

**A Resolution Finding That Warner Cable Communications, Inc., Is Not In Compliance With Certain Provisions Of The Non-Exclusive Cable Franchise Granted To It, and Providing Warner Cable Communications, Inc., With Notice Of And Opportunity To Cure Such Non-Compliance Pursuant To Section 626 (d) Of The Cable Communications Policy Act Of 1984, 47 U.S.C. & 546 (d).**

**Whereas**, On May 16, 1979, **Union Township** adopted Resolution 2/79 awarding a non-exclusive cable television franchise to Warner Cable Communications, Inc. (hereinafter "Warner Cable") to construct, operate and maintain a cable television system. (Resolution 2/79) being hereinafter referred to as the "Cable Franchise Ordinance"); and

**Whereas**, **Union Township** is a party to an Agreement For Participation In A Regional Council Of Governments to foster cooperation among the political subdivisions with respect to the administration and regulation of the cable television franchises granted by member communities, and by which the Intercommunity Cable Regulatory Commission (hereinafter "ICRC") was established for the purpose of administering and regulating such cable television franchises, including the Cable Franchise Ordinance; and:

**Whereas**, pursuant to Section XXVI of the Cable Franchise Ordinance, on or about the fifth and tenth anniversary of the effective date of the Cable Franchise Ordinance, the ICRC scheduled and held public meetings with Warner Cable on June 25, 1985 and May 16, 1989 to review Warner Cable's performance under the Cable Franchise Ordinance; and

**Whereas**, based on extensive review and after extensive dialogue, exchange of information and numerous meetings between ICRC representatives and Warner Cable representatives, the ICRC has advised Warner Cable and **Union Township** that the ICRC has concluded that Warner Cable has not complied with and is currently not in compliance with several provisions of the Cable Franchise Ordinance; and

**Whereas**, Section 626 (d) of the Cable Communications Policy Act of 1984, 47 U.S.C. & 546 (d), provides that a franchising authority may not base a denial of renewal of a cable television franchise on a failure to substantially comply with the material terms of the franchise or on a failure to provide a quality of service, including signal quality, response to consumer complaints, and billing practices, that is reasonable in light of community needs unless the franchising authority has provided the franchisee with notice of and the opportunity to cure such failures, or in any case in which it has been documented that the franchising authority has waived its right to object or has effectively acquiesced to such failures; and

**Whereas**, the Trustees of **Union Township** has advised Warner Cable in writing, at least thirty days prior to this meeting, as to its time, place and purpose, and caused to be published a notice, at least once, ten days before this meeting in a newspaper of general circulation within the **Union Township**.

Now, Therefore, Be It Resolved by the trustees of **Union Township** all elected member thereto concurring, that:

**Section I.** The Trustees of **Union Township** hereby finds that Warner Cable has not substantially complied with, and currently is not in substantial compliance with, the Cable Franchise Ordinance in the following material respects:

1. **Live Access and Community Programming.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable will provide equipment and studio facilities for local access programming that, among other things, are "equipped to allow for the production of live programming". Exhibit A further states that "Warner Cable is committed to local programming" and will provide a system with "A flexible format that includes regular live locally-oriented programs". Exhibit A also states that, through the use of mobile mini-cam units and related equipment, "local events can be presented live on one of Warner's community channels". Exhibit A further provided that "communities serviced by Warner Cable could avail themselves of Warner mini-cam units to obtain professional, live coverage of local events and activities". Exhibit A also specifically contemplated that public access users could make "live studio presentations".

Notwithstanding these provisions, Warner Cable has not, and does not now, provide adequate facilities capable of producing and delivering live access programming. Moreover, Warner Cable has not, and does not now, provide live coverage of local events over a community programming channel.

2. **Public Access Training.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable propose(s) to conduct a series of ongoing Warner Cable TV Workshops, where experts in the areas of programming and TV operations and production would demonstrate how individuals and organizations can use a cable television. In addition to providing a broad base of knowledge and understanding about this vital medium, these workshops would be designed to encourage citizens to develop and produce their own programs. These workshops would be publicized and presented in a professional manner in order to encourage maximum participation by residents of your community.

Exhibit A further states that Warner Cable will conduct "training sessions" on the use of public access equipment and facilities and that such training sessions will "generally be held bi-monthly".

Notwithstanding these provisions, Warner Cable has failed to conduct "Warner Cable TV Workshops" on an "ongoing" basis during the franchise term to date, and it has not publicized such workshops in a way to encourage maximum participation by community residents. In addition, Warner Cable has not conducted training session for use of public access facilities and equipment on a bi-monthly basis throughout the franchise term to date. Because of public demand and Warner's failure to provide these classes the ICRC has been providing the above mentioned classes without compensation from Warner Cable since 1985.

3. **School Loops** Section XIII(A) of the Cable Franchise Ordinances provides that Warner Cable shall install one interactive service drop and one educational closed circuit without initial or monthly charge to schools as listed in the Franchise Ordinance. Section XIII(A) further provides that this education loop shall be interconnected to the School District.

Notwithstanding Section XIII(A), Warner Cable has not installed the required educational loop, much less interconnected that loop with the School District Educational Loop. Warner Cable thus has failed to comply with Section XIII(A) of the Cable Franchise Ordinance.

4. **Governmental Loop.** Section XIII(B) of the Cable Franchise Ordinance provided that Warner Cable shall install one interactive service drop and one closed circuit governmental drop without initial or monthly charge to the locations in **Union Township** as described in the Franchise Agreement.

Notwithstanding Section XIII (B), Warner Cable has not installed the required governmental loop. Warner Cable thus has failed to comply with Section XIII (B) of the Cable Franchise Ordinance.

5. **Narrowcasting.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provided that the cable system constructed and operated by Warner Cable will have "narrowcast capability, i.e., the capability to present closed circuit messages and program to designated households. It further provided that **Union Township** will have its own local hub site where locally originated programming to be viewed only by the local community can be inserted. Exhibit A also provides that Warner Cable's system will have four channels with narrowcasting capability and that one of these channels will be set aside especially for local community programming, such as (city etc. ) council meeting, public hearings, two-way mayor/city manager forums, special interest group meetings, and continuing education/in-service credit programming.

Notwithstanding these provisions, Warner Cable's system is not capable of providing the narrowcasting services set forth in its proposal, at least not without the installation of additional electronics and drops, which Warner Cable has not installed. Thus, Warner Cable has failed to comply with the narrowcasting provisions in its proposal, which were incorporated into the Cable Franchise Ordinance.

6. **Local Origination Programming.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference and made a part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable will produce and distribute over its cable system locally originated, community programming. Warner Cable proposed to devote a channel on its system, called "Butler County Alive," to local origination programming. The channel would include such local programming as Butler County Alive, Hats Off To You, Issue Forums, County Calendar, and special events, such as school events, fine arts programs parades and festivals, theatrical and music performances, sporting events, and periodic week-long salutes to individual ICRC member communities. Warner Cable also proposed to conduct ongoing workshops to encourage local citizens to participate in developing local origination programming, and to staff and equip a local Programming Department, which would have responsibility for the production of locally originated programming in the Warner Cable studios and at remote locations. Warner Cable also stated the "ratings cannot determine the success or failure of its local origination programming. Its objective it to provide and outlet and forum that will provide opportunities for exposure to all kinds of people, places, and ideas."

Notwithstanding these provisions, Warner Cable has discontinued providing the local origination programming and production and support for such programming promised in its proposal. Warner Cable discontinued its local origination programming in 1983. It has thus failed to comply with the local origination programming provisions set forth in its proposal and incorporated into the Cable Franchise Ordinance.

7. **Central Studio Facilities.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable will construct a cable system that includes a central studio and operations facility with network quality production equipment. It further provides that each community will have access to these extensive central studio and computer facilities. The proposal also provided that the central studio facilities would include production studios; playback facilities; an equipment repair center; requisite lighting and furnishings; control room equipment with

necessary switching and special effects; a computer terminal capable of providing interactive communications with subscribers; equipment to enable the simultaneous stereophonic transmission of audio portions of local programs on the FM band and monaural transmission with the video picture; computer equipment capable of placing alpha-numeric information on a channel from keyboards at locations within each community; a video playback center with a 3-machine playback chain and controlling device to sequence videotape players; tape editing and library facilities; and an audio playback center. From this central studio facility, Warner Cable promised to regularly draw on the significant community events and personalities around Butler County to produce more local interactive programming than has even been experienced in television.

Notwithstanding these provisions, Warner Cable failed to make the central studio facilities promised in its proposal available to **Union Township** residents, or the ICRC. The only studio facilities constructed and maintained by Warner Cable in the area are those located at Blue Ash. The Blue Ash studio, however, lacks many of the capabilities set forth in Warner Cable's proposal, since 1983 has not been used by Warner Cable to produce and deliver the local programming promised in its proposal, and has not been made available for use by residents of **Union Township**. Thus, Warner Cable has failed to comply with the provisions of its proposal concerning central studio facilities that are incorporated into the Cable Franchise Ordinance.

8. **Mobile Mini-Cam Units.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable will provide several mobile mini-cam units for remote program production. It further provides that the mobile mini-cam units will be equipped with full color video production equipment as well as video recorders and short-range microwave. By letter to Aaron Mackey dated April 13, 1979, Warner Cable supplemented its Exhibit A proposal to provide a list of the equipment to be included in each mobile mini-cam production unit. The Exhibit A proposal also provides that the mini-cam units would be available to provide professional, live coverage of local events and activities, and that a sufficient number of the units will be provided to meet the local programming needs of all the communities Warner Cable serves. Warner Cable also represented that the mobile mini-cam units would be part of facilities with substantial capability for the production of local interest programming from remote locations throughout **Union Township**.

Notwithstanding these provisions, Warner Cable has failed to provide or make use of mobile mini-cam units in the number and manner set forth in its proposal, as incorporated in the Cable Franchise Ordinance.

9. **Emergency Override Capability.** Section XIX of the Cable Franchise Ordinance provides:

**In the event of an emergency or disaster, the Grantee shall upon request of the Township make available its facilities to the Township for emergency use during the period of such emergency or disaster and shall provide such personnel as necessary to properly operate under the circumstances.**

**The Grantee shall incorporate into its facilities the capability for an emergency interrupt whereby the Township in times of crises may be able to introduce a bulletin on all channels simultaneously.**

Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides:

Warner Cable will utilize emergency alert equipment similar to CADCO or equivalent. This equipment will preempt programming on all cable channels with an audio override. Township officials could use this equipment to broadcast emergency instructions to residents in the event of civil disaster. The equipment is normally activated via a special phone located at Police Headquarters or another designated Township facility.

Notwithstanding these provisions, neither Union Township nor the ICRC has been able to assure itself that Warner Cable's system has the emergency override capability required under the Cable Franchise Ordinance. Warner Cable representatives have stated that the capability exists, but have not demonstrated this to Union Township or the ICRC.

Every ICRC community would like to witness Warner Cable conducting tests to prove that the cable system has the required emergency override capability specified in the Cable Franchise Ordinance.

10. **Expanded Service.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made part of the Cable Franchise Ordinance under Section III thereof, provides that Warner Cable will provide three levels of service, "Economy Service," "Expanded Service", and "QUBE Interactive Service". It further provides that Expanded Service would comprise 30 channels, including nine company originated channels and five public access channels. The QUBE Interactive Service would provide all of the programming on Economy and Expanded Service plus six additional, two-way interactive channels. The proposal also represented that Warner Cable proposed to offer these three different levels of service to allow residents to select a package that meets their particular viewing tastes and monthly budgets.

Notwithstanding these provisions, Warner Cable has restricted its service offerings in such a manner as to give residents an effective choice of only two, rather than three, levels of service. Warner Cable has accomplished this effective reduction in service levels by altering its rates to that the rate for Expanded Service is now the same as the rate for QUBE Interactive Service, whereas the rate for Expanded Service was originally between the rates for Economy Service and QUBE; indeed, the rate differential between Economy and Expanded Service was originally less than the differential between Expanded Service and QUBE Interactive Service. As a result of Warner Cable's actions, residents now have an effective choice of only two levels of service to meet their individual viewing tastes and monthly budgets, despite the proposal representation that three levels were needed to meet residents' tastes and budgets. Warner Cable has thus failed to provide the breadth of service/price offerings set forth in the proposal, as incorporated in the Cable Franchise Ordinance.

11. **Operational Reports.** Section XVII of the Cable Franchise Ordinance provides:

A. Within six (6) months from the effective date of this ordinance, the Grantee shall submit to the Trustee President a plan for the entire Township indicating the date on which the Grantee expects the installation of the CTS will be completed and available for services to subscribers in the various areas of the Township.

B. The Grantee shall furnish the Township President with progress reports indicating in detail, the area of construction of the CTS. Such periodic reports shall be furnished at six (6) month intervals, the first report to be made nine (9) months from the effective date of this Ordinance.

Notwithstanding the provisions of Section XVII, Warner Cable has failed to furnish the Township President the reports required by that Section.

**12. Reports on Franchise Payments.** Section V(A) of the Cable franchise Ordinance provides that Warner Cable shall "File with the City within forty-five (45) days after the expiration of its fiscal year, during the period this franchise shall be in force, a financial statement showing in detail the gross annual receipts as defined herein of Grantee during the preceding year". Section V(A) further provides that Warner Cable shall "file, within ninety (90) days following the conclusion of each fiscal year of the Grantee, and annual report showing the yearly total gross receipts and payments to the Township and any further relevant financial information in regard to the company as may be required by the Township President.

Notwithstanding these provisions, Warner Cable has failed to file the annual financial statements and reports required by Section V(A).

**13. Maps, Annual Shareholder Reports, and Shareholder List.** Section IX of the Cable Franchise Ordinance provides in pertinent part:

**A. The Grantee shall file with the Township President true and accurate maps or plats of all existing and proposed installations upon the streets. These maps and plats shall conform to the requirements of the Township President and shall be kept continuously up to date.**

**B. The Grantee shall file annually with the Treasurer, within ninety (90) days after the end of the Grantee's fiscal year, a copy of the annual report to its stockholders. This report shall be submitted with such other reasonable information as the Township President shall request with respect to the Grantee's properties, income and expenses related to its CATV operations within the Township.**

**C. The Grantee shall continually keep on file with the Treasurer a current list of its shareholders holding over five (5%) percent of the outstanding stock and officers with their current addresses.**

Notwithstanding these provisions, Warner Cable has:

(a) failed to file and continuously update the maps or plats required by Section IX(A), having provided a map of its cable system for the first time in 1989;

(b) failed to file annually the annual report to shareholders required by Section IX (B); and

(c) failed to file and update the list of shareholders, officers and addresses required by Section IX(C).

**14. Home Security Services.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provided that, through the combination of QUBE technology, time-tested sensing devices and proprietary Warner interface equipment, Warner Cable will provide to residents and businesses of **Union Township** a sophisticated security system designed to monitor subscriber detection devices which include burglary, fire, and emergency medical monitors.

Notwithstanding these provisions, Warner Cable has failed to offer or provide the home security services set forth in its proposal as incorporated in the Cable Franchise Ordinance. Warner Cable discontinued offering such services on or about 1984.

15. **Interactive Programming.** Exhibit A to the Cable Franchise Ordinance, which is incorporated by reference in and made a part of the Cable Franchise Ordinance under Section III thereof, provides that, as part of QUBE Interactive Service, Warner Cable will provide a variety of two-way interactive services to subscribers, including but not limited to the ability to purchase wide variety of special events such as ballet, opera, rock concerts, and special sporting events; the ability to take courses at home from local colleges and universities; self-improvement courses; the ability to participate in local community programming from their homes; the ability to participate in public issues forums and local governmental proceedings; the ability to take exams, tests, and quizzes at home; and play competitive interactive games. These QUBE interactive services proposed by Warner Cable were in addition to; and separate and apart from, use of QUBE interactive technology to provide pay-per-view premium movies. Warner Cable further represented that QUBE interactive two-way service would be "devoted to local programming".

Notwithstanding these provision, Warner Cable has failed to provide the breadth of two-way interactive services promised in its proposal and incorporated in the Cable Franchise Ordinance. Instead, Warner Cable provides only pay-per-view premium movies and events. Warner Cable has consequently failed to comply with the provisions relating to two-way interactive services set forth in its proposal and the Cable Franchise Ordinance.

16. **Transfer of the Cable System Without Prior Notice And Consent Of Union Township,** Section XXIII of the Cable Franchise Ordinance provides, among other things, that the franchise may not be assigned or transferred, nor, may control of Warner Cable be changed, transferred or acquired, without prior notice and filing of a petition with **Union Township** and without the prior consent of **Union Township**.

Notwithstanding these provisions, a transfer of the Franchise and a transfer of control of Warner Cable within the meaning of Section XXIII of the Cable Franchise Ordinance was effected on or about July 24, 1989, through the purchase of more than 50 percent of the outstanding shares of Warner Communications, Inc., by Time, Inc. Such transfer was effected without prior notice and filing of a petition with **Union Township** relating to such transaction and without the prior consent of **Union Township** all in violation of Section XXIII of the Cable Franchise Ordinance. On September 19, 1989 Resolution 7-89, An Resolution Disapproving The Transfer Of The Non-Exclusive Cable Television Franchise Held By Warner Cable Communications, Inc., Effected By Consummation Of The Tender Offer Of Time, Inc., For Warner Communications, Inc. Without The Prior Consent Of **Union Township** Denying The Consent Of **Union Township**, To Such Transfer; And Directing The Intercommunity Cable Regulatory Commission To Take Appropriate Action. Resolution 7/89 is incorporated by reference herein and made a part hereof.

17. **Failure To Cooperate In Securing A Waiver From The FCC Relating To Franchise Fee Payments.** Section V(A) of the Cable Franchise Ordinance provides in pertinent part of "(a)n additional two (2%) percent of gross receipts will be paid by the Grantee for the funding of local access programming at such time as **Union Township** prepares and the Federal Communications Commission approves a plan for the conduct, administration and funding of public access programming in the community".

In the spring of 1983, the ICRC, on behalf of **Union Township** and other ICRC member communities, filed with the Federal Communications Commission ("FCC") a petition for special relief from the FCC's then-existing rules limiting franchise fee payments by cable operators to municipalities to three (3%) percent of gross annual revenues. The ICRC petition requested that the FCC grant a waiver of then-existing FCC rules limiting franchise fee payments by cable operators to municipalities to three (3%) percent of gross annual revenues. The ICRC petition requested that the FCC grant a waiver of then-existing FCC rules and approve the payment of a five (5%) percent franchise fee to the ICRC by Warner Cable as contemplated in the Cable Franchise Ordinance. Section V(A) of the cable Franchise Ordinance contemplated, and

representatives of Warner Cable agreed, that Warner Cable would cooperate with the ICRC in obtaining the FCC waiver contemplated in Section V(A). However, Warner Cable failed to cooperate with the ICRC in a timely manner and was delinquent in providing its written support to the waiver petition, which was needed as an attachment to the petition. As a result, the filing of the petition was delayed for two years. The Cable Communications Policy Act of 1984, which specifically permitted the five (5%) percent franchise fee contemplated by Section V(A), was subsequently enacted by Congress, thereby mooting the ICRC's petition at the FCC.

As a result of Warner Cable's delay, the ICRC was deprived of additional franchise fees in the amount of two (2%) percent of Warner Cable's gross annual revenue for a period of approximately two years. This shortfall in franchise fee revenue was the direct result of Warner Cable's failure to fulfill its commitment to cooperate in the filing and obtaining of an FCC waiver as contemplated by Section V(A) of the Cable Franchise Ordinance.

**Section II.** The grounds of Warner Cable's non-compliance with the Cable Franchise Ordinance set forth in Section I hereof are not exclusive, and are without prejudice to any subsequent finding by **Union Township** nor the ICRC with respect to any additional grounds of non-compliance.

**Section III.** Without waiver of or superseding prior notice and opportunity to cure provided by **Union Township** and the ICRC. This Resolution is explicitly intended to constitute notice to Warner Cable of its failure to substantially comply with material terms of the Cable Franchise Ordinance and of events to be considered under Subsection 626(c) (1) (B) of the Cable Communications Policy Act of 1984, 47 U.S.C. and 546 (C) (1) (B), and of Warner Cable's opportunity to cure the same, all as required by Section 626 (d) of the Cable Communications Policy Act of 1984, 47 U.S.C. & 546 (d).

**Section IV.** The **Union Township** clerk is hereby directed to cause a certified copy of this Resolution to be delivered to Warner Cable by certified mail, return receipt requested.

Fully and lawfully Passed, Adopted, and Approved by the trustees of **Union Township** this 11th day of September, 1990.

  
Township President

  
Clerk

9/11/90  
Date