

ORDINANCE NO. 89-0-2

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO WARNER CABLE COMMUNICATIONS INC. OF OHIO TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE VILLAGE OF MAGNETIC SPRINGS, UNION COUNTY, OHIO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

BE IT ORDAINED BY THE VILLAGE OF MAGNETIC SPRINGS:

SECTION I.

SHORT TITLE

This resolution shall be known and cited as the "Village of Magnetic Springs Cable Television Franchise Resolution". Within this document it shall also be referred to as "this franchise" or "the Franchise".

SECTION II.

DEFINITIONS

For the purpose of the Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the

singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A) "Grantee" means Warner Cable Communications Inc. its agents, employees, lawful successors, transferees or assignees.
- B) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies, political subdivisions; riots, epidemics, landslides; lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts; civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party.
- C) "Person" means any corporation, partnership, proprietorship or organization authorized to do business in the State of Ohio, or any natural person.
- D) "Public Property" means any real property other than a street owned by any governmental unit.
- E) "Street" means the surface of and the space above and below any street, road, highway, freeway, lane, path, way, alley, court, sidewalk, boulevard,

parkway, drive, or any public easement or right-of-way now or hereafter held by the Village which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cable, conductors, ducts, confluent, vaults, man holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

F) "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 television service which includes, but is not limited to, video and audio programming and which is provided to multiple subscribers within the Village.

G. "Village" means the Village of Magnetic Springs, Union County, a county in the state of Ohio. The Village Council are the authority for the Village.

SECTION III.

GRANT OF AUTHORITY

For the purposes of constructing, operating and maintaining a System in the Village, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the Village such lines, cables,

conductors, ducts, confluents, vaults, manholes, amplifiers, pedestals, attachments and other operating equipment as are necessary and pertinent to the operation of the System.

SECTION IV

COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- A) This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of state and federal laws, rules, and regulations.
- B) Grantee's rights are subject to the police powers of the Village to adopt and enforce ordinances necessary to the health, safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the Village pursuant to that power.

SECTION V

TERRITORIAL AREA INVOLVED

This Franchise is granted for the territorial boundary of the Village. In the event of annexation by the Village, any new territory shall become part of the area covered.

SECTION VI

FRANCHISE TERM

This Franchise shall commence upon the effective date of this Resolution and shall expire twenty (20) years thereafter unless renewed, revoked or terminated sooner as herein provided.

SECTION VII

FRANCHISE NON-EXCLUSIVE

The Franchise granted herein is non-exclusive. The Village specifically reserves the right to grant, at any time, one or more additional franchises for a System in accordance with state and federal law and on the same terms and conditions as contained herein.

SECTION VIII

WRITTEN NOTICE

All notices or demands required to be given under this Franchise shall be deemed to be given when delivered personally to the persons designated below or upon the date actually received as evidenced by registered or certified mail receipt addressed as follows:

If to the Village: Village of Magnetic Springs
P.O. Box General Delivery
Magnetic Springs, Ohio 43036

ATTENTION: MAYOR

If to Grantee: Warner Cable Communications Inc.

400 Metro Place

Dublin, Ohio 43017

Attention: Director of Government/Community Relations

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

SECTION IX

REPAIR OF STREETS AND PROPERTY

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

SECTION X

TRIMMING OF TREES

Grantee shall have the authority to trim trees on public property within utility easements at its own expense as it may deem necessary to protect its wires and facilities.

SECTION XI

DAMAGES AND DEFENSES

- A) Grantee shall indemnify and hold harmless the Village for all damages and penalties, at all times during the term of this Franchise, as a result of Grantee's exercise of this Franchise.
- B) In order for the Village to assert its rights to be indemnified and held harmless, the Village must:
 - 1) Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
 - 2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
 - 3) Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

SECTION XII

LIABILITY INSURANCE

- A) Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the Village and the Grantee with regard to all damages mentioned in the following minimum amounts:
- 1) One Hundred Thousand Dollars (\$100,000.00) for bodily injury or death to any one person;
 - 2) Three Hundred Thousand Dollars (\$300,000.00) for bodily injury or death resulting from any one accident;
 - 3) Three Hundred Thousand Dollars (\$300,000.00) for all other types of liability.
- B) Upon request of the Village, Grantee shall furnish to the Village satisfactory evidence that an insurance policy has been obtained and is in full force and effect.

SECTION XIII

TRANSFER OR ASSIGNMENT OF FRANCHISE

This franchise shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, but the rights granted herein shall not be transferred or assigned by the Grantee without written notice to the Village.

SECTION XIV

FRANCHISE RENEWAL

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

SECTION XV

VILLAGE'S RIGHT TO REVOKE

In addition to all other rights which the Village has pursuant to law or equity, the Village reserves the right to revoke, terminate or cancel this Franchise and all rights and privileges pertaining thereto in the event that:

- A) Grantee violates any material provision of this Franchise; or
- B) Grantee practices any fraud upon the Village or subscriber; or

- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

SECTION XVI

REVOCATION PROCEDURES

- A) The Village shall notify the Grantee of its intention to revoke, terminate or cancel this Franchise. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation.
- B) Grantee shall have ninety (90) days or such additional period of time as may be reasonably necessary subsequent to receipt of the notice in which to correct the violation before the Village may formally revoke, terminate or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the Village that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the Village shall stay the ninety (90) day period as described above.
- C) The Village shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the Village shall

determine that a default or violation has occurred, the Village shall supplement the decision with written findings of fact.

- D) If after hearing the dispute Grantee has been found to be in default, Grantee shall then have ninety (90) days from such a determination to remedy the violation or failure. At any time after that ninety (90) days period the Village may, by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke terminate or cancel this Franchise.

SECTION XVII

REMOVAL UPON REVOCATION

Upon the revocation of this Franchise as herein provided, Grantee shall remove all of its attachments and wires from poles used as authorized herein.

SECTION XVIII

FORCE MAJEURE

If by reason of a force majeure any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

XIX

MAPS

Upon request of the Village, Grantee shall maintain on file with the Village a true and accurate map or set of maps showing all System equipment installed and in place in Streets and other public places. ✓

SECTION XX

SERVICE AREA

- A) Residents in those areas with an average density of at twenty five (25) homes per contiguous mile, aerial or underground mile, as measured from the nearest point of usable trunk, shall be provided service upon payment of the standard installation charge and applicable monthly fees; except that installations requiring underground drops or aerial drops in excess of one hundred and fifty (150) feet shall be considered a non-standard installation to be charged at Grantee's actual cost of installation.
- B) Service to homes not meeting those density requirements of paragraph (A) above shall be provided on a time plus material basis.

SECTION XXI

UNAUTHORIZED CONNECTIONS OR MODIFICATIONS

- A) It shall be unlawful for any Person, without the expressed consent of the Grantee to make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the System for any purpose whatsoever.
- B) It shall be unlawful for any Person, to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the System for any purpose whatsoever.
- C) It shall be unlawful for any Person to construct, operate or maintain a System without having first applied for and received a franchise from the Village.
- D) Any Person convicted of a violation of this Section shall be subject to the penalty provisions of the Village Code which is incorporated herein by reference.

SECTION XXII

FREE SERVICE TO VILLAGE AND SCHOOLS

The Grantee shall, upon written request make its basic service available without charge to all public and parochial schools located within the Village; and at up to three (3) locations in the Village to be designated by the Council (i.e. municipal building, fire, police) not including installation (charges to consist only of time and material).

- A) Installation and service will be subject only to a building being contiguous to a main or lateral cable; and
- B) For a single connection per building;
- C) Grantee may relocate, upon request, the outlet at a charge not to exceed the Grantee's cost for such relocation.

SECTION XXIII

SEVERABILITY

If any term, condition or Section of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or Section to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, conditions and Sections hereof shall in all other respects, continue to be effective and to be complied with.

SECTION XXIV

PASSAGE AND EFFECTIVE DATE

This Franchise, having been published as required, shall take effect and be in force from and after thirty (30) days following its final passage and approval.

Passed and adopted this 6th day of September, 1989.

ATTEST: Karen Cox
Village Clerk

BY: Mayor Joe McCarthy

BY: [Signature]

ITS Mayor

ITS President