CARMEL, TENNESSE, 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 FORTH 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 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 communications 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.

(3) The costs of repair and restoration of property to a condition as good as that prevailing prior to the installation, construction, operation or removal of such facilities shall be borne by the Licensee.

(4) The Licensor may in the event damage is done to the property aforedescribed and not satisfactorily repaired by Licensee after reasonable notice conduct repairs itself and charge the reasonable costs of same to Licensee.

(5) Licensee shall with respect to owners of private property strictly and promptly comply with the provisions of 47 U.S.C. §541 (a)(1)(C).

(6) Prior permission must be obtained from the Licensor prior to the use of any public easement, right-of-way, etc. as hereinabove noted for construction.

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 specifically agrees that it will pay all damages and penalties which the Licensor may be required to pay as a result of 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) In order for the Town to assert its rights to be indemnified and held harmless, the Town shall: (A) Promptly notify the Licensee of any claim or legal proceeding which give rise to such right; (B) Afford the Licensee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding; and (C) Fully cooperate in the defense of such claim and make available to the Licensee all pertinent information under its control relating thereto but shall be entitled to be reimbursed for all costs and expenses incurred by the Town.

(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 of:

(a) $1,000,000.00 for bodily injury or death to any one person, within the limit, however, of $3,000,000.00 for bodily injury resulting from any one accident.

(b) $300,000.00 for property damages resulting from any one accident.

(c) $300,000.00 for all other types of liability.

(4) 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

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 undertake such removal at Licensee's cost and expense.

SECTION IX

MAP

Upon request, Licensee shall file with Licensor a map or blueprint 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 blueprints at the date thereof, if requested to do so by the Licensor.

SECTION X

RATES

With thirty (30) days' notice to the Licensor, the Licensee may adjust rates in accordance with 47 U.S.C. § 521 et seq. The same procedure must be followed in increasing hook-on or second hook-on charges.

SECTION XI

NON-DISCRIMINATION

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

(a) Licensee agrees, except as noted herein, to provide service 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 200 feet from existing distribution lines. All such installations of greater than 200 feet or custom installating will be on a time plus material basis.

(b) Licensee further agrees to extend its service 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 system equal to 80% of 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.

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 prior written consent of Licensor--which consent shall not be unreasonably withheld. No assignment shall become effective until the assignee has filed with the Licensor evidence of the assignee's financial responsibility and anticipated ability and competence to render the public service contemplated by this Agreement. Notwithstanding the above provisions, this section shall 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 within 200 feet of existing cable within the territory of the Licensor.

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. Upon notice by the subscriber to the Licensee, failure or interruption of service for periods of over twenty-four (24) continuous hours shall result in a pro-rata reduction in each affected subscriber's service charge by the Licensee.

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 five percent (5%) of the Licensee's gross receipts per year derived from operations in the franchise area on or before the last day of February of each calendar year.

SECTION XVIII

FORCE MAJEURE

If for any reasons of force majeure either party is unable in whole or in part to carry out its 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.

SECTION XVIX

SEVERABILITY

If any section of this ordiance, or any portion thereof, is for any reason, held invalid or unconstitutional by any court of compentent 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.

SECTION XX

AMENDMENT OF CABLE COMMUNICATIONS ACT OF 1984

In the event of amendment or repeal of the Cable Communications Act of 1984, 47 U.S.C. §§521 et seq., which is in its entirety incorporated into this franchise, the parties reserve the right to renegotiate any provision hereof by giving the other party thirty (30) days notice of the intention to do the same.

SECTION XXI

ACCESS TO INFORMATION CHANNEL

Licensee agrees to broadcast on its information channel subject to space and time limitations (presently Channel 5) notices of public interest submitted by Licensor.

SECTION XXII

EFFECTIVE DATE

This Ordinance shall become law upon passage of its third reading and prior execution of same by Licensee, the public welfare requiring it.

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

Passed 1st reading 11-16-89

Passed 2nd reading 11-16-89

Passed 3rd reading 12-28-89

Ronnie L. Davis
MAYOR

WARNER CABLE COMMUNICATIONS, INC.

BY: James Gray

ATTEST:

Rita J. Jones
CITY RECORDER

APPROVED AS TO FORM:

Michael A. Faulk
CITY ATTORNEY

RESOLUTION NO. 136

RESOLUTION OF THE TOWN OF MOUNT CARMEL, TENNESSEE APPROVING A TRANSFER OF THE CABLE TELEVISION FRANCHISE

WHEREAS, Time Warner Entertainment Company, L.P. ("Time Warner") owns, operates, and maintains a cable television system (the"System") in the Town of Mount Carmel ("Franchise Authority"), pursuant to Ordinance No. 104 (the "Franchise"), and Time Warner is the current authorized holder of the Franchise; and

WHEREAS, Time Warner and InterMedia Partners of Tennessee ("InterMedia") have entered into an Asset Purchase Agreement dated as of October 18, 1995, as amended (the "Purchase Agreement"), providing for the sale , assignment and transfer of all of the assets of the System, including all rights and obligations of Time Warner under the Franchise, to InterMedia (the "Transfer") subject to, among other conditions, any required approval of the Franchise Authority with respect thereto; and

WHEREAS, Time Warner and InterMedia have requested consent by the Franchise Authority to the Transfer in accordance with the requirements of the Franchise; and

WHEREAS, the Franchise Authority had found InterMedia to be legally, technically and financially qualified to own and operate the System in accordance with the Franchise; and

WHEREAS, the Franchise Authority deems that the transfer is the best interest of the residents of the Town of Mount Carmel:

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN, as follows:

SECTION 1. The Franchise Authority hereby consents to and approves the Transfer of the Franchise to InterMedia and its successors and assigns, relating to the period from and after the closing of the transaction described in the Purchase Agreement (the "Closing Date").

SECTION 2. InterMedia may, during the remaining Franchise term, transfer and assign the Franchise to any entity owned or controlled by, controlling or under common control with, InterMedia, or its general or limited partners, or any affiliate thereof, upon notice to Franchise Authority, describing the entity in sufficient detail to satisfy the Franchise Authority that the transfer and assignment meets the requirements of this Section 2.

SECTION 3. The Franchise Authority hereby consents to and approves the assignment, mortgage, pledge or other encumbrance, if any, of the Franchise, System or assets relating thereto, or of the partnership interests in InterMedia, as collateral of a loan.

SECTION 4. The Franchise Authority confirms that, as of the date of the Resolution: (a) the Franchise was properly granted to Time Warner, is valid, remains in full force and effect and expires on December 9, 2004, subject to option, if any, to extend such term; (b) the Franchise supersedes all other agreements between Time Warner and the Franchise Authority and represents the entire understanding of the parties; and (c) Time Warner is materially in compliance with the provisions of the Franchise and there are no material unfulfilled commitments of Time Warner under the Franchise.

SECTION 5. The consents and approvals hereby granted are given pursuant to the Franchise and are permitted by law, and shall be contingent upon and take effect only on and after the Closing Date, at which time Time Warner shall be released from all obligations and liabilities under the Franchise that relate to periods from and after such date.

A D O P T E D this the 25th day of January, 1996.

James L. Dean

JAMES L. DEAN, Mayor

ATTEST:

Nancy Carter

NANCY F. CARTER, Recorder

APPROVED AS TO FORM:

Joe May

LAW OFFICES OF FAULK, MAY & COUP, Attorneys