

Ordinance

3-1006

ORDINANCE NUMBER _____

An Ordinance granting a non-exclusive right and franchise to Time Warner Entertainment - Advance/Newhouse Partnership to construct, operate, and maintain a cable television system in the Town of Eastover, South Carolina subject to the conditions, reservations, and limitations herein stated.

Be it ordained by the Town Council, the governing authority of the Town of Eastover, after having considered and approved, as part of a full public proceeding affording due process, the legal, character, financial, technical, and other qualifications of Time Warner Entertainment - Advance/Newhouse Partnership, as well as the adequacy and feasibility of it's construction arrangements:

SECTION I

In consideration of the faithful performance and observation of the conditions, reservations, and limitations hereinafter specified, the non-exclusive right and franchise is hereby granted to Time Warner Entertainment - Advance/Newhouse Partnership its heirs, successors and assigns (hereinafter referred to as "Franchisee") to engage in the business of operating and providing a cable television system providing broadband telecommunication services including cable service as defined in the Cable Communications Policy Act of 1984, and for that purpose to erect, install, construct, repair, replace, reconstruct, and maintain on, or over, under, upon, across, and along public streets, alleys, easements, or highways such poles, wires, cable conductors, ducts, conduit, vaults, manholes, amplifiers, appliance, attachments, and other property as may be necessary and appurtenant to the cable television system, and in addition, so to use, operate, and provide similar facilities or properties rented or leased from a public utility franchised or permitted to do business in the Town for the purpose of receiving, amplifying, and distributing television and radio signals for the use of the residents of the Town in all forms, in accordance with laws and regulations of the United States of America, the State of South Carolina, and the ordinances and regulations of the Town of Eastover for a period of fifteen (15) years from the effective date hereof and may be renewed for an additional fifteen (15) year period after the appropriate public proceeding affording due process in which the Town has reviewed the Franchisee's performance under the Ordinance. In the public proceeding concerning renewal, the Town will also consider the adequacy and consistency of the Ordinance with the Federal Communications Commissions (hereinafter referred to as "FCC") rules, as well as the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996, and make any necessary changes in accordance with Section XII of this Ordinance. The Town agrees that no franchise shall be granted on more favorable or less burdensome terms and conditions than those imposed upon the Franchisee.

SECTION II

By accepting the conditions, reservations, and limitations specified herein, the Franchisee agrees to continue providing cable television service to the areas of the Town currently served; provided, however, that the Franchisee shall not be obligated to extend its lines and provide service to those areas in which there are less than 30 homes per mile of cable plant that would be required to serve such homes, as measured from the nearest terminal point of the Franchisee's activated cable plant.

SECTION III

The poles or towers used by the Franchisee, its successors and assigns, or its television distribution system shall be so erected not to interfere with traffic over highways, streets, and alleys, and the location of poles, towers, or other obstructions shall be fixed with the prior written approval and under the supervision of the Town as to such locations, giving consideration to the reasonable operation of the system; provided further that such locations shall not be vested interest and such facilities shall be relocated by the Franchisee whenever they shall restrict or obstruct the operation or location of highways, streets, alleys, or public places.

SECTION IV

Permission is hereby granted to the Franchisee, its heirs, successors and assigns, to attach or otherwise affix cables or wires to the facilities of any public utility company, even though the same may cross over streets, easements, sidewalks, public land and highways of the Town, provided that the Franchisee secures the permission and consent of the public utility companies concerned to affix its cable and/or wires or other apparatus to their facilities.

SECTION V

All highways, streets, sidewalks, alleys, or public places, owned or controlled by the Town, disturbed or damaged in the construction or maintenance of the cable television system shall be promptly repaired by the Franchisee at its expense and to the satisfaction of the Town.

SECTION VI

The terms and provisions of the Ordinance may not be assigned without the prior written consent of the Town Council except to a company controlling, controlled by, or under common control with the Franchisee.

SECTION VII

The Franchisee shall hold the Town harmless from all claims for damages, including attorney's fees and court costs, arising out of the construction, maintenance, and operation of the cable television system. The Franchisee shall, at all times during the existence of this Ordinance, maintain in force, at its own expense, a general comprehensive liability insurance policy with an insurance company authorized to do business in the State of South Carolina, protecting the Town against liability for loss or damage for personal injury, death, and property damage caused by the operations of the Franchisee under this Ordinance, with minimum liability limits of One Million Dollars (\$1,000,000.) for personal injury or death of any one person, One Million Dollars (\$1,000,000.) for personal injury or death of two or more persons in any one occurrence, and One Million Dollars (\$1,000,000.) for damage to property resulting from any one occurrence.

SECTION VIII

The rights and privileges herein granted are upon the condition that the Franchisee shall pay to the Town, as consideration therefore, an annual franchise fee of three percent (3%) of gross revenues received by the Franchisee within the Town. Said annual franchise fee shall be paid by the Franchisee to the Town by the first day of March for the preceding calendar year.

SECTION IX

The Franchisee shall provide one (1) free Basic and Expanded Basic service outlet to Town buildings, fire houses, police stations, and public schools (K-12) located within 200 feet from the activated plant of the cable system. Service connections will be offered to other public schools located within the franchise area at cost. Upon request, the installation of internal wiring to serve additional outlets will be provided at the Franchisee's cost.

The Franchisee will provide free service connections, including any requested internal wiring for additional outlets to any private secondary school, as defined by, and receives funding pursuant to Title 1 of the Elementary and Secondary Education Act of 1965, which is located within 200 feet from the activated plant of the cable system. Basic and Expanded Basic service will be provided to each outlet in such schools free of any charges.

The Franchisee will offer such service connections to any other such private secondary schools located within its franchise service area at cost.

The Franchisee will provide a free monthly educational program listing to each connected school. Additional copies of program listings will be provided upon request at cost. Such educational program listing will identify and describe programming on the Franchisee's system that is appropriate for use in the classroom and will provide suggested curriculum support ideas.

SECTION X

The Franchisee agrees to comply with FCC rules and regulations, Part 11 pertaining to Emergency Alert Systems.

SECTION XI

The Franchisee reserves the right to drop, add, or substitute channels/services as government regulations or business decisions dictate, as well as in the interest of upgrading subscriber services.

SECTION XII

The Franchisee agrees that it will comply with all rules and regulations of the FCC, and the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996. The Franchisee and the Town also agree that any modifications of the FCC rules and regulations or the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996, resulting from amendment thereto, shall be incorporated into the Ordinance within one (1) year of adoption of the modification or at the time of the franchise renewal under the terms of this Ordinance, whichever occurs first.

SECTION XIII

The Franchisee agrees to indemnify and save the Town harmless from any and all claims for damages, including attorney's fees and court costs, through legal action by third parties for infringement of trademarks, patents and/or copyrights arising out of the operation of the cable television system therein franchised.

SECTION XIV

The cable television system franchised hereunder shall comply fully with the technical standards and all other rules and regulations of the FCC and shall be constructed, maintained, and operated so as to provide an efficient service of the highest practicable standards to its subscribers. The system will operate on a full-time basis, less normal maintenance time and conditions over which the Franchisee has no control including, but not limited to, acts of God, wars, riots, etc.

SECTION XV

Notwithstanding anything to the contrary contained herein, the Franchisee expressly reserves the right to pass through as an external cost any and all costs associated with meeting the requirements set forth in this Franchise in accordance with the rules and regulations of the FCC. Nothing contained herein shall be construed as an agreement to the contrary or a waiver by the Franchisee of the right to pass such costs through.

SECTION XVI

The Franchisee agrees to adopt procedures for the investigation and resolution of all complaints regarding the quality of service, equipment malfunctions, and similar matters in compliance with FCC customer service regulations. As part of its procedures, the Franchisee agrees to keep and maintain such a proper and adequate inventory of maintenance and repair parts of the cable television system. The Franchisee further agrees to have maintenance and repair crews available in accordance with good engineering practices. The Franchisee agrees to make reasonable efforts to respond to service complaints within one (1) business day of their receipt, and in compliance with FCC customer service rules. The Franchisee shall maintain a telephone service which subscribers may call without incurring additional message or toll charges. The Franchisee shall provide each subscriber with a notice of procedures for reporting and resolving complaints at the time of initial subscription to the cable system.

SECTION XVII

In the event that the Franchisee is in default in any of the material terms and conditions hereof and it fails to make substantial efforts to correct said default within ninety (90) days after being served in writing by the Town with notice of such default, then, and in that event, and after affording the Franchisee a time to be heard, the Town shall have the right and option to terminate the franchise; provided, however, that no default caused by reasons outside the Franchisee's control shall be considered to be cause for termination. This section does not preclude the Franchisee from the right of appeal to a court of law of any final decision made by the Town. Upon termination of the franchise, the Franchisee shall have one hundred and twenty (120) days in which to remove its cable television facilities. If at the end of said period Franchisee has failed to remove its facilities, the Town shall have the right to remove said facilities at the expense of the Franchisee, and without incurring liability.

SECTION XVIII

If any section, sub-section, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court or federal regulatory agency, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portions thereof.

This Ordinance shall take effect on the date of the third reading approval by the Town Council.

Done in Council this 11th day of October, 1999.

MAYOR: Geraldene Roberson

TOWN CLERK: Debbie Dove

First Reading: 08-02-99

Second Reading: 09-20-99

Third Reading: 10-11-99

CERTIFICATION OF ACCEPTANCE BY FRANCHISE

Time Warner Entertainment - Advance/Newhouse Partnership hereby accepts and agrees to the terms and provisions of this Franchise.

DATE: _____

PARTNERSHIP

TIME WARNER ENTERTAINMENT -
ADVANCE/NEWHOUSE

BY: _____

WITNESS:

Printed Name of Officer and Title

This Ordinance shall take effect on the date of the third reading approval by the Town Council.

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TOWN CLERK: Deirdre Dove

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