

ORDINANCE NO. XXXIV

AN ORDINANCE RELATING TO AND REGULATING COMMUNITY TELEVISION ANTENNA SYSTEMS IN THE TOWNSHIP OF MOUNT JOY, LANCASTER COUNTY, PENNSYLVANIA.

WHEREAS, the Board of Supervisors has fully considered the legal character, financial and technical qualifications of Warner-CCC, Inc., as well as its construction arrangements, in a full public proceeding after due notice to the public, and it has been determined that a formal nonexclusive franchise should be granted to Warner-CCC, Inc.

BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Mount Joy, Lancaster County, Pennsylvania, and it is hereby ordained and enacted by authority of the same as follows:

Section 1. (Title) This Ordinance shall be known and may be cited as the "MOUNT JOY TOWNSHIP COMMUNITY ANTENNA TELEVISION FRANCHISE ORDINANCE".

Section 2. (Definitions)

a. "COMMUNITY ANTENNA TELEVISION" (CATV) shall mean an arrangement or combination of apparatus whereby television signals broadcast over the air are received at one or more towers, antennas or other devices from television stations licensed by the Federal Communications Commission and other information sources and which for a consideration are transmitted by means of a co-axial cable or other suitable device to television receiving sets or subscribers to such service.

b. "TOWNSHIP" is the Township of Mount Joy, Lancaster County, Pennsylvania.

c. "COMPANY" is Warner-CCC, Inc., the grantee of rights under this franchise.

d. "BOARD OF SUPERVISORS" is the governing body of the Township of Mount Joy, Lancaster County, Pennsylvania.

e. "STREETS" shall mean and include all public streets, ways, alleys and parkways owned by or under the jurisdiction of the Township of Mount Joy.

f. "PERSON" and "APPLICANT" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

Section 3. (Nonexclusive Franchise) There is hereby granted by the Township to the Company a nonexclusive franchise to construct a community antenna television system (CATV) for television related services as may be prescribed or permitted by the Federal Communications Commission and to use poles, wires, conduits and appurtenances under, along, across or upon any or all public streets, ways, alleys or parkways, as the same now or may hereafter exist within the Township of Mount Joy and within the boundaries of the said Township of Mount Joy as the same may hereafter be extended for transmitting and distributing electricity and electrical impulses and signals for television purposes, namely to produce reproduction of sights and sounds in combination to the residents of the Township of Mount Joy, upon the terms and conditions and subject to the limitations herein set forth.

Section 4. (Territory) Upon the annexation of any territory to the Township, the portion of any said CATV system that may be located or operated within said territory, upon the streets, alleys or public ways thereof, shall thereafter be subject to all the terms of this franchise as though it were an extension made thereunder.

Section 5. (Compliance with Applicable Laws and Ordinances)

The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the Township, and to such reasonable regulations as the Township shall hereafter by resolution or ordinance provide. A permit fee in the amount of Fifty (\$50.00) Dollars shall be paid to the Township at the time application is made by the Company to operate under the terms of this Ordinance.

Section 6. (Liability of Company) Company shall indemnify and save the Township and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims and costs, including attorneys' fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of Company's television antenna system or any equipment of the Company. In case suit shall be filed against the Township, either independently or jointly with said Company, to recover for any said claim or damages, said Company, upon notice to it by said Township, shall defend said Township, its agents and employees, against said action, and in the event of a final judgment being obtained against said Township, either independently or jointly with said Company, the said Company will pay said judgment and all costs and hold the Township harmless therefrom. For this purpose Company shall carry and at all times maintain on file with the Secretary of the Township of Mount Joy and at all times keep in force, a public liability policy or policies in the name of Company and the Township as their respective interests may appear, insuring Company and the Township against any and all liability arising from the installation and/or operation of said system, which policy or policies shall be approved by the Solicitor of the Township. Such liability policy or

policies shall be in the sum of One Hundred Thousand (\$100,000.00) Dollars for damage to property in any one accident, and not less than Three Hundred Thousand (\$300,000.00) Dollars for injury or death to any one person, and not less than the sum of Five Hundred Thousand (\$500,000.00) Dollars for death or injury to all persons affected by any one accident. Such policies of insurance shall be issued by a company licensed to do business in the Commonwealth of Pennsylvania. The Company shall also carry workmen's compensation coverage for all of its employees subject to such coverage, and shall submit to the Secretary of the Township a certificate of insurance showing that workmen's compensation coverage is in effect.

Section 7. (Service Standards) The Company shall during the continuance of this franchise provide facilities and service sufficient to meet the needs of the public welfare, and shall maintain its facilities and service up to date and in keeping with technical progress. Company shall maintain and operate its system and render efficient service in accordance with such rules and regulations as are, or in the future may be, set forth by the Federal Communications Commission or any other regulatory agency which preempts the authority of the Township. The system shall be installed and maintained in accordance with good engineering practices, and any spurious electromagnetic radiation must fall within the limits specified by the Federal Communications Commission. All construction must be done in a good and workmanlike manner free of obvious defects which may be a hazard to life and limb, and in conformance with the standards as set forth in the National Electric Safety Code.

a. Continuous Service. Company service shall be in accordance with FCC rules and continuing without substantial interruption except for causes beyond its control, including normal maintenance requirements, daily during the regular telecast and operating time of the station whose TV Broadcasts are being received.

b. Nondiscrimination of Service. The Company shall serve any person residing in or owning property in the Township desiring service who shall pay the charges hereafter enumerated within three (3) months after requesting the same if such request meets the conditions under Section 18 (Extension of Service) of this Ordinance and any applicable Federal Communications Commission ("FCC") rules and regulations or the rules and regulations of any other regulatory agency having jurisdiction. The Company agrees that it will comply with any future modifications of 47 CFR 76.31 within one year of adoption.

c. Complaints. The Company shall promptly investigate and resolve all service complaints and equipment malfunctions. The Company shall maintain a local business office for these purposes in Marietta, Pennsylvania, where a complete tariff governing the service to customers is on file. Said tariff shall also be on file with the Secretary of the municipality.

Section 8. (Rates) The rates charged by the Company hereunder shall be as follows:

Startup charge for installation or re-connection of 1st outlet.	\$20.00
Monthly Service	7.50
Additional TV startup charge for installation or re-connect plus \$2.00 monthly service	15.00
Additional FM outlet startup charge for installa- tion or re-connect plus \$2.00 monthly service	15.00
Startup for FM installation or re-connect, no charge if made at time of original installation.	
FM without TV startup charge for installation or re-connect plus \$7.50 per month	20.00
Re-location within existing home	5.00

\$20.00 re-connect startup charge after disconnected for non-payment.

\$5.00 startup charge re-connect after seasonal disconnect.

The Company shall not, except as hereinafter provided, increase rates without the permission and approval of the Board of Supervisors after a full public proceeding affording due process. The Board of Supervisors shall not unreasonably withhold approval of a rate increase upon the showing of need by the Company. Any application for rate increase shall be acted upon within sixty (60) days after submission thereof, and consent shall be deemed given if Township has not acted within said time.

Any rate increases necessitated by the payment of copyright fees shall be permitted without the approval of the Board of Supervisors, provided, however, that the Company first notify the Township in writing of its intention to increase its rates due to additional costs directly attributable to said copyright fees.

Section 9. (Transfer of Franchise) The Company shall not sell transfer or assign this franchise without the approval of the Board of Supervisors, which said approval shall not be unreasonably withheld. Board of Supervisors shall act on any application for assignment hereunder within sixty (60) days of its presentation; if action by Board of Supervisors is not forthcoming within such time period, the application to assign shall be deemed approved without further proceedings. Provided, however, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Township Secretary an instrument accepting the terms of the franchise and agreeing to perform all the conditions thereof.

Section 10. (Conditions of Street Occupancy).

a. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing the Company shall at its own cost and expense and in a manner approved by the Board of Supervisors, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced and shall maintain the restoration in improved condition for one year.

b. Relocation. In the event that at any time during this franchise the Township shall lawfully elect to alter or change the location or grade of any street, alley or other public way, or if in the opinion of the Board of Supervisors, a pole or pole line interferes with the necessary convenience of the Township or a property owner, then, upon reasonable notice by the Township the Company shall remove, relay and relocate its poles, wires and cables or other television fixtures at its own expense.

c. Placement of Fixtures. It is to be the general policy of the Township and it is understood by Company that where distribution lines are to be installed along any public street the same shall preferably be attached to existing utility poles rather than to additional poles placed by Company, and that where poles are to be placed in alleys, the same shall be located whenever possible on the same side of the alley as existing utility poles. It is understood and agreed that this restriction and limitation shall extend to any and all streets within the limits of the Township. Special exception or exceptions may be granted to Company by the Board of Supervisors upon written application to it by Company, but said exceptions shall be for good cause shown and in the sole discretion of the Board of Supervisors.

Before Company sets poles or constructs any structure on Township property it shall file with the Township detailed specifications showing the exact location, height and dimensions of the poles or structures to be erected. The poles or structures

shall not be erected thereafter until such specifications shall be approved in writing by the Supervisors. All wires, cables and other overhead equipment shall be at such minimum heights as are or may be required of telephone or power lines by the Public Utility Commission of Pennsylvania or the Pennsylvania Department of Transportation.

Where with respect to an application to set a pole or poles the Board of Supervisors of the Township are uncertain as to the exact location of the limits of the right-of-way of any street or alley, then in its discretion it may require the same to be surveyed by a surveyor selected by it, the cost of said survey to be paid by Company.

d. Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming in contact with wires and cables of the Company, all trimming to be done under the supervision and direction of the Board of Supervisors and at the expense of the Company.

e. Use of Poles and Fixtures. The Company agrees that it will furnish a copy of any contract entered into with any utility for the use of their poles by the Company setting forth the terms, conditions and duration of said contract. The Company agrees that the copy of the aforementioned contract will be filed with the Secretary of the Township prior to starting any installation of wires or other facilities on the Township streets under this franchise.

f. Removal of Service Drops from Premises of Subscriber. The Company shall, on request of any subscriber, promptly remove service drops and installations from the premises of such subscriber.



g. Removal of Wire, Poles and Installation from Township Streets. The Company shall remove or cause to be removed from the streets, alleys and public ways of the Township of Mount Joy and from all public property all of the wires, poles and installations of any kind or nature whatsoever which have been installed under the authority of this franchise upon the termination of this franchise, the cessation of operation under this franchise by the Company, its successors or assigns, for any reason whatsoever, or the forfeiture of this franchise under the provisions of Section 13 herein. In order to insure the performance of this provision, and the provisions, terms and conditions of this Ordinance, the Company shall post an adequate performance bond and continue the same in effect during the term of this franchise, said bond to be in the amount of Five Thousand (\$5,000.00) Dollars in favor of the Township with the surety or sureties thereon to be approved by the Township and with the bond to be approved as to form by the Township Solicitor.

Section 11. (Term of Franchise) The franchise and rights granted herein shall take effect upon the effective date of this Ordinance and shall continue in force and effect for a period of fifteen (15) years thereafter. At the option of the Company and with the approval of the Supervisors, upon review of the applicant's qualifications, the franchise may be extended for additional terms, each of fifteen (15) years. Any modifications of 47 CFR 76.31 or other Rules of the Federal Communications Commission shall be incorporated into this Franchise Ordinance within one (1) year of adoption, or at the time of franchise renewal, whichever occurs first.

Section 12. (Franchise Fee) The Company shall pay to the Township for the nonexclusive franchise granted herein a sum equal to three (3%) percent of the annual gross subscriber revenues within the Township; provided, however, that in no event shall the annual

payment be less than One Hundred (\$100.00) Dollars. The franchise fee shall be payable semi-annually on or before the 15th day of March and on or before the 15th day of October of each year. A duly authorized agent of the Township shall have the right to examine the appropriate books of the CATV Company in the Township to determine and verify the gross income from permitted operations in the Township.

Section 13. (Forfeiture) The Board of Supervisors may at any time declare a forfeiture of this grant for violation or default by the Company of any of the terms thereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given notice by the Township of such violation or default and of the attempt to declare a forfeiture. Thereafter if such violation or default shall continue for a period of more than ninety (90) days, except in the case of circumstances beyond the control of the Company, all the rights and privileges of said Company under the provisions of this Ordinance may be forthwith declared forfeited and revoked. If any action shall be instituted or prosecuted directly or indirectly by the Company, or by its stockholders, or creditors, to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the Board of Supervisors, to be expressed by ordinance. Provided, however, the Company shall not be deemed to be in default for performance of any provision of this grant, nor shall any forfeiture be invoked for any violation or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God, or any cause beyond the control of the Company.

Section 14. (Manner of Giving Notices) Whenever, by the terms of this Ordinance, notice is required to be given by the Township to the Company, it may be given by delivering to an officer of the Company a paper writing thereof during the ordinary business

hours at the principal office of the Company. Whenever the Company is required to give notice to the Township it shall do so by leaving or delivering a paper writing at the office of the Secretary of the Township during ordinary business hours.

Section 15. (Township Held Harmless) The Company will hold the Township harmless from the alleged violation of any utility franchise previously granted by the Township. The granting of a franchise under this Ordinance shall not be construed as any undertaking or guarantee of the efficiency of the Company or maintenance of the service of Company. The Township assumes no responsibility for the acts or omissions of the Company other than to require compliance with this Ordinance.

Section 16. (Severability) Should any section or part of any section of this Ordinance, for any reason, be declared void or invalid, the remainder of said Ordinance shall not be affected thereby.

Section 17. (Acceptance of Franchise) This grant is made upon the express condition that the Company, within thirty (30) days after this Ordinance takes effect and becomes operative, shall file with the Secretary of Township a written acceptance of the same, and when this Ordinance shall have been accepted by the Company, such Ordinance and acceptance shall constitute a contract between the Township and the Company for all the uses, services and purposes set forth in this Ordinance, and the Company by its acceptance of the provisions of this Ordinance binds itself to provide the necessary television antenna system and to establish, operate and maintain the local television antenna system contemplated in this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. In the event that said Company fails to file said

written acceptance within the time hereinbefore specified, this grant, together with any rights or liabilities arising out of the proposal heretofore made for the furnishing of an adequate television antenna system for the benefit of inhabitants of said Township, and the acceptance of such proposal by the Township, shall be of no effect and void.

Section 18. (Extension of Service) CATV service under this franchise shall be extended within four (4) years of the date hereof to all portions of the Township [excluding those areas having less than fifty (50) homes per mile] commencing within one year after receiving a certificate of compliance from the FCC and shall cover not less than twenty (20%) percent per year.

Section 19. (Repealer) Ordinance No. IX and all other Ordinances or parts of Ordinances inconsistent herewith expressly are repealed.

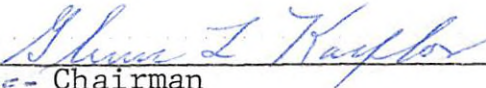
Section 20. (Effective Date) This Ordinance shall become effective five (5) days after enactment by the Board of Supervisors.

ORDAINED AND ENACTED this 8<sup>th</sup> day of December, A.D., 1977, by the Board of Supervisors of the Township of Mount Joy, Lancaster County, Pennsylvania, in lawful session duly assembled.

ATTEST:

TOWNSHIP OF MOUNT JOY

  
Secretary

By:   
Vice - Chairman

  
(SEAL)