

PUBLIC NOTICE

ORDINANCE NO. 381

AN ORDINANCE RE-NEWING AND GRANTING A FRANCHISE FOR THE OPERATION OF A CABLE TELEVISION SYSTEM IN THE BOROUGH OF MOUNT JOY AND SETTING THE TERMS AND CONDITIONS FOR THE OPERATION OF SAID SYSTEM.

BE IT ORDAINED by the Borough Council of the Borough of Mount Joy, Lancaster County, Pennsylvania as follows:

Section 1. Short Title. This ordinance may be cited as the Mount Joy CATV Ordinance of 1976.

Section 2. Definitions. As used in this ordinance, and in regulations pertaining hereto, unless the context clearly requires a different meaning, the following terms shall have the meanings ascribed to them in this section.

(a) **Borough** means the Borough of Mount Joy, Lancaster County, Pennsylvania. When used in connection with the granting of permits or exercise of other acts of discretion, administration or regulation hereunder, it shall mean the Borough Council or such officer or agents as the Borough Council may have designated to perform a particular function.

(b) **Franchisee** means (a) Warner-CCC, Inc., a corporation organized under the laws of the Commonwealth of Illinois and having its principal office in New York, New York, (b) any assignee or transferee to which the franchise granted to said corporation hereunder is legally transferred; and (c) any other corporation which may be made subject to any of the provisions of this ordinance under a franchise hereafter granted.

(c) **Facility, Facilities** shall mean individually or collectively the towers, antennas, poles, conduit, wire, cable, amplifiers, connectors and all other plant, fixtures and equipment or apparatus of the franchisee required to gather and distribute audio and video program material to the franchisee's customers. Except where the context indicates otherwise, these terms shall mean such facilities installed in, on or under a street as herein defined.

(d) **Street, Streets** shall mean individually or collectively all public streets, alleys, ways, parkways and bridges, (including the sidewalks thereof) now or hereafter existing within the present boundaries of the Borough and within any territory hereafter annexed to the Borough.

Section 3. The Granting of the Franchise. The Borough of Mount Joy hereby grants a franchise to Warner-CCC, Inc., its successors and assigns for the operation, maintenance and extension of the existing cable television system in the Borough of Mount Joy. The granting of this

franchise is subject to the conditions set forth herein and all applicable local, state and federal laws, rules and regulations now in effect or hereafter adopted.

Section 4. State and Federal Rules and Regulations. All applicable local, state and federal laws, rules and regulations are incorporated into this ordinance as though set out in full and compliance therewith is made an express condition of the granting of the franchise.

Any modifications of the provisions of Section 76.31 of the rules and regulations of the Federal Communications Commission resulting from amendment by the FCC, shall be incorporated into this franchise within one (1) year of the adoption of the aforesaid amendments or modifications or at the time of renewal of this franchise, whichever occurs first.

Section 5. Effective Date, Term, Renewal and Termination of the Franchise. The effective date of this franchise will be July 12, 1976.

The rights under this franchise are hereby granted for a period of ten (10) years from the effective date mentioned above. Renewal of franchise rights may be granted by the Borough of Mount Joy after due consideration by the Borough and after a public hearing is held. There shall be no obligation upon either the Borough or the franchisee to renew the franchise.

Upon termination of the franchise or any extension thereof, the franchisee shall remove its facilities from the streets within one (1) year of the termination, except that in the case of the removals that would require the excavation of the Borough streets. In that case, those facilities shall remain in place and shall become the property of the Borough unless the Borough requires or permits those facilities to be removed. All facilities not removed within one (1) year shall become the property of the Borough.

Section 6. Insurance and Indemnity. Franchisee shall defend and indemnify the Borough and hold it harmless from any liability, loss, damage, or expense from any claim or demand made upon the Borough or any suit filed or judgment or execution rendered against the Borough which arises out of the construction, maintenance, operation or existence of the franchisee's system or any of its facilities, in the Borough, and the franchisee shall provide insurance protection for any person who might suffer injury or damage caused by or resulting from franchisee's negligence. In order to assure the Borough of franchisee's performance of the obligations herein assumed, the franchisee shall obtain and keep in force during the

term of the franchise, a policy or policies of public liability and property damage insurance in which franchisee shall cause the Borough to be named as an additional assured and providing liability coverage in the amounts of not less than \$300,000 for injuries resulting to any one person, and \$1,000,000 for injuries resulting to persons in any one occurrence and property damage coverage in the amount of \$300,000 resulting from any one occurrence and shall furnish certificates of such insurance to the Borough.

The franchisee shall also post with the Borough and keep in force a bond with corporate surety in the amount of \$2,000 to insure the franchisee's compliance with its obligations and duties hereunder.

Section 7. Service and Rates. Franchisee shall provide the necessary facilities and service sufficient to meet the needs of the public and shall maintain its facilities and service up to date and in keeping with technical progress. The franchisee shall maintain, operate and render efficient service on a minimum of eight (8) T.V. channels with an all band system capable of providing twelve (12) T.V. channels and a full range of F.M. radio stations. The system shall be operated so as not to adversely affect or interfere with existing radio or television reception. The installation and construction of all facilities or transmission lines shall be done in conformity with the standards of the National Electric Safety Code.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the franchisee shall do so at such times as shall cause the least amount of inconvenience to its customers, preferably between the hours of 11:00 p.m. and 11:00 a.m. The service furnished shall be continuous daily during the regular telecasting hours of the stations whose T.V. broadcasts are being transmitted.

Franchisee agrees to respond to and investigate all complaints received from its subscribers within the Borough and to resolve said complaints in an efficient and timely manner if at all technically and reasonably possible, and franchisee's agents shall be available for such purposes in the Borough. For the purpose of taking complaints from customers, the Borough and franchisee agree that the business office of the franchisee shall be the place designated to receive said complaints. If service complaints are not resolved in a manner satisfactory to the customer by the franchisee, the Borough Manager is hereby authorized to receive and resolve said complaints. Notice of the complaint procedure shall

be given by franchisee to each new subscriber at the time of initial regular subscription to the cable system and shall be published in a newspaper of general circulation in the Borough by the franchisee at least once a year or whenever a change occurs.

The franchisee shall have the right to promulgate and put into effect such rules, regulations and conditions respecting the sale, furnishing or use of the system and services it will provide as shall be necessary to permit the franchisee to carry on its business in an efficient manner, to exercise the rights granted to it under this ordinance and to conduct its operations in the manner it believes is most likely to assure its ability to provide uninterrupted service to its customers.

The rates for regular subscriber services are attached hereto as Exhibit "A". Rates shall be non-discriminatory throughout. No increase in said rates for service shall be made except as authorized by the Borough after a public proceeding affording due process. It will be the franchisee's responsibility to prepare and present in writing any request for a rate increase to the Borough. The Borough shall base its authorization for a rate increase on the facts presented by the franchisee. Any request for a rate increase shall be acted upon within sixty (60) days after submission of the rate increase request to the Borough. If the Borough does not act within said time, the request shall be deemed to have been approved by the Borough. Rates for regular subscriber services shall be just, reasonable and adequate and shall at all times be maintained consistent with the franchisee's capital and operating costs. Requests for rate increase shall be limited to one per calendar year. If any increased costs are imposed on franchisee due to copyright fees, increased pole attachment fees, and/or increased on new city or state regulatory fees, such increased costs may be automatically passed on to the subscriber in increased charges, without the Borough's prior approval, on a pro rata basis. Franchisee shall advise the Borough of such increases and shall substantiate.

Section 8. Franchise Reimbursement to Borough. During the life of the franchisee, an annual franchise fee will be paid to the Borough in the amount of three percent (3%) of the franchisee's gross subscriber revenues per year as derived from regular cable television and radio operations in the Borough.

Said fee shall be paid to the Borough on or before March 1st of every calendar year for the period covering the previous calendar year. An annual report of operations shall

accompany said fee, and the Borough reserves the right to inspect the records of the franchisee as a check on the correctness of the fee paid or have the annual report certified by a C.P.A. as correct. In addition to the annual franchise fee paid to the Borough, the franchisee shall provide free cable television service to any public school, firehouse or municipal building if requested to do so.

Section 9. Location of Facilities and Use of Public Streets. The franchisee shall have the right to utilize all public streets and alleys in the Borough for the location of the facilities necessary to provide the service to the citizens of the Borough. Wherever possible, the franchisee shall utilize the existing facilities of the other utilities to erect, extend or maintain its service. The Borough reserves the right to determine the location of all the facilities within the Borough limits and to forbid erection of any facility in a location it deems to be hazardous. In all new residential developments, the franchisee shall locate all facilities underground.

The franchisee shall install, maintain and operate its facilities in accordance with good engineering and construction practices, and only in full compliance with all applicable statutes, ordinances, rules and regulations now or hereafter made effective and in such manner and places as to not unreasonably interfere with travel upon and use of the streets or access to adjacent properties. All wires, cables, and other overhead facilities shall be at such minimum heights as are or may be required by the Borough or Pennsylvania Department of Transportation or other entity having jurisdiction.

The franchisee also agrees that all work will be done in compliance with all state and local ordinances, laws, rules and regulations and that the franchisee will be responsible to secure all necessary permits for the required work.

Section 10. Transfers of Franchise. The franchisee shall not sell, transfer or assign this franchise nor any rights hereunder without written approval of the Borough. Said approval will not be unreasonably withheld; provided that no assignment shall be approved or become effective until the assignee has filed with the Borough evidence that satisfies the Borough of the assignee's financial responsibility and anticipated ability and competence to render the public service contemplated by the franchisee. If action by the Borough is not forthcoming within 90 days after application is filed, consent shall be deemed granted. Assignee must agree to the same terms as did the franchisee in the first instance. This paragraph shall not apply to

transactions covered herein between franchisee and wholly owned subsidiaries of Warner-CCC, Inc.

Section 11. Forfeiture of License. The Borough may at anytime declare forfeiture of the grant of this franchise after a full public hearing for violation or default by franchisee of any of the terms of the grant, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the franchisee shall first be given notice by the Borough of such violation or default and of the attempt to declare a forfeiture and thereafter if such violation or default shall continue for a period of ninety (90) days or if franchisee has made an attempt to correct the defect during the ninety (90) day period, all rights and privileges of said franchise under the provisions of the agreement may be forfeited and revoked provided, however, the franchisee shall not be deemed to be in default for performance of this franchise nor shall any forfeiture be invoked for any violation or failure to perform due to natural causes beyond the control of the franchisee. The Borough shall have the right to determine if the franchisee has complied with the Borough's notice of violation or if a reasonable attempt has been made to comply.

Section 12. Notices. Notices required by this ordinance shall be given in writing by personal delivery or by certified mail as follows:

To the Borough, addressed to: Borough Manager, Borough of Mount Joy, 21 East Main Street, Mount Joy, PA 17552.

To the franchisee, addressed to: Warner-CCC, Inc., P.O. Box 129, Marietta, PA 17547.

With a copy to: Warner Cable Corporation, 75 Rockefeller Plaza, New York, NY 10019.

Section 13. Repeal of Previous Ordinances. The Borough hereby repeals the ordinance of July 11, 1966 known as the Mount Joy CATV Ordinance of 1966.

Section 14. Severability. If any part of this ordinance is deemed or declared unconstitutional, void or invalid, the remainder of the ordinance shall remain in effect, not withstanding such unconstitutional, void or invalid provision.

Section 15. Acceptance and Effective Date. This ordinance shall become effective immediately upon the acceptance of the ordinance by the franchisee and the entry by the franchisee into an agreement in writing with the Borough evidencing such acceptance.

SUBSCRIBER RATES

\$6.50 per month for initial connection.

\$2.00 per month for additional connection.

\$2.00 per month for F.M. radio.