

FRANCHISE AGREEMENT

BETWEEN

**THE TOWN OF SHANDAKEN,
NEW YORK**

AND

Time Warner NY Cable LLC

TIME WARNER CABLE

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Attachment A - Franchise Area Map

Already submitted to the Town

FRANCHISE

THIS Franchise, executed in triplicate this _____ day of _____, 2007, by and between the Town of Shandaken (hereinafter referred to as the Town), by the Supervisor acting in accordance with the authority of the duly empowered local governing body (hereinafter referred to as the Town Board), party of the first part, and **Time Warner NY Cable LLC ("Time Warner Cable")**, a corporation organized and existing under the laws of the State of New York, with a place of business of which is located at **2 Industrial Drive, Middletown NY 10941** (hereinafter referred to as the Franchisee), party of the second part

WITNESSETH

WHEREAS, Pursuant to the Town Law, the Town Board has the exclusive power on behalf of the Town to grant franchise renewals providing for or involving the use of the Public Right-of-Way (as defined in Section 1 hereof) and to give the consent of the Town to any Franchisee for or relating to the occupation or use of the Public Right-of-Way; and

WHEREAS, Pursuant to the Communications Act of 1934, as amended (the "Communications Act"), the Town Board has the authority to grant Cable Television Franchises and renewals thereof on behalf of the Town and whereas the Town Board and the Franchisee pursuant to said Federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the Franchise renewal procedures required of municipalities and cable operators in the grant of Cable Television Franchises or their renewal; and

WHEREAS, The Town has conducted negotiations with the Franchisee and has conducted one or more public hearings on the Franchisee's franchise renewal proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of the Franchisee's technical ability, financial condition, and character; said public hearing also included consideration and approval of the Franchisee's plans for operating the Cable Television System; and

WHEREAS, Following such public hearings and such further opportunity for review, negotiations and other actions as the Town Board deemed necessary and that is required by law, the Town Board decided to renew Franchisee's Franchise as provided hereinafter; and

WHEREAS, The Town Board, in granting this franchise renewal, embodied in this Franchise are the results of its review and any negotiations with the Franchisee and has determined that said Franchise, complies with the standards and requirements of the New York State Public Service Commission and all applicable Federal and State laws and regulations; and

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby made a part of this Franchise, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

SECTION 1 -- DEFINED TERMS

Unless the context clearly indicates that a different meaning is intended:

- (a) "Basic Service" means a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following: all signals carried in fulfillment of the Cable Act, any public, educational, and governmental access programming required in this Franchise agreement; and any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. Additional signals may be added to the basic tier by Franchisee.
- (b) "Town Board" means the Town Board of the Town of Shandaken, New York.
- (c) "Cable Act" shall mean Title VI of the Communications Act of 1934, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, codified at 47 U.S.C '521 *et. Seq.*, as it may be amended or succeeded.
- (d) "Cable Television Service" or "Cable Service" means
 - (1) The one way transmission to Subscribers of Video Programming, or other programming service; and/or
 - (2) Subscriber interaction, if any, which is required for the selection (or use) of such Video Programming or other programming service.
- (e) "Cable System" "Cable Television System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such terms do not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves only Subscribers without using any Public right-of-Way; (c) a facility of a common carrier which is subject, in whole or in part, to the of the Cable Act, except that such facility shall be considered a Cable Television System to the extent such facility is used in the transmission of video programming directly to Subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.
- (f) "Complaint" means a verbal or written indication from a Subscriber within the Town of a problem that generates a work order by the Franchisee, or a written Complaint on any

topic, or Complaint to the Town that is communicated to the Franchisee with any aspect of Cable Service.

- (g) "Educational Access Channel" means any channel designated for noncommercial educational access use.
- (h) "Effective Date" of this Franchise shall be the date upon which both parties to this Franchise shall have affixed their signatures hereto.
- (i) "Franchise" means a non-exclusive authorization or renewal thereof issued by the Town Board, which authorizes the non-exclusive and revocable right to construct, operate and/or maintain a Cable Television System and provide Cable Services within the franchise area in accordance with the terms of this Franchise.
- (j) "Franchisee" means Time Warner NY Cable LLC "Time Warner Cable", its successors, assigns and transferees.
- (k) "FCC" means the Federal Communications Commission, its designee and any successor thereto.
- (l) "Government Access Channel" means any channel specifically designated or dedicated for noncommercial government access use.
- (m) "Gross Revenues" means all revenue derived directly or indirectly by the Franchisee from the operation of the Franchisee's Cable Television System within the Town to provide cable service. "Gross Revenues" shall include, but not be limited to, amounts for the Basic Service tier, cable programming Service Tiers, pay per channels and pay per view services, music services, video on demand, converter rental, subscriber installations and transactions, leased access, advertising, equipment rentals. Revenues that are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to Cable Television Systems and jurisdictions on a per Subscriber basis measured in a consistent manner from period to period. Gross Revenues shall not include excise taxes, late fees, bad debt or any other taxes that are imposed on the grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental unit. Gross Subscriber Revenues shall include revenue from cable modem service to the extent these services are deemed a cable service by applicable Federal or State Laws or by a court of competent jurisdiction binding upon the Town and Time Warner Cable.
- (n) "May" is permissive.
- (o) "NYSDPS" means the New York State Department of Public Service or any successor State agency with similar responsibilities.
- (p) "Person" means an individual, partnership, association, corporation, joint stock company, trust, corporation, or organization of any kind, the successors or assigns of the same.

- (q) "Public Access Channel" means any channel designated or dedicated for noncommercial use by the general public or noncommercial organizations that are made available for use without charge to users on a nondiscriminatory basis in accordance with the rules and regulations specified by the Town or designee of the Town.
- (r) "Public Property" means any real property owned by the County or any other government entity other than a Public Right-of-Way.
- (s) "Public Right-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any highway, street, alley, sidewalk, bridge, and/or tunnel that the Town has the right to grant the use of. No reference herein, or in any permit, to the Public right-of-Way shall be deemed to be a representation or guarantee by the Town that its title to any property is sufficient to permit its use for such purpose, and the Franchisee shall, by its use of such terms, be deemed to gain only such rights to use property in the Town as the Town may have the undisputed right and power to give. Notwithstanding the foregoing, this term shall not include any Public Property.
- (t) "Service Tier" means a category of Cable Television Service provided by the Franchisee over the Cable Television System for which a separate rate is charged for such category by the Franchisee.
- (u) "Shall" or "will" are mandatory.
- (v) "Subscriber" means any Person lawfully receiving any Cable Television Service in the Town provided over the Cable Television System.
- (w) "Town" means the Town of Shandaken.

SECTION 2 -- CONSENT TO FRANCHISE AND CONDITION PRECEDENT

- (a) Grant. The Town hereby grants to the Franchisee the non-exclusive right to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service within the Town as it now exists and may hereafter be changed, and in so doing to use the Public Right-of-Way of the Town by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and operating a Cable Television System in, over, under, upon, and across any and all said Public Right-of-Way within the Town and to provide efficient Cable Television Service subject to the terms and conditions set forth herein, and generally applicable local, State, and Federal laws, ordinances, rules and regulations.
- (b) Non-interference. In exercising rights pursuant hereto, the Franchisee shall not endanger or interfere with the lives of Persons, interfere with any existing installations of the Town, any public utility serving the Town or any other Person permitted to use the streets and Public Right-of-Way nor unnecessarily hinder or obstruct the free use of the streets and Public Right-of-Way. The grant of one Franchise does not establish priority for use

over the other present or future permit or franchise holders or the Town's own use of the streets and Public Right-of-Way. The Town shall at all times control the distribution of space in, over, under or across all streets or Public Right-of-Way occupied by the Cable Television System.

- (c) Entire Agreement. This Franchise and the attachments hereto constitute the entire agreement between the parties and supersede any and all prior cable television agreements and other agreements or instruments by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to Cable Television Service.
- (d) Nonexclusive. This Franchise shall not be construed as any limitation upon the right of the Town to grant to other Persons rights, privileges, and authorities herein set forth, in the same or other Public Right-of-Way. The Town specifically reserves the right to grant at any time during the term of this Franchise such additional franchise for a Cable Communication System as it deems appropriate provided, however, no additional franchise shall be granted on terms and conditions more favorable or less burdensome than those outlined herein. In the event the franchisee voluntarily enters into an Agreement conferring additional benefits to any other community served in Ulster County by the franchisee, the franchisee shall offer the same or similar benefits to the Town of Shandaken so long as the Town of Shandaken agrees to the same or similar concessions, if any, provided to the franchisee by such other community or communities to secure such benefits.
- (e) General Town Ordinances and Local Laws. This Franchise granted by the Town is hereby made subject to the generally applicable Ordinance and/or Local Laws provisions now in effect and hereafter made effective. Nothing in the Franchise shall be deemed to waive the requirements of the various generally applicable codes, ordinances or local laws of the Town regarding permits, taxes, and fees to be paid, or manner of construction.
- (f) Franchise Area. The Franchise area shall be the entire Town including any areas annexed thereto. Attachment A to this Franchise is a map of the Franchise area, Attachment A, "Franchise Area Map," including all streets therein. Indicated thereon is the location of all existing trunk and feeder plant of the Cable System.
- (g) Police Powers Reserved. The Franchisee shall comply with all applicable laws, ordinances and regulations enacted by the Town pursuant to the Town's police powers. Any conflict between the terms of this Franchise and any present or future lawful exercise of the Town's police s shall be resolved in favor of the latter.
- (h) Town's Right to Perform Public Works. Nothing in this Franchise shall be in hindrance to the right of the Town or any governmental authority to perform or carry on, directly or indirectly, any public works or public improvements of any description. Should the Cable Television System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Franchisee shall, at its own cost and expense, protect or relocate its Cable Television System, or part thereof, as

reasonably directed by the Town officials or any governmental authority provided, however, all similarly situated users of the right of way are required to engage in the same relocation and if the Town reimburses any user of the right of way for relocation, Franchisee shall be similarly reimbursed.

- (i) Emergency Removal of Plant. If at any time, in case of fire or disaster in the Town, it shall become necessary in the reasonable judgment of the Town to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the Town shall have the right to do so at the sole cost and expense of the Franchisee provided, however, the Town first provides Franchisee immediate notice and opportunity to expeditiously cut or remove its facilities and Franchisee fails to do so. The Franchisee shall bear all costs of reinstallation, repair, and other costs resulting from or arising out of the emergency cutting or removal of the Cable Television System.
- (j) Time Is of The Essence to this Franchise. Whenever this Franchise shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to materially perform within the time allotted shall be sufficient ground for the Town to invoke an appropriate penalty including possible revocation of the Franchise, subject to notice and a time to cure.
- (k) No Waiver of Rights. No course of dealing between the Franchisee and the Town nor any delay on the part of the Town in exercising any rights hereunder shall operate as a waiver of any such rights of the Town or acquiescence in the actions of the Franchisee in contravention of rights except to the extent expressly waived by the Town or expressly provided for in the Franchise.

SECTION 3 -- TERM AND THE RIGHTS ARISING HEREUNDER

The Franchise herein granted and the rights arising hereunder are for a term commencing on the Effective Date." The initial term of the Franchise shall be ten (10) years, which shall expire ten (10) years from the Effective Date. The terms of this Franchise are subject to the approval of the NYSDPS.

SECTION 4 -- REVOCATION

- (a) Grounds for Revocation. The Town reserves the right to revoke any Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in the following circumstances, each of which shall represent a default and breach under this Franchise grant:
 - (1) If the Franchisee shall default in the performance of any of the material obligations under this Franchise, or under such documents, contracts and other terms and provisions entered into by and between the Town and the Franchisee.

- (2) If the Franchisee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
 - (3) If the Franchisee shall violate any material lawful orders or rulings of any regulatory body having jurisdiction over the Franchisee relative to this Franchise.
 - (4) If the Franchisee evades any of the material provisions of this Franchise or practices any fraud or deceit upon the Town or cable Subscribers.
 - (5) The Franchisee's construction schedule is delayed later than the schedule contained in the Franchise or beyond any extended date set by the Town.
 - (6) Failure to restore system-wide or area specific service after ninety-six (96) consecutive hours of interrupted service, except for an event of force majeure or when approval of such interruption is obtained from the Town or if the Franchisee ceases to operate and provide services for any reason within the control of the Franchisee.
 - (7) Material misrepresentation of fact in the application for or negotiation of the Franchise or any extension or renewal thereof.
 - (8) The Franchisee ceases to provide Cable Service over the Cable Television System for any reason within the control of the Franchisee.
 - (9) Failure to provide Subscribers or users with adequate service in the best interest of the public convenience and welfare in accordance with the provisions of this Franchise and the law and regulations of the State of New York.
 - (10) Failure by the Franchisee to comply with the PEG access provisions of this Franchise.
- (b) Procedure Prior to Revocation.
- (1) The Town shall make written demand that the Franchisee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the Franchisee continues for a period of thirty (30) days following such written demand, the Town shall place its request for termination of the Franchise upon a regular Town Board meeting agenda. The Town shall cause to be served upon such Franchisee at least seven (7) days prior to the date of such Town Board meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the Town at least once, seven (7) days before such meeting in a newspaper of general circulation within the Town.

- (2) The Town Board shall hear any Persons interested therein, and shall determine in its discretion, whether or not any failure, refusal or neglect by the Franchisee was with just cause.
 - (3) If such failure, refusal or neglect by the Franchisee was with just cause, as defined by the Town in its reasonable judgment, the Town Board shall direct the Franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.
 - (4) If the Town Board shall determine such failure, refusal, or neglect by the Franchisee was without just cause in its reasonable judgment, then the Town Board shall, by resolution, declare that the Franchise of the Franchisee shall be terminated and bond forfeited unless there be compliance by the Franchisee within ninety (90) days.
- (c) Effect of Circumstances Beyond Control of the Franchisee. The Franchisee shall not be declared at fault or be subject to any sanction under any provision of this Franchise in any case, in which performance of any such provision is prevented by reasons beyond the Franchisee's control. A fault shall not be deemed to be beyond the Franchisee's control if committed by a corporation or other business entity in which the Franchisee holds a controlling interest whether held directly or indirectly.

SECTION 5 -- RIGHTS RESERVED TO THE GRANTOR

- (a) Purchase Upon Revocation or Non-Renewal. The Franchisee and the Franchisor will comply with Section 627 of the Cable Act (47 U.S.C. 547).
- (b) Purchaser Rights. Upon payment of the purchase price and upon conditions agreed to by the Town, the Franchisee shall immediately transfer to the Town all contracts, leases, licenses, permits and any other assignable rights necessary to maintain continuity of service to the public and transfer possession and title to all facilities and property, real and personal, related to its Cable System.
- (c) Right of Inspection of Records. The Town shall have the right to inspect books, records, reports, maps, plans, and financial statements of the Franchisee relating to operations within the Town as reasonably necessary to determine Franchisee's compliance with the provisions of this Franchise and New York State law and regulation on reasonable notice during normal business hours.
- (d) Right of Inspection of Property. Upon reasonable notice, the Franchisee shall permit examination by any duly authorized representative of the Town, of system facilities, together with any appurtenant property of the Franchisee situated within or without the Town necessary to determine compliance of the Franchisee under this Franchise and New York State law and regulation.

- (e) Right of Intervention. The Town shall have the right of intervention in any suit or proceeding to which the Franchisee is party and in which the Town shall have a material interest.
- (f) Renewal. Upon completion of the term of any Franchise granted under this Franchise, the Town may in its sole discretion grant or deny renewal of the Franchise of the Franchisee in accordance with the provisions of the Cable Act. The Franchisee shall have no property right in the public rights of way upon the completion of the Franchise term.

SECTION 6 – BONDS INDEMNIFICATION & INSURANCE

In the event of a sale or transfer to a company unaffiliated with Time Warner Cable, the Shandaken Town Board may require the new franchisee to comply with the terms and conditions of (A), (B), (C), (D) and (E) of this section.

- (A) Performance Bond. Prior to the Effective Date of the Franchise, the Franchisee shall obtain and maintain during the entire term of any Franchise and any extensions and renewals thereof, at its cost and expense, and file with the Town, a performance bond in the amount of \$50,000 to guarantee the faithful performance of the Franchisee of its obligations as specified below. Failure to timely obtain, file, and maintain said bond shall constitute a violation within the meaning of this section. Such bond must be issued by a surety and in a form acceptable to the Town Conditions. The performance bond shall be issued by a surety licensed to do business in New York State and shall provide the following conditions:

1. There shall be recoverable by the Town from the principal and surety, jointly and severally, any and all fines and liquidated damages due to the Town and any and all damages, losses, costs, and expenses suffered or incurred by the Town resulting from the failure of the Franchisee to: faithfully comply with the provisions of this Franchise; comply with all orders, permits and directives of any Town agency or body having jurisdiction over its acts or defaults; pay fees due to the Town; or pay any claims, liens or taxes due the Town which arise by reason of the construction, maintenance or repair of the Cable System. Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses. The total amounts of the bond shall be forfeited as a liquidated damage paid to the Town in the event:
 - a. The Franchisee abandons the Cable System.
 - b. The Franchisee assigns the Franchise without the express written consent of the Town.
 - c. The Franchise is terminated by reason of the default of the Franchisee.

- (B) Use of Performance Bond. Prior to drawing upon the performance bond for the purposes described in this section, the Town shall notify the Franchisee in writing that payment is due and the Franchisee shall have ten (10) days from the receipt of such written notice to make a full and complete payment. If the Franchisee does not make the payment within ten (10) days, the Town may withdraw the amount thereof, with interest and penalties, from the performance bond.
- (C) Notification. Within three (3) days of a withdrawal from the performance bond, the Town shall send to the Franchisee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- (D) Replenishment of Performance Bond. No later than thirty (30) days after mailing to the Franchisee by certified mail notification of a withdrawal, the Franchisee shall replenish the performance bond in an amount equal to the amount so withdrawn. Failure to make timely replenishment of such amount to the performance bond shall constitute a material violation of this Franchise.
- (E) Non-Renewal, Alteration, or Cancellation of Performance Bond. The performance bond required herein shall be in a form satisfactory to the Town and shall require thirty (30) days written notice of any non-renewal, alteration or cancellation to the Town or the Franchisee. The Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the Town, written evidence of the issuance of replacement bond or policies within thirty (30) days following receipt by the Town or the Franchisee of any notice of cancellation.

Town Rights. The rights reserved to the Town with respect to the performance bond are in addition to all other rights of the Town, whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such a bond shall affect any other right the Town may have.

The Shandaken Town Board shall require Time Warner Cable to comply with the terms and conditions of (A), (B), (C) and (D) following:

- (A) Insurance. The Franchisee shall obtain and maintain liability insurance, insuring the Town and the Franchisee against all claims for penalties or damages charged against the Town or the Franchisee resulting from the acts or omissions of the Franchisee, its servants, employees, agents or independent contractors for the installation, construction, operation, maintenance or expansion of its Cable Television System herein authorized. The Franchisee shall maintain such insurance with the Town of Shandaken as an additional party throughout the term of the Franchise and any renewal term in the amounts specified herein.
 - (1) Commercial General Liability Insurance. The Franchisee shall maintain, and by its acceptance of any License granted hereunder specifically agrees that it will maintain throughout the term of the Franchise, general liability insurance insuring the Franchisee in the minimum of:

- a. \$1,000,000 for property damage per occurrence;
 - b. \$2,000,000 for property damage aggregate;
 - c. \$1,000,000 for personal bodily injury or death to any one Person; and
 - d. \$2,000,000 bodily injury or death aggregate per single accident or annual aggregate.
- (2) Policy Inclusions. Such general liability insurance must include coverage for all of the following: occurrence form, premises- operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
- (3) Automobile Liability Insurance. The Franchisee shall maintain, and by its acceptance of any License granted hereunder specifically agrees that it will maintain throughout the term of the Franchise, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:
- a. \$2,000,000 for bodily injury and consequent death per occurrence;
 - b. \$1,000,000 for bodily injury and consequent death to any one Person.
 - c. \$500,000 for property damage per occurrence.
- (4) Workers' Compensation and Employer's Liability Insurance. The Franchisee shall maintain and by its acceptance of any License granted hereunder specifically agrees that it will maintain throughout the term of the Franchise, Worker's Compensation and employer's liability, valid in the State, in the minimum amount of the Statutory limit for Worker's Compensation.
- (5) No Limitation on Liability. None of the provisions of this Franchise or any insurance policy required herein, or any damages recovered by the Town hereunder, shall be construed to excuse the faithful performance by or limit the liability of the Franchisee for damages under this Franchise.
- (6) Certification. Franchisee shall deliver a certification of insurance evidencing compliance with this section within ten (10) days of the Effective Date or any change in such coverage. In addition, all policies evidencing such insurance and the certificates issued with respect thereto shall provide for at least thirty (30) days written notice to the Town prior to cancellation, reduction in policy limits or material change in coverage thereof.
- (7) State Licensed. All insurance carriers providing coverage above, shall be duly licensed to operate in the State of New York.

- (8) Insurance for Contractors and Subcontractors. The Franchisee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its Cable Television System by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with this Section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of the Franchisee's Cable Television System.
- (9) Hold Harmless Clause. All contractual liability insurance policies maintained pursuant to this Franchise, shall include that the Franchisee agrees to indemnify, defend and hold harmless the Town, its officers, employees, elected officials, consultants, contractors, agents, boards and commissions and any successors to Towns interest from and against any and all claims, demands, losses, damages (including personal injury resulting in death), liabilities, fines, penalties, charges, administrative and judicial suits, proceedings and orders, judgments and all reasonable costs and expenses incurred in connection therewith, including without limitation reasonable attorney's fees and costs of defense (collectively, the "Losses") arising from acts or omissions of the Franchisee or its successors, agents, contractors or employees in connection with its Cable Television System or Cable Service, or otherwise arising out of or related to the Franchise, except to the extent any Losses arise from the willful misconduct or gross negligence of the Town, its officers, employees, elected officials, consultants, contractors agents, boards and commissions, and any successors to the Town's interests."
- (10) State Institution. All insurance policies provided under the provisions of this Franchise shall be written by companies authorized to do business in the State of New York.
- (11) Payment. The Franchisee shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Franchise and shall be solely responsible for the payment of any deductible and/or retention to which such policies are subject, whether or not Town is an insured under the policy.
- (B) Liability. The Franchisee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Town, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims, (including without limitation worker's compensation claims against the Town or others), causes of action, actions, liability, and judgments for injury or damages at law or equity of any nature whatsoever arising out of or through, or alleged to arise out of or through:
- a. The acts or omissions of the Franchisee, its subcontractors, agents or employees, to which the Franchisee's negligence shall in any way contribute to the above (see Section 6 (B)).

- b. Arising out of any claim for invasion of the right of privacy, for defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or any other right of any Person, firm or corporation except those asserted in connection with the Town's utilization of PEG channels.
 - c. Arising out of the Franchisee's failure to comply with the provisions of any Federal or State statute, ordinances or regulation applicable to the Franchisee in its business hereunder.
- (C) Damages. The Franchisee shall defend in the name of the Town, and pay all expenses incurred by Town in defending itself, with regard to all damages and penalties the Town may legally be required to pay as a result of the Franchise granted hereunder. Damages and penalties shall include but not be limited to damages arising out of copyright infringement and all other damages arising out of the construction, installation, operation or maintenance of its Cable Television System, whether or not any such act or omission is authorized, allowed or prohibited by this Franchise granted hereunder. Expenses shall include all incidental expenses including attorney fees. The Town shall notify the Franchisee of any actions, claims, or suits, of any nature whatsoever, arising out of or through or alleged to arise out of or through or in any way connected with the grant of a license to the Franchisee or through the operation of the Franchisee's business for which the indemnification provisions of this Franchise are applicable.
- (D) Conditions. The foregoing indemnity is conditioned upon the following: The Town shall give the Franchisee notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Town from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own costs and expense.

SECTION 7 -- RELOCATION OF PROPERTY

Whenever the Town or a public utility franchised or operating within the Town shall require the relocation or reinstallation of any property of the Franchisee in or on any of the Public Right-of-Way of the Town as a result of the relocation or other improvements of any such Public Right-of-Way, it shall be the obligation of the Franchisee on written notice of such requirement, except in emergency situations, to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the Town or the public utility. In the event a public utility or other user of the right of way is compensated for such relocation or reinstallation then the Franchisee shall be similarly compensated.

The Franchisee shall, on request of a Person holding a building or moving permit issued by the Town, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses for any such temporary removal, raising or lowering of wires, or other property shall be paid in advance to the Franchisee by the Person requesting the same. The Franchisee shall be given in such cases not less than thirty (30) working days prior written notice in order to arrange for the changes required.

SECTION 8 -- USE & INSTALLATION

(a) Construction and Technical Standards.

- (1) Permits. Prior to construction or alteration of aerial or underground construction in the Public Right-of-Way, if the Town requires permits, the Franchisee shall in each case file plans with the Town, obtain all generally applicable non-discriminatory construction permits, and receive written approval of the Town before proceeding. No erection or installation of any tower or pole shall be commenced by any Person until approval thereof has been received from the Town.
- (2) Minimum Interference. The Franchisee's system and associated equipment erected by the Franchisee within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, and other Public Right-of-Way and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other Public Right-of-Way and places. No pole or other fixtures placed in any Public Right-of-Way by the Franchisee shall be placed in such a manner as to interfere with normal travel on such public way.
- (3) Parallel Construction and Removal. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for aesthetic, safety and engineering considerations, and all applicable codes. All aerial cables shall be removed if not in use.

Construction and Operation Standards. The construction, installation, operation, maintenance, and/or removal of the Cable Television System shall meet the following safety, construction, and technical specifications, codes, standards, laws and guidelines, where applicable:

Occupational Safety and Health Administration Regulations
(OSHA) National Electrical Code National Electrical Safety Code (NESC)

All Federal, State and generally applicable non-discriminatory municipal construction and technical requirements, including FCC and NYSDPS rules and regulations.

All generally applicable non-discriminatory building and zoning codes,

and all land use restrictions as the same exist or may be amended.

Any and all State and Federal law or regulation regarding the transportation or disposal of hazardous materials.

(4) Maintenance and Workmanship.

- a. The Franchisee's Cable Television System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the streets by or under the Town's authority.
- b. The Franchisee shall provide and use any equipment and appliances necessary to control and carry the Franchisee's signals so as to prevent injury to the Town's property or property belonging to any Person within the Town. The Franchisee, at its own expense, shall repair, renew, change and improve its facilities from time to time as may be necessary to accomplish this purpose.
- c. The Franchisee shall not construct its Cable Television System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Public Right-of-Way.

(5) Standby Power. The Franchisee shall maintain equipment capable of providing standby power for a minimum of twenty-four (24) hours for the headend.

Easements. Any easements over or under private property necessary for the construction or operation of the Cable Television System shall be arranged for by the Franchisee. Any easements over or under property owned by the Town other than the Public Right-of-Way shall be separately negotiated with the Town.

- (6) Construction Notice. Throughout any period of new construction or rebuild, the Franchisee shall give the Town written notice, a reasonable time before the commencement of or rebuild or upgrade, but in no event shall said notice be given less than thirty (30) business days before such commencement.
- (7) Emergency Notification. The Franchisee shall provide the Town with a twenty-four (24) hour emergency telephone number at which a named responsible adult representative of the Franchisee (not voice mail or a recording) can be accessed in the event of an emergency.
- (8) Notice of Construction to Residents. The Franchisee shall provide advance notice, appropriate to the circumstances, prior to entry whenever desiring to enter or cross any private property within Town or work in abutting Public Right-of-Way.

(b) Use of Streets.

- (1) Underground Installation. All installations shall be underground in those areas of the Town where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Franchisee may install its service above ground, provided that at such time as those facilities are required to be placed underground by the Town or are placed underground, the Franchisee shall likewise place its services underground without additional cost to the Town, or to the individual subscribers so served within the Town provided, however, if the Town reimburses any user of the right of way for such relocation, Franchisee shall be similarly reimbursed. Where not otherwise required to be placed underground by this Franchise, the Franchisee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
- (2) Interference with Persons, Improvements, Public and Private Property and Utilities. The Franchisee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:
 - a. Not endanger or interfere with the health, safety or lives of Persons.
 - b. Not interfere with any improvements the Town or State may deem proper to make.
 - c. Not interfere with the free and proper use of public streets, alleys, bridges, easements or other Public Right-of-Way, places or property, except to the minimum extent possible during actual construction or repair.
 - d. Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair.
 - e. Not obstruct, hinder or interfere with any utility owned by the Town or an agency of the Town and gas, electric, or telephone facilities or other utilities currently located within the Town.
- (3) Restoration of Property. The Franchisee shall restore at its sole cost and expense, within twenty (20) working days, weather permitting in accordance with generally applicable Town ordinances, rules and regulations, any portion of the Public Right-of-Way that is in any way disturbed by the construction, operation, maintenance or repair of the Cable Television System to as good or better condition than existed previously. In addition, the Franchisee shall, at its sole cost and expense, restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of the Franchisee or by its acts or omissions, to the same

condition as such property was in immediately prior to the disturbance, damage or injury. In the event that the Franchisee and its contractors and subcontractors fail to make such repair within the time specified by the Town, the Town shall be entitled to make repairs or have such repairs made and the Franchisee shall pay the costs of the Town for such repair.

- (4) Private Property. The Franchisee shall be subject to all generally applicable laws, ordinances or regulations regarding private property in the course of constructing, installing, operating or maintaining the Cable Television System in Shandaken. The Franchisee shall promptly repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating or maintenance of the Cable Television System at its sole cost and expense.
 - (5) Compensation for Public Property. If the right is granted, by lease, license or other manner, to use and occupy Public Property, in addition to the Public Right-of-Way, for the installation of cable television facilities, the compensation to be paid shall be fixed by the Town.
 - (6) Tree Trimming. The Franchisee may trim trees or other vegetation owned by the Town or placed in the public right of way to prevent branches, leaves or roots from touching or otherwise interfering with its wires, cables, or other structures as approved by the Town. [Note: To be checked against Town ordinances.] The Franchisee shall use its best efforts to obtain the prior permission of the owner of any privately owned trees or other vegetation before it prunes or trims same.
 - (7) Removal of Obsolete Facilities/Cooperation. Unless otherwise specified by the Town, when the Franchisee opens a trench, accesses a conduit or boring, or is working on aerial locations, it shall remove its own Cable Television System facilities which are no longer in use or which the Franchisee, in its sole discretion, deems obsolete, from such locations.
- (c) Erection, Removal And Common Use of Poles.
- (1) Approval for Poles. No poles shall be erected by the Franchisee without prior approval of the Town with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of the Franchisee shall give rise to a vested interest and such poles or structures shall be removed or modified by the Franchisee at its own expense whenever the Town determines that the public convenience would be enhanced thereby.
 - (2) Requirements to Use Existing Poles. Where poles already exist for use in serving the Town are available for use by the Franchisee on terms and conditions acceptable to Franchisee, Franchisee shall make arrangements for such use.

- (d) Tests And Performance Monitoring. The Franchisee shall semi-annually, or more frequently as required, conduct technical performance tests to demonstrate full compliance with all technical standards and guidelines of the FCC and the NYSDPS.
- (e) Emergency Alert. Franchisee shall at all times comply with the emergency alert requirements specified by the FCC and the State of New York.
- (f) Employee Identification. Franchisee shall provide a standard photographic identification document to all employees, , who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, Franchisee shall endeavor to identify all field personnel, vehicles, and other major equipment with the Franchisee's name and telephone number.
- (g) Maintenance. All structures and all lines, equipment and connections in the Public Right-of-Way of the Town, wherever situated or located, shall at all times be kept and maintained in a safe condition and in good order and repair.
- (h) Technical Standards. The Cable Television System permitted to be operated hereunder shall be installed and operated in conformance with this Franchise, NYSDPS, and FCC rules and regulations. Any NYSDPS and FCC technical standards or guidelines related to the Cable Television System and facilities shall be deemed to be regulations under this Franchise.

SECTION 9 -- REMOVAL AND ABANDONMENT OF PROPERTY

Upon denial of renewal of this Franchise, or upon its revocation, as provided for herein, the Town shall have the right to require the Franchisee to remove, at its own expense, all or a portion of the Cable Television System required by public necessity from all Public right-of-Way within the Town within six months from receipt of such request. In the event, the system is not removed, the said system shall be deemed abandoned and the Town may remove or cause to move the system or portions thereof and the cost for such removal shall be borne by the Franchisee.

SECTION 10 -- CUSTOMER SERVICE, TESTING

- (a) Customer Service Standards. The Franchisee shall maintain and operate its Cable Television System at all times in compliance with the customer service related laws, rules, regulations, the NYSDPS, and the FCC. The Town shall have the right and authority to request an inspection or test of the Cable System by the NYSDPS, the FCC, or to have such inspection or test performed, all at the Town's expense. The Franchisee shall fully cooperate in the performance of such testing.
- (b) Line Extension. The Franchisee shall offer Cable Service to all dwelling units receiving Cable Service on the Effective Date of this Franchise. In addition, the Franchisee shall extend service to all dwelling units within the corporate limits of the Town in which the

density of dwelling units is at least twenty (20) dwelling units per cable mile in accordance with 895.5 of the NYSDPS rules.

- (c) Subscriber Drops/Cable. Franchisee shall make service available to all subscribers who are located with 200 feet (two hundred feet) of the closest feeder line. Franchisee shall use its best efforts to construct in new developments at the same time as the utilities and in accordance with its line extension obligation hereunder.
- (d) Abandonment. The Franchisee is prohibited from abandoning any service to any area of the franchise area or any portion thereof without the written consent of the Town. In the event Franchisee makes a showing of financial loss or technical infeasibility, the Town may consent to Franchisee's abandonment of a portion of the franchise area.

SECTION 11 -- PUBLIC, EDUCATIONAL, GOVERNMENTAL ACCESS (PEG)

NYSDPS Rules. The Franchisee shall comply with Part 895.4 of the NYSDPS rules as regarding public, educational and governmental access requirements.

- (a) Public and Educational Access
 - 1. Upon agreement among the Townships of Woodstock, Hurley, Olive and Shandaken, and upon agreement of the Onteora School District, and within provisions of franchise renewals properly accepted and signed by the townships of Shandaken and Woodstock, the franchisee will construct a fiber network permitting the upstream insertions of educational access programming originating from the Onteora High School in Boiceville, New York such that those Time Warner Cable subscribers currently looped together in each of the townships named above shall receive such programming. Time Warner Cable shall receive either wholly from one township, or partially from up to four townships a sum totaling \$20,000 toward the cost of engineering and implementing the so-called SHOW (Shandaken, Hurley, Olive Woodstock) educational channel. The Onteora School District shall be the designated entity to administer the educational/governmental channel (currently channel 20). Except for the cost already mentioned, the franchisor shall not be responsible for any other costs.
- (b) Movement of PEG channel(s). In the event Time Warner Cable moves the PEG channel(s) to a different location on the channel lineup, Time Warner Cable will provide reasonable advance notification of the channel move. Time Warner shall reimburse the PEG channel(s) for reasonable expenses associated with the cost of replacing print materials, channel identification tags and replacement promotional material for each relocated PEG channel.
- (c) Origination Points. The Franchisee will maintain a return path from the two sites (Town Hall and Onteora School) originating programming on the effective date of this Franchise.

- (d) Signal Quality. Franchisee shall assure that the access channel delivery system from the origination points specified herein meet the same technical standards (fiber feed) as the remainder of the System as set forth herein.

SECTION 12 -- RATES

- (a) Rates. Rates and charges imposed by the franchisee for a cable television service shall be subject to regulation in accordance with Federal Law.
- (b) Nondiscrimination in Rates. Except as otherwise permissible under applicable law, the Franchisee shall not unfairly discriminate against individuals in the establishment and application of rates and charges for Cable Services available to generally all Subscribers. This provision is not intended to and shall not prohibit (i) sales, promotions or other discounts which the Franchisee deems necessary or desirable to market its Cable Services; or (ii) the Franchisee from discounting rates to Persons who subscribe to any services on a seasonal basis or discounting rates to Persons who subscribe to any services that are provided on a bulk billed basis.

SECTION 13-- SERVICE TO PUBLIC FACILITIES AND ACCOUNTABILITY PROVISIONS

Free Drops. At the request of the Town, the Franchisee shall provide and maintain a single service outlet providing basic cable service free of charge to each school, the public library, the firehouses and municipally-owned building which is occupied for governmental purposes, police stations, fire stations, provided the point chosen by the Franchisee for connection of such wire to the institution is no further than two hundred feet (200') from the closest feeder line of the Cable Television System and capable of an aerial drop. If such connection is longer than two hundred feet (200'), the Town's institutions shall be allowed to pay for additional installation at costs.

SECTION 14-- ADDITIONAL SUBSCRIBER SERVICES

- (a) Privacy Notice. Notice of the Franchisee procedures for reporting and resolving billing disputes and the Franchisee's policy and the Subscribers rights in regard to personally identifiable information, as that term is defined in Section 631 of the Communications Act, will be given to each Subscriber at the time of such Person's initial subscription to the Cable Television System services and thereafter to all Subscribers as required by federal or state law.
- (b) Parental Control. The Franchisee shall offer to, and shall notify in writing, the Subscribers of the availability of locking program control devices, which enable the Subscriber to limit reception of obscene or indecent programming in the Subscriber's residence. The notice provided by the Franchisee shall be given to new Subscribers at the time of installation and thereafter to all Subscribers as required by the Federal or State law. The Franchisee shall provide to Subscribers, upon request, parental control devices that allow any channel

or channels to be locked out. Such devices shall block both the video and the audio portion of such channels to the extent that both are unintelligible. The cost to Subscribers for parental control devices is subject to FCC regulation or NYSDPS regulation, as applicable.

- (c) Subscriber Notification. In accordance with the applicable requirements of federal and state laws, the Franchisee shall provide written notice of any increases in rates or charges for any Cable Television Service or a change in such service.
- (d) Administration. The Administrator for the Town for this Franchise shall be Supervisor of the Town. All correspondence and communications between the Franchisee and the Town pursuant to this Franchise shall be addressed by the Franchisee to the Administrator.
- (e) Access to the Home. It is agreed that all Cable Television Service offered to any Subscribers under this Franchise shall be conditioned upon the Franchisee having legal access to any such Subscribers' dwelling units or other units wherein such Service is to be provided.
- (f) Customer Service Rules. The Franchisee and the Town shall at all times comply with the NYSDPS customer service & consumer protection standards, and FCC customer service regulations.
- (g) Records. The Franchisee shall comply with all NYSDPS customer service laws and regulations., and maintain, consistent with Section 896.8 of the NYSDPS rules, the following records:
 - (1) A record of all service orders received regarding Subscriber Complaints including the date and time received, nature of Complaint, date and time resolved, and action taken to resolve.
 - (2) A log showing the date, approximate time and duration, type and probable cause of all Cable System outages, whole or partial, due to causes other than routine testing or maintenance.

SECTION 15 -- FRANCHISE FEES

- (a) Finding. Because the Town finds that:
 - (1) The Public Right-of-Way to be used by the Franchisee in the operation of its system within the boundaries of the Franchise area are valuable public properties acquired and maintained by the Town and State at great expense to its taxpayers; and
 - (2) The grant to the Franchisee to the said streets is a valuable property right without which the Franchisee would be required to invest substantial capital in Right-of-Way costs and acquisitions; and

- (3) The administration of this Franchise imposes upon the Town additional regulatory responsibility and expense; therefore

The Franchisee shall pay to the Town a Franchise fee in an amount of five percent (5%) of the Gross Revenues, the maximum amount permitted under applicable Federal law, less any assessment of the Public Service Commission on Communications/Cable Television. The obligation to pay such Franchise fees shall commence as of the Effective Date of this Franchise. The Franchise fee shall be in addition to any generally applicable non-discriminatory fee or tax. Franchise fee payments shall be accompanied by a written certification from a certified public accountant or a financial officer of the Franchisee that the cable Gross Revenues reported by the Franchisee for the preceding quarter as well as the computation of Franchise fees for that quarter are accurate.

- (b) Acceptance by the Town. No acceptance of any payment by the Town shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable as a Franchise fee under this Franchise or for the performance of any other obligation of the Franchisee.
- (c) Failure to Make Required Payment. In the event that any Franchise payment or recomputed amount is not made on or before the dates specified herein, the Franchisee shall pay as additional compensation an interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate of the Town's primary depository bank during the period that such unpaid amount is owed.
- (d) Audit. The Town may audit the Franchisee to verify the accuracy of Franchise fees paid to the Town. All records reasonably necessary for such audit shall be made available by the Franchisee at a location within a three (3) hour drive of the Town. Any additional undisputed amount due the Town shall be paid within thirty (30) days of the Town's submitting an invoice for such sum, and if such sum shall exceed five percent (5%) of the total Franchise fee which the audit determines should have been paid for any calendar year, the Franchisee shall pay Town's cost of auditing that calendar year as well.
- (e) Payments to be Made Quarterly. The Franchise fee shall be payable quarterly with the following payment schedule: For revenues received January 1 to March 31: due and payable by July 1. For revenues received April 1 to June 30: due and payable by October 1. For revenues received July 1 to September 30: due and payable by January 1. For revenues received October 1 to December 31: due and payable by April 1. Time Warner Cable shall submit to the Town, along with payment of said fees, a report showing reasonable detail the basis for the computation thereof. The report should also be verified from an officer of the company. Lastly, a late fee or percentage may be included if the payment is received after the scheduled date.
- (f) Inspection. Upon reasonable notice and during normal business hours, the Town shall have the right to inspect pertinent books, records, maps, plans, financial statements, and other like materials of the Franchisee which are pertinent to the Franchisee's compliance

with the terms and conditions of this Franchise. The Town and the Franchisee agree that the Franchisee's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding Subscribers. The Town will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided that the Franchisee has advised the Town of the confidential nature of the information. In the event that the Town receives a request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Town will give the Franchisee notice of such request as soon as possible prior to disclosure in order to allow the Franchisee to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

SECTION 16 -- SEPARABILITY, POLICE POWERS, GOVERNING LAW, REQUESTS FOR AUTHORIZATIONS AND NON-DISCRIMINATION

- (a) Separability. If any section, subsection, sentence, clause, paragraph or portion of this Franchise (as well as any law or regulation applicable or purported to be applicable to this Franchise) is for any reason held to be invalid, void, unenforceable, illegal or unconstitutional by any court of competent jurisdiction, such law, regulation or provision of this Franchise shall be deemed separate and distinct and shall have no effect on the validity of the remaining portions hereof.
- (b) Laws and Rules. To the extent not inconsistent with or contrary to applicable Federal law, the terms of this Franchise shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Franchise or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable Federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable Federal laws. All terms and conditions of this Franchise are subject to Federal and State Law. All terms and conditions of this Franchise are subject to the approval of the NYSDPS.
- (c) Regulation. Expressly reserved to the Town is the right to adopt, in addition to this Franchise and existing laws, ordinances, and regulations, such additional generally applicable laws and regulations as it may find necessary in the exercise of its police power as provided for herein.
- (e) Authorizations. The Franchisee shall file requests for any necessary operating authorizations with the NYSDPS and the FCC within sixty (60) days of the Effective Date of this Franchise.
- (e) Nondiscrimination. The Franchisee shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any Person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

- (f) No Recourse Against the Town. The provisions of this agreement are subject to 47 USC 555(a) of the Federal Cable Law.

SECTION 17- NOTICE

All notices required herein shall be in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail or by facsimile transmission or by any other means to the parties and locations:

When to the Franchisee:

Director of Government/Public Affairs
Time Warner Cable
Hudson Valley Region
2 Industrial Drive
Middletown, NY 10941
845-692-5339
845-692-0901 - fax

When to the Town:

Town of Shandaken
P.O. Box 134
7209 Route 28
Shandaken, NY 12480
845-688-7165
845-688-2041 - fax

SECTION 18 -- INTEGRATION

This Franchise supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Franchise may be amended (except as otherwise expressly provided for herein) only by an agreement in writing signed by duly authorized Persons on behalf of both parties. To the extent required by state law, amendments hereto shall be confirmed or approved by the NYSDPS.

The headings of the various sections of this Franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Franchise.

SECTION 19 -- NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or the public in any manner that would indicate any such relationship with the other.

SECTION 20-- ASSIGNMENT

- (a) Operation. Only the Franchisee shall own, operate, manage, and maintain the Cable System and provide Cable Service by use of the Cable Television System.
- (b) Transfer of Franchise. A Franchise or system assets shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, or otherwise disposed of, nor shall title to the Cable System, legal or equitable, or any right, interest or property therein, pass to or vest in any Person without the prior consent of the Town. Any transfer of this Franchise without the prior consent of the Town shall make this Franchise subject to termination unless the Town shall have consented thereto.
- (c) Ownership Transfer. The Franchisee shall not sell, transfer or dispose of thirty-five percent (35%) or greater ownership interest in the Franchisee or more at one time of the ownership or controlling interest in the System, to a corporation, partnership, limited partnership, trust or association, or Person or group of Persons acting in concert without the consent of Town. Every sale, transfer, or disposition of thirty-five percent (35%) at any one time shall make this Franchise subject to termination unless the Town shall have consented thereto.
- (d) Transfer of Control. The Franchisee or parent corporations shall not change actual working control, of the Franchisee without the prior consent of the Town. Every change, transfer, or acquisition of control of the Franchisee shall make this Franchise subject to termination unless and until the Town shall have consented thereto.
- (e) Town Approval. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of this Franchise of ownership or control, the Town may inquire into the legal, financial and technical qualifications of the prospective transferee or controlling party in a timely manner, and the Franchisee shall provide the Town with all required information in accordance with Federal law. Such requests for information by the Town may, without limitation, be addressed to the prospective legal qualifications, financial capability and technical capabilities. The Franchisee shall assist the Town in any such inquiry, including facilitating the prospective transferee's responses to the Town's information requests. No transfer for which the Town's consent is required may occur until the successor, assignee or lessee has complied or agreed to comply with all of the requirements of this Franchise, including, but not limited to, providing certificates of insurance, unless the Town Board waives such compliance.

- (f) Requests for Consent/Procedure/Restrictions. If the Franchisee seeks to obtain the consent of the Town to any transactions or matters described here, the Franchisee shall submit a request for such consent and a copy of the FCC Form 394 and applicable exhibits to the Town. The Franchisee shall provide information on the transfer, transferee, and current operations, as required by Federal law.
- (g) Town Action. If required by Federal law or regulation, the Town has not taken action on the Franchisee's request for transfer within one hundred twenty (120) days after receiving FCC Form 394, consent by the Town shall be deemed given of the transfer consent.
- (h) No Waiver of Public Property Rights. The consent or approval of the Town or any other public entity to any transfer of the Franchisee shall not constitute a waiver or release of the rights of the Town in and to the Public Property or Public Right-of-Way, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.
- (i) Signatory Requirement. Any approval by the Town of transfer of ownership or control of this Franchise or the Franchisee shall be contingent upon the prospective franchisee becoming a signatory to this Franchise.
- (j) Assumption of Control. The Town agrees that any financial institution having a pledge of this Franchise or its assets for the advancement of money for the construction and/or operation of this Franchise shall have the right to notify the Town that it or its designees satisfactory to the Town will take control and operate the Cable Television System. Further, said financial institution shall also submit a plan for such operation that will insure continued service and compliance with all Franchise obligations during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one (1) year, unless extended by the Town at its discretion and during said period of time it shall have the right to petition for transfer of this Franchise to another Franchisee. If the Town finds that such transfer, after considering the legal, financial, character and technical qualifications of the applicant are satisfactory the Town will transfer and assign the rights and obligations of such Franchise. The consent of the Town to such transfer shall not be unreasonably withheld.
- (k) Notwithstanding anything herein to the contrary, no consent shall be required of the Town for a transfer to an entity controlling, controlled by or under the same common control as Franchisee.

SECTION 21 LIQUIDATED DAMAGES

- (a) Remedies.
 - (1) Schedule of Liquidated Damages. Because Franchisee's failure to comply with certain material provisions of this Franchise will result in injury to the Town or to Subscribers, and because it will be difficult to estimate the extent of such injury, the Town and Franchisee hereby agree that the liquidated damages and penalties stated

below represent both parties' best estimate of the damages resulting from the specified injury.

- (2) Violations. For the violation of any of the following, the Town shall notify Franchisee in writing of the violation. The Town shall provide Franchisee with a detailed written notice of any franchise violation upon which it proposes to take action, and there shall be a thirty (30) day period within which Franchisee may demonstrate to the reasonable satisfaction of the Town that a violation does not exist or cure an alleged violation or, if the violation cannot be corrected in thirty (30) days, submit a plan reasonably satisfactory to the Town to correct the violation. If an alleged violation is proven to exist, and no cure or action on a plan reasonably acceptable to the Town has been received by the Town within the thirty (30) days specified above, such liquidated damages shall be payable by the Franchisee following a public hearing providing Franchisee an opportunity to be heard. Franchisee may petition the Town Board for relief from any assessed damages. The imposition of liquidated damages shall not preclude the Town from exercising the other enforcement provisions of this Franchise, including revocation, or other statutory or judicially imposed penalties. Liquidated damages may be imposed as follows:
- a. For failure to complete construction or extend service in accordance with Franchise: \$100/day for each day the violation continues;
 - b. For failure to comply with requirements for public, educational and government access: \$100/day for each day the violation continues;
 - c. For failure to submit material reports, maintain records, provide documents or information: \$50/day for each day the violation continues; and
 - d. As per Section 14 (g) for violation of customer service standards required by this Franchise, or by FCC regulation: \$50/day per standard violated.
 - e. As per Section 5(c) and 15 (e) for violation of the books and financial records provisions of this Franchise: up to \$50/day for each day the violation continues.
 - f. For violation of other material provisions of this Franchise: up to \$100/day for each day the violation continues.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise to be duly executed by their duly authorized representatives the day and year first written above.

WITNESS

TIME WARNER NY CABLE LLC

"TIME WARNER CABLE"

By: _____

Name: _____

Title: _____

Date: _____

TOWN OF SHANDAKEN, NY

By: _____

Name: Mr. Robert Cross

Title: Town Supervisor

Date: _____

WITNESS:

[Signature]
Joe Christiano

Attachment A - Franchise Area Map

Provided to the Town

TOWN OF SHANDAKEN



DATE: May 7, 2007

RESOLUTION # 81

OFFERED BY Supervisor Cross

WHEREAS, the Town of Shandaken and Time Warner Cable LLC has entered into a Franchise Agreement, and

WHEREAS, pursuant to Town Law, the Town Board has the exclusive power on behalf of the Town to grant franchise renewals providing for or involving the use of the Public Right -of-Way and to give the consent of the Town to any Franchisee for or relating to the occupation or use of the Public Right-of-Way; and

WHEREAS, pursuant to the Communications Act of 1934, as amended, the Town Board has the authority to grant Cable Television Franchises and renewals thereof on behalf of the Town and

WHEREAS, the Town Board and Time Warner Cable LLC pursuant to said Federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the Franchise renewal procedures required of municipalities and cable operations in the grant of Cable Television Franchises or their renewal; and

WHEREAS, the Town has conducted negotiations with Time Warner Cable LLC and conducted a public hearing on March 5, 2007 at 6:30 pm on Time Warner Cable LLC's franchise renewal proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of Time Warner Cable LLC's technical ability, financial condition, and character; said public hearing also included consideration and approval of Time Warner Cable LLC's plans for operating the Cable Television System; and

WHEREAS, following such public hearings and such further opportunity for review, negotiations and other actions as the Town Board deemed necessary and that is required by law, the Town board has decided to renew Time Warner Cable LLC's Franchise as provided in the Franchise Agreement, and subject to the provision in a letter dated May 7, 2007 and the addition of all five fire houses located in the Town of Shandaken receiving free cable, internet and phone service,

THEREFORE BE IT RESOLVED, that the Town Board, grants this franchise renewal, and authorizes the Supervisor to sign said Franchise Agreement dated the 8th day of May, 2007.

AND MOVES ITS ADOPTION

Seconded by: Councilman DiSclafani

ROLL CALL

	AYES	NAYS
COUNCILMAN TODD	<u> x </u>	<u> </u>
COUNCILMAN DISCLAFANI	<u> x </u>	<u> </u>
COUNCILMAN MUNSTER	<u> x </u>	<u> </u>
COUNCILMAN STANLEY	<u> x </u>	<u> </u>
SUPERVISOR CROSS	<u> x </u>	<u> </u>