

ORDINANCE NO. 73

AN ORDINANCE GRANTING TO WARNER CABLE OF VIRGINIA INC.  
(FORMERLY PENINSULA CABLE CORPORATION) ITS SUCCESSORS AND ASSIGNS  
THE NON-EXCLUSIVE LICENSE TO CONSTRUCT, MAINTAIN AND OPERATE  
TRANSMISSION AND DISTRIBUTION FACILITIES IN, UNDER, OVER, ALONG,  
ACROSS AND UPON THE STREETS, LANES, AVENUES, ALLEYS, BRIDGES,  
HIGHWAYS AND OTHER PUBLIC PLACES IN THE COUNTY OF JAMES CITY,  
VIRGINIA, FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION BY  
CABLE, OF AUDIO AND VIDEO AND OTHER IMPULSES IN CONNECTION  
WITH THE OWNING AND OPERATING OF A CABLE COMMUNICATIONS (CATV)  
SYSTEM FOR THE INHABITANTS OF SAID COUNTY AND OTHER RELATED  
PURPOSES, FOR A PERIOD OF FIFTEEN YEARS, AND REGULATING THE  
SAME.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia; pursuant to Section 15.1 - 23.1 of the Code of Virginia, public notice having been given and all requirements of due process having been complied with as follows:

SECTION I

In the consideration of the faithful performance and observance of the conditions, restrictions and reservations hereinafter specified, the non-exclusive right and privilege (herein called the License) is hereby granted to WARNER CABLE OF VIRGINIA INC. (formerly Peninsula Cable Corporation) its successors and assigns, hereinafter called the "Grantee", whose legal, character, financial, technical and other qualifications, and the adequacy and feasibility of whose construction arrangements, have been approved by the Board of Supervisors to construct, maintain, and operate for a period of fifteen (15) years from the date of passage of this Ordinance, an audio and video (television) transmission and distribution system and its necessary facilities, additions thereto, in, under, over, along, across and upon streets, lanes, avenues, alleys, sidewalks, bridges and highways and other public places in the County of James City, Virginia, for the purpose of transmission and distribution of audio and video (television) and other impulses and energy, in connection with owning and operating a cable communications (CATV) system, in accordance with the laws of the United States of America, the State of Virginia and Ordinance of the County of James City, Virginia

SECTION II

Whenever used herein, the words "Audio", "Video", and "Television" shall mean a system for transmission of audio signals and transient visual images by means of electrical impulses.

### SECTION III

The distribution system of the Grantee shall be underground, except, that the Grantee shall have the right to use the poles erected and maintained by the locally franchised Telephone Company and/or the locally franchised Power Company; provided mutually satisfactory rental agreements can be entered into with said companies. Where such locally franchised underground conduits and poles are not available, the Grantee shall underground its own distribution system. The location of underground conduits shall be under the supervision and with the approval of the County Administrator. (Service lines installed by Grantee to individual residences or places of business shall be installed underground if any such residence or place of business is, at the time of such installation by Grantee, then served by either underground electric service or underground telephone lines.) Grantee shall not, during the term of this permit, oppose the adoption by James City County, of lawful ordinances or regulations requiring that all public utility service lines be installed underground.

### SECTION IV

The Grantee's transmission and distribution system, poles, wires and appurtenances, and underground conduit installations, shall be located, constructed and maintained so as not to endanger or interfere with the lives of persons or interfere with any improvements or additions the County may deem proper to make from time to time, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, or other public property; removal or relocation of any part of the Grantee's transmission and distribution to avoid such interference shall be at the Grantee's expense.

## SECTION V

In the maintenance and operation of the television transmission and distribution system in the County of James City and in the course of construction or additions to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public place made by the Grantee in the course of its operations or the operations of its successors or assigns, shall be approved by the Virginia Highway Department and shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during period of dusk and darkness shall be designated by warning lights of approved types.

Whenever the Grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway, or other public place, the same shall be replaced and the surface restored in as good condition as before entry within forty-eight (48) hours after completion of the Grantee's work. Upon failure of the Grantee to make such restoration within such time, or to begin such restoration within such time, if the restoration cannot be made within such time, or upon the Grantee's delay of more than twenty-four (24) hours in the continuation of a restoration begun, the Virginia Highway Department may serve upon the Grantee notice of the Highway Department's intent to cause restoration to be made, and unless the Grantee, within twenty-four (24) hours after receipt of such notice, begins or resumes the proper restoration, the Highway Department may cause the proper restoration to be made, including the removal of excess debris, and the reasonable expense of same, as itemized, shall be paid by the Grantee upon demand by the Highway Department.

SECTION VI

The Grantee shall have the right to prescribe service rules and regulations for the conduct of its business not inconsistent with the provisions of this and other ordinances of the County.

SECTION VII

The Grantee shall provide channels for the reception of the maximum number of "local" commercial and non-commercial television stations and the maximum number of "distant" independent stations and, in addition, may provide programs of other types and from other sources, making available a wide selection of programming and services to its subscribers, all pursuant to and consistent with FCC rules and policies and subject to prior approval of the FCC, if necessary. Initially, Grantee shall provide not less than twelve (12) commercial channels with public access, educational and governmental channels. Grantee will provide in James City County or in the City of Williamsburg adjacent thereto a minimal black-and-white on site transmission facility for public and governmental access. Grantee will maintain in the City of Hampton a mobile color transmitting facility to which access will be available from James City County subject to reasonable scheduling limitations.

SECTION VIII

The Grantee's distribution system shall conform to the rules prescribed by the Federal Communications Commission with respect to maximum tolerance for spurious radiation.

SECTION IX

The Grantee's receiving equipment, transmission and distribution lines and related electronic components shall be installed and maintained so as to provide pictures on subscriber

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receivers throughout the system essentially of the same visual quality as those received at the antenna site. The Grantee shall not engage in any phase of renting, selling, or servicing (other than making normal adjustment on) any television sets or receivers. Violation of this section of the ordinance shall be just cause for cancellation of the Grantee's rights hereunder.

#### SECTION X

Installation and maintenance of equipment shall be such that the standard NTSC color signals shall be transmitted with fidelity to any subscriber color receiver. As expeditiously as possible after receipt of subscriber complaints regarding quality of service, equipment malfunctions, and similar matters, the Grantee shall investigate such complaints and resolve them to the extent reasonably possible, and agents shall be available in the County for such purposes.

#### SECTION XI

All rules, regulations, and policies of the Federal Communications Commission shall be followed including, but not limited to, non-duplication protection and carriage.

#### SECTION XII

The Grantee shall indemnify, protect and save harmless the County from and against losses and physical damages to property, bodily injury or death to persons, including payments made under any workmen's compensation law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments on poles within the County, or by any act of the Grantee, its agents or employees. The Grantee shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly

from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damage to property shall not be less than twenty-five thousand dollars as to any one accident and not less than two hundred thousand dollars aggregate in any single policy year; and against liability due to bodily injury or to death of persons not less than one hundred thousand dollars as to any one person and not less than three hundred thousand dollars as to any one accident. The Grantee shall also carry such insurance as it deems necessary to protect it from all claims under any workmen's compensation laws in effect that may be applicable to the Grantee. All insurance required by this agreement shall be and remain in full force and effect for the entire life of this agreement. Said policy or policies of insurance or a certified copy or copies thereof shall be approved by the County Administrator.

#### SECTION XIII

If the Grantee shall fail to comply with any of the provisions of this License, or default in any of its obligations, except for causes beyond the reasonable control of the Grantee, or shall fail within ninety (90) days after written notice from the County, to correct such default or non-compliance, the Board of Supervisors shall have the right to revoke this License and all rights of the Grantee hereunder.

#### SECTION XIV

At the time this License becomes effective, the Grantee shall furnish a bond to the County in the amount of ten thousand dollars, in such form and with such sureties as shall be acceptable to the County, guaranteeing the payment of all sums, which may at any time become due from the Grantee to the County under the terms of this grant (except such sums as are covered by the insurance provided in Section XII), and further guaranteeing the faithful performance of all the obligations of the Grantee

under the terms of this License.

#### SECTION XV

Should any Section, Clause, or Provision of this License be declared invalid by a Court of Law, or by an administrative agency, it shall not affect the validity of the License as a whole or any part hereof, other than the part declared invalid. Any modifications of the provisions of Section 76.31 of the Rules of the FCC relating to franchise or licensing standards shall be incorporated in this license within one (1) year of adoption of the modification, or at the time of renewal of the license whichever occurs first.

#### SECTION XVI

This License shall be between the County of James City, Virginia, and the Grantee or its successors or assigns and shall take effect and be in force for fifteen (15) years from the date of its passage by the Board of Supervisors of the County of James City and the ratification and acceptance of its terms in writing by the Grantee within sixty (60) days of the awarding of this License. Ratification and acceptance of this License shall be accomplished by delivering to the County Administrator the following: (1) Its written acceptance of this License; (2) A duly executed bond in favor of the County in the sum of ten thousand dollars (\$10,000.00), conditioned and approved as provided in Section XIV hereinabove; and (3) Certificates of liability insurance, conditioned and approved as provided in Section XII hereinabove. At the expiration of the fifteen year License term the License may be renewed, upon approval after the exercise of due process by the Board of Supervisors, for three consecutive five-year periods, subject to all Federal and State regulations.

#### SECTION XVII

The rights and privileges hereby granted and conferred shall lapse and terminate and this License shall be forfeited unless the Grantee shall, within one year from the date of FCC certification of this License, commence operating its system for providing the Community Antenna Television services herein provided for. The Grantee shall accomplish significant construction within one (1) year after receiving FCC certification, and shall thereafter, each year, equitably and reasonably extend energized trunk cable to a substantial percentage of the potential subscribers in the County based on concentration of population in accordance with FCC requirement. Grantee shall apply for FCC certification within thirty (30) days of grant of this License and shall diligently prosecute same.

#### SECTION XVIII

The Grantee agrees that the maximum connection charges and monthly service charges as shown on the rate schedule hereto attached as Exhibit A shall not be increased for a period of two years beginning on the date when service is first provided to subscribers in James City County, provided, however, that the installation charges shown on the attached schedule shall apply where the structure to be connected is within 200 feet from a public way. If such structure be more than 200 feet from a public way, the installation charge may be increased not more than \$5.00 for each 25 feet in excess of 200 feet.

After the two year period set forth above, Grantee agrees that its regular installation cost shall not exceed \$25.00 per connection and that the monthly service charge for regular subscriber service shall not be more than \$6.00 per month per connection. In the event that the Grantee shall feel that charges for regular services are insufficient or are in-

equitable in any manner, the Grantee may apply, after advertisement required by law, to the Board of Supervisors for a revision of such charges. The Board of Supervisors may revise the maximum limits of such regular charges as herein established, provided that the determination of the Grantee's rates shall be subject solely to the rules and regulations of any State or Federal authority which may subsequently, by due process of law, acquire jurisdiction over this type of industry or enterprise. Notwithstanding anything herein to the contrary, no increases in rates charged for regular subscriber services above the maximum set forth above shall be made except as authorized by the Board of Supervisors after an appropriate public proceeding affording due process.

#### SECTION XIX

This license shall not be assignable except with the approval of the Board of Supervisors (and such approval shall not unreasonably be withheld), and the rights and privileges of this license shall not accrue to any successor, assignee or designee until there is filed with the County Administrator the ratification and acceptance of this license (as to any successor, assignee, or designee) as is required of the Grantee in Section XVI hereinabove, and the assignment and succession of such rights and privileges has been approved by said Board.

#### SECTION XX

In consideration of the grants contained herein, the Grantee agrees to pay annually to the County of James City a sum equal to three per cent of the gross annual revenues derived from its regular subscriber services under this license.

The term "regular subscriber services" shall mean all revenue derived from monthly service charges to residential, commercial and institutional subscribers of whatever nature for

connections to Grantee's system, but shall not include advertising revenue and other revenues of Grantee derived from the use of Grantee's system by others.

Grantee agrees to provide a statement of the gross annual revenues derived from its regular subscriber service within 60 days of the end of each calendar year (or Grantee's fiscal year) which shall be certified under oath by an officer of the Grantee.

SECTION XXI

This Ordinance is adopted in the interest of the Public welfare and convenience.

SECTION XXII

This Ordinance shall be in full force and effect from and after September 15, 1973.

Adopted by the Board of Supervisors of James City County, Virginia, August 13, 1973.

PENINSULA CABLE CORPORATION  
RATE SCHEDULE - JAMES CITY COUNTY

<u>RESIDENTIAL DWELLING UNITS</u>	<u>INSTALLATION</u>	<u>MONTHLY SERVICE CHARGE</u>
First Connection	\$19.95	\$5.95
Each Additional Connection	5.00	2.00
Move to Another Dwelling	5.00	
Relocate Within Same Dwelling	5.00	
Reconnect	5.00	
Dwellings more than 200 feet from a public way	add 5.00 for each 25 feet over 200 feet	

COMMERCIAL UNITS (Bars, Restaurants, Clubs, and other places of public gatherings)

Each Connection	Time and Material	5.95
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HOTELS, MOTELS, HOSPITALS, & OTHER INSTITUTIONS

First Connection	Time and Material	5.95
Each Additional Connection (up to 50)	" "	2.00
Each Additional Connection (over 50)	" "	1.50

SCHOOLS, POLICE STATIONS, FIRE HOUSES & TOWN HALL

First Connection	Free	Free
Additional Connection	Time and Material	5.95

SUPPLEMENTAL RATE INFORMATION

- A. Multiple Dwelling Units - treated the same as Residential Dwelling
- B. When a Subscriber specifically requests unusual or non-standard routing of our cable, Installation Charges will be based on Time and Material costs.

EXHIBIT A