

ORDINANCE NO. 124

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO WARNER CABLE COMMUNICATIONS INC. TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF GREENLAND, ARKANSAS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

BE IT ORDAINED BY THE CITY OF GREENLAND, ARKANSAS:

SECTION I.
SHORT TITLE

This ordinance shall be known and cited as the "City of Greenland Cable Television Franchise Ordinance". Within this document it shall also be referred to as "this Franchise" or "the Franchise".

SECTION II.
DEFINITIONS

For the purpose of this 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 Arkansas 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 Arkansas, 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 City which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, confluents, 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 video programming and which is provided to multiple subscribers within the City.
- G) "City" means the City of Greenland, Arkansas, a City in the State of Arkansas. The City Board is the authority of the City.

SECTION III GRANT OF AUTHORITY

For the purposes of constructing, operating and maintaining a System in the City, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, confluents, vaults, manholes, amplifiers, appliances, 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 City 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 City pursuant to that power.

SECTION V
TERRITORIAL AREA INVOLVED

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

SECTION VI
FRANCHISE TERM

This Franchise shall commence upon the effective date of this Ordinance and shall expire fifteen (15) years thereafter unless renewed, revoked or terminated sooner as herein provided.

SECTION VII
FRANCHISE NON-EXCLUSIVE

The Franchise granted herein is non-exclusive. The City 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 City: City of Greenland
P.O. Box 67, Greenland, AR 72737
If to Grantee: Warner Cable Communications Inc.
125 W. Mountain
Fayetteville, Arkansas 72701

Attention: General Manager

Warner Cable Communications Inc.
400 Metro Place North
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
NOTICE OF RATE INCREASES

Prior to implementing any rate increase, Grantee shall give the following notice:

- A) At least twenty (20) days' advance notice to the City: and
- B At least twenty (20) days' advance notice to subscribers.

SECTION XII
FRANCHISE FEE

Grantee shall pay to the City a franchise fee equal to five percent (5%) of gross subscriber receipts, less bad debt and franchise fees, derived from its cable subscribers residing in

the City of Greenland. Such payment shall be made quarterly to the City of Greenland by Grantee.

SECTION XIII
SERVICE EXTENSION

A) Construction of Line Extension

Grantee agrees to construct an extension of Grantee's system to make its cable service available to the residences located in the area of Cato Springs Road (Highway 265) that was annexed by the City of Greenland in 1985. The City and Grantee agree that this service extension does not meet the cable industry's commonly accepted housing density requirements when comparing the number of potential subscribers to the cost of constructing the service extension.

B) City's Contribution to Construction

(1) The City will contribute to the cost of such construction. The City and Grantee agree that the City's contribution toward such construction is \$23,500. Grantee shall use its own funds to construct the service extension described above.

(2) The City and Grantee further agree that the City's contribution toward construction shall be considered a prepayment of the franchise fee which is required under Section XII herein and that the prepayment is made pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 622 (b).

C) Construction Account

(1) Upon completion of the service extension, Grantee shall create a construction debit account for the City of Greenland, the total amount of which shall be \$23,500. There shall be no interest charged on the \$23,500, nor shall there be any penalty for early payment of any outstanding balance of the construction debit account.

(2) Grantee shall calculate once a year in July the total amount of annual franchise fees that would be due to be paid to the City under the terms of this agreement for the 12-month period starting July 1 of the preceding year. Such calculation shall be made pursuant to the provisions of Section XII.

(3) Grantee shall then deduct the total amount of the preceding 12 months' franchise fees, calculated pursuant to Section XII and covering the period set forth in Section XIII (C)(2), from the construction account's balance and provide a written record to the City showing the following: (a) the construction account's beginning balance, (b) the total amount of franchise fees due for the 12-month period, including the total amount of revenues to which it was applied and (c) the construction account's ending balance.

(4) The procedures set forth in subsections (2) and (3) shall continue until such time as the balance of the construction account is zero.

(5) At the time the balance of the construction account reaches zero, Grantee shall begin to remit franchise fee payments directly to the City, as set forth more fully herein in Section XII.

(6) If Grantee transfers or assigns its interest in the system to another entity, the City's franchise fee construction account shall be similarly transferred or assigned to such other entity and the repayment process described herein shall continue until such time as the account's balance reaches zero.

SECTION XIV DAMAGES AND DEFENSES

- A) Grantee shall indemnify and hold harmless the City 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 City to assert its rights to be indemnified and held harmless, the City 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 XV
LIABILITY INSURANCE

- A) Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the City and the Grantee with regard to all damages mentioned in Section XIV above 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 City, Grantee shall furnish to the City satisfactory evidence that an insurance policy has been obtained and is in full force and effect.

SECTION XVI
TRANSFER OR ASSIGNMENT OF FRANCHISE

The rights granted herein shall not be transferred or assigned by the Grantee without written notice to the City. No transfer or assignment shall become effective until the transferee or the assignee has filed with the City its written acceptance of the terms and conditions of this Franchise. Notwithstanding anything to the contrary, this Section XVI shall not apply if the transfer or assignment is to an entity controlling, controlled by or under common control as the Grantee. If the City fails to act upon a transfer request within sixty (60) days of Grantee's written request, then such application shall be deemed to have been approved. Such approval shall not be unreasonably withheld.

SECTION XVII
FRANCHISE RENEWAL

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

SECTION XVIII
CITY'S RIGHT TO REVOKE

In addition to all other rights which the City has pursuant to law or equity, the City 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 City or subscriber; or
- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

SECTION XIX
REVOCATION PROCEDURES

- A) The City 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 subsequent to receipt of the notice in which to correct the violation before the City may formally revoke, terminate or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the City that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the City shall stay the ninety (90) day period described above.
- C) The City shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the City shall determine that a default or violation has occurred the City 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) day period the City 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 XX
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 XXI
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.

SECTION XXII
MAPS

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

SECTION XXIII
SERVICE AREA

- A) Residents in those areas with an average density of at least forty (40) homes per aerial mile or eighty (80) homes per 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 XXIV
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 City.
- D) Any Person convicted of a violation of this Section shall be subject to the penalty provisions of the City Code which is incorporated herein by reference.

SECTION XXV
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 XXVI
PASSAGE AND EFFECTIVE DATE

Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

Passed and adopted this 13th day of May, 1991.

ATTEST:


CITY TREASURER/RECORDER


MAYOR