

TOWN OF HAVEN, MINNESOTA
ORDINANCE NO. 89-1

AN ORDINANCE GRANTING AN EXTENSION PERMIT TO WESTMARC CABLE HOLDING, INC., ITS SUCCESSORS AND ASSIGNS, TO ERECT, ENLARGE, OPERATE, REPAIR, AND MAINTAIN IN HAVEN TOWNSHIP, MINNESOTA, TRANSMISSION LINES, WIRES, AND FIXTURES NECESSARY FOR OPERATION OF A CABLE COMMUNICATIONS SYSTEM FOR RECEIVING, DISTRIBUTING, AND FURNISHING TO THE TOWN OF HAVEN, ITS INHABITANTS AND OTHERS, TELEVISION AND RADIO IMPULSES OR SIGNALS INTO AND THROUGH THE TOWN, AND THE USE OF STREETS, ALLEYS, AND PUBLIC GROUNDS OF THE TOWN, FOR SUCH PURPOSES.

WHEREAS, Minn. Stat. §238.08, Subd. 1, provides that a municipality shall require a franchise or extension permit of any cable communications system providing service within the municipality; and

WHEREAS, WestMarc Cable Holding, Inc., a Delaware corporation (hereinafter the "Company"), has requested the authorization of the Town of Haven (hereinafter also called the "Town") to extend service from its cable communications system currently operating under a lawful franchise within the City of St. Cloud, Minnesota, which is the "core service unit" as defined by Minn. Stat. §238.02, Subd. 14; and

WHEREAS, the Town of Haven extension area as defined by Minn. Stat. §238.02, Subd. 15, is not within the Twin Cities Metropolitan Area as defined in Minn. Stat. §473.121, Subd. 2; and

WHEREAS, pursuant to Minn. Stat. §238.17, the request by the Company has been considered in a public proceeding, affording reasonable notice and opportunity to be heard.

NOW, THEREFORE, the Town Board of Supervisors of the Town of Haven hereby ordains that there is hereby granted to the Company a nonexclusive extension permit to construct, operate, and maintain a cable communications system extension within the Town of Haven, subject to the following terms and conditions:

Section 1. Term of Extension Permit. The extension permit shall expire at the same time as the cable communications franchise currently in effect in the City of St. Cloud, the core service unit. Any change in the expiration date of the franchise, by way of either renewal or amendment to the franchise, shall automatically apply to the extension permit, unless the Town of Haven, pursuant to Section 9 herein, acts to terminate or limit the term of the extension permit within ninety (90) days of passage of the renewal or amendment to the franchise, which activities shall be governed by applicable federal and state law.

Section 2. Applicable Provisions of Franchise. The Company and the Town agree to abide by all of the applicable provisions of the core service unit franchise, as the same may from time to time be amended or renewed by the City of St. Cloud, subject to the approval of the Town of Haven, and particularly those which relate to the following:

- a. Channel capacity;
- b. Access channels and requirements;
- c. Public access equipment for production and reproduction of playback of programming;
- d. Two-way capability;
- e. Indemnification by the Company;
- f. Compliance with federal and state regulations; it being understood that such provisions shall specifically apply to the Town, as well as the City of St. Cloud;
- g. Access to financial records;
- h. Transfer of Ownership;
- i. Municipal purchase rights;
- j. Standards for system construction and operations;
- k. Relocation notice;
- l. Abandonment of service;
- m. Equipment removal;
- n. Criminal Penalties;
- o. Severability.

Section 3. Construction Permits; Performance Bond.

- a. The Company recognizes and acknowledges its obligation under the terms of the franchise of the core service unit to obtain a permit from the Town prior to commencing any construction activities in Town rights-of-way or on any other Town property.
- b. As a condition to receiving a construction permit from the Town as set forth above, the Company shall maintain and furnish to the Town, at the Company's expense, a general comprehensive liability insurance certificate covering personal injury, death or property damage occasioned by the Company's operations under this Extension Permit, with minimal liability limits of One Million and No/100 (\$1,000,000.00) Dollars combined coverage. The above-referenced certificate shall contain a provision that written notice of any cancellation or reduction in coverage shall be delivered to the Town at least thirty (30) days in advance of the effective date thereof.

Section 4. Rates. Prior to offering service to any member of the general public in the Town, the Company shall prepare a clear and concise list of all current subscription

rates and charges, including, but not limited to, all installation and disconnection charges, charges for optional services, and charges or deposits for the use of equipment offered to subscribers for use with the services offered by the Company. A certified copy of this list of rates and charges shall then be filed with the Town Clerk and shall be available for public inspection at the offices of the Town. An amended list of rates and charges shall be prepared and filed with the Town Clerk at least thirty (30) days prior to the effective date of any change or adjustment in the subscription rates and charges.

Section 5. Fees, Charges, and Deposits.

- a. No fee, charge, deposit, or associated term or condition shall be imposed by the Company or any affiliated person, firm, or corporation for any service unless it is filed with the Town Clerk as said filings may be amended from time to time by the Company. The fees, charges, deposits, and associated terms and conditions for basic services shall be set forth in said filings as well as those rates for extra services and for service-related activities and all other services, facilities, equipment, and other matters. All such fees, charges, deposits, and associated terms and conditions shall be nondiscriminatory, provided that this requirement shall not prevent: (i) the use of sales promotions, other special discounts, waiver of charges, reduced charges, or changes in associated terms and conditions to identifiable classes of subscribers; (ii) the negotiation of bulk rates, discounts, reduced charges, or changes in associated terms and conditions for the provision of services; and (iii) the offering of specialized services at negotiated rates, provided that the Company shall ensure that no residential subscriber is charged any fee, charge, or deposit in excess of those set forth in filings required by this extension permit, as may be amended from from time to time by the Company.
- b. Except as provided in rate filings required by the core service unit franchise, this ordinance, or state or federal law or regulation, the Company shall not impose any fee or charge on any subscriber for: (i) any service call to said subscriber's premises to perform any repair or maintenance work, except any such work necessitated by a negligent or wrongful act of said subscriber; or (ii) the disconnection of services to a subscriber, provided that the Company may impose appropriate charges if, at the time of disconnection, some or all of the Company's equipment is not returned to the Company or the subscriber has not paid all outstanding fees and charges due to the Company.

Section 6. Franchise Extension Fee. During the term of the franchise extension permit granted hereunder, the Company shall pay to the Town annually an amount equal to three (3%) percent of all basic and all tiered gross service receipts derived from within the Town. This payment shall be made to the Town within ninety (90) days after the last day of each year. Service receipts shall include service charges, fees arising from the communications and transmittal of information of any nature including fees for fire or other protection, but shall not include monies received as installation charges, and charges and fees for reconnections, inspections, repairs, or modification of any installation, nor state or federal taxes relating thereto.

Section 7. Revised Filings by Company. Within at least thirty (30) days prior to the effective date of any change in any rate, charge, deposit, or associated terms or conditions set forth in filings required by the core service unit franchise, this ordinance, or other applicable state or federal law or regulation, the Company shall: (i) submit the revised filing to the Town Clerk together with a description of the proposed change and (ii) provide a written notice of such proposed change to each affected subscriber.

Section 8. Hypothecation. The Town hereby consents to the grant by the Company or any affiliate of the Company who may from time to time hold the franchise of a security interest in all of its rights, powers and privileges under the franchise and all of its other assets to such lending institution or institutions as may be designated by the Company or any affiliate of the Company, which lending institution or institutions shall have all of the rights or remedies of a secured party under the applicable Uniform Commercial Code.

Section 9. Termination of Franchise. The Town may terminate and cancel the Extension Permit and all rights and privileges of the Extension Permit if the Company:

- a. Substantially violates any provision of the Extension Permit;
- b. Attempts to evade any of the provisions of the Extension Permit;
- c. Practices any fraud or deceit upon the Town;
- d. Files a petition under the Bankruptcy Act or any other insolvency or creditors' rights law, state or federal; or
- e. Is adjudged bankrupt or insolvent under any insolvency or creditors' rights laws, state or federal.

The Town shall provide the Company with written notice of the cause for termination and its intention to terminate and shall allow the Company a minimum of thirty (30) days after service of the notice to correct the violation. The Company shall be afforded an opportunity to be heard at a public hearing of the Town prior to the termination of the Extension Permit. In the event the Town determines to terminate the Extension Permit, the Company has thirty (30) days from the date of the conclusion of the public hearing or the giving of notice of such termination, whichever occurs later, within which to file an appeal with any court of competent jurisdiction. During the period any appeal is being considered, the Extension Permit shall remain in full force and effect.

The Company shall not be held in default or noncompliance with the material provisions of the Extension Permit, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

Section 10. Special Terms and Conditions. The following terms and conditions shall apply to the grant of rights by the Town to the Company under this ordinance:

- a. The service area under this ordinance shall be Valley View Addition, Kilian Addition, and the residences on Sherburne County Road 8 adjacent to the electric utility trunk line serving Valley View Addition. Said service area is subject to change by mutual written agreement of the Town and the Company.
- b. The Company shall not install or cause to be installed any additional utility poles, but shall use existing poles or underground cable installations to extend its services to the Town.
- c. No additional overhead lines will be placed by the Company over the south side of 27th Street, S.E., west of 14th Avenue, S.E.


Section 11. Severability and Preemption. All ordinances or portions of ordinances in conflict herewith are hereby repealed. Should any section of this ordinance be held by a court of competent jurisdiction to be unconstitutional or void, the remaining provisions shall remain in full force and effect.

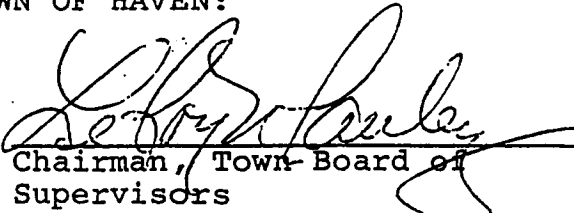
Section 12. Effective Date of Ordinance. This ordinance shall be effective from and after its adoption and publication as provided by law.

Enacted by the Town Board of Supervisors of the Town of Haven the 21st day of August, 1989.

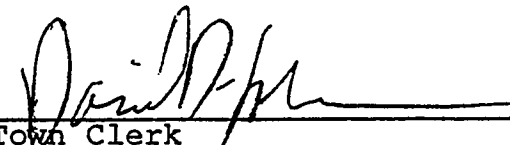
Attest:

TOWN OF HAVEN:


Town Clerk

By 
Chairman, Town Board of Supervisors

Published in the West Sherburne Tribune the 17th day of October, 1989.


Town Clerk