

TOWN OF FALMOUTH

CABLE TELEVISION  
FRANCHISE AGREEMENT

GRANTED TO  
TIME WARNER ENTERTAINMENT COMPANY, L.P.

January 24, 2000

FALMOUTH TOWN COUNCIL  
FALMOUTH, MAINE

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## FRANCHISE

This Franchise Agreement entered into this \_\_\_\_ day of January, 2000, by and between Time Warner Entertainment Company, L.P., a Delaware Limited Partnership, and the Town Council of the Town of Falmouth, Maine, as Franchise Authority for the renewal of the cable television Franchise(s):

### WITNESSETH:

WHEREAS, the Franchise Authority of the Town of Falmouth, Maine (the "Town"), pursuant to 30-A M.R.S.A. §3008, is authorized to grant one or more non-exclusive revocable franchise agreements to construct, upgrade, operate and maintain a Cable Television System within the Town of Falmouth; and WHEREAS, the Town and the predecessor of Time Warner Entertainment Company, L.P., Public Cable Company, entered into a Franchise Agreement to construct, upgrade, operate and maintain a Cable Television System in the Town of Falmouth on December 20, 1988; and

WHEREAS, Public Cable Company's obligations under the Franchise Agreement with the Town were assigned to Time Warner Entertainment Company, L.P. ("Time Warner" or "Company") on December 21, 1998; and

WHEREAS, the Town and Time Warner did engage in good-faith negotiations to renew the Franchise Agreement to construct, upgrade, operate and maintain the Town's Cable Television System; and

WHEREAS, the Town after consideration, analysis and deliberation, approved the technical ability, financial qualifications, upgrade provisions, Cable Television System design and other proposals of Time Warner; and

WHEREAS, the Town has determined that it is in the best interest of the Town of Falmouth to grant a Franchise Agreement to Time Warner;

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

## SECTION 1 - DEFINITIONS

For the purpose of this Franchise Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word shall is always mandatory and not merely directory, except where noted. Where the following definitions are in conflict with definitions of law, it is the express intent that the definition in applicable federal law shall take precedence.

(a) Basic Service or Basic Level of Service: The lowest service tier, other than a Pay Cable Service, distributed over the Cable System, which includes, without limitation, all Public, Educational and



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Governmental Access Channels and all Broadcast Signals, if any, required to be carried on Basic Service pursuant to federal law or this Franchise Agreement to the extent it is not inconsistent with federal law.

(b) Cable Act: Cable Communication Policy Act of 1984 (the "1984 Cable Act"), Public Law No. 98-549, 98 Stat. 2779 (1984), as amended by the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), Public Law No. 102-385, 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996).

(c) Cable Service: The one-way transmission to Subscribers of video programming or Other Programming Services, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or Other Programming Service.

(d) Cable Television System or Cable System: A facility consisting of a set of closed transmission paths and associated Signal generation, reception and control equipment designed to provide Cable Service (including video programming) to multiple Subscribers within a service area unless such system does not use any public rights of way.

(e) Channel or Video Channel: A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(f) Company: Time Warner Entertainment Company, L.P., its lawful successors, transferees, or assignees, in accordance with the terms and conditions of this Franchise Agreement.

(g) Designated Access Provider: The entity or entities designated from time to time by the Town to provide PEG access to the residents of the Town of Falmouth.

(h) Downstream Channel: A channel over which Signals travel to an authorized recipient of programming.

(i) Drop or Cable Drop: The interconnection between each home or building and the Cable System.

(j) FCC: The acronym of the Federal Communications Commission or any successor agency.

(k) Franchise Authority: The Town Council of Falmouth, Maine, or its successor.

(l) Government Channel: Any channel, or portion thereof, which has been allocated for use by the Town, the Franchise Authority or its designee(s).

(m) Gross Annual Revenues: Consideration of any form or kind derived by the Company from the carriage of Signals over the Cable Television Systems including, without limitation: the distribution of any Service over the System; the provision of any Service related activity in connection with operation of the Cable System; Basic Service monthly fees; all other Service fees; fees paid for pay and/or pay-per-view Services, installation, reconnection, downgrade, upgrade and any other similar fees; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals, and/or leases and/or sales; all home-shopping service(s) revenues; and advertising revenues. Gross Annual Revenues shall not include monies Company is required to expend for promotional activities, refunds to

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customers, uncollectible accounts or taxes and fees (except for franchise fees) on services furnished by Company which are imposed upon any customer or user by the local or governmental entity and collected by Company on behalf of such local or governmental entity or paid to such entity.

- (n) Origination Point: A connection to the cable system which is provided to allow for live programming to be transmitted from that location Upstream to the Headend and from there Downstream to the Subscribers over one or more access channels.
- (o) Other Programming Service: Services which Company may make available to all Subscribers generally.
- (p) Pay Cable or Premium Service: Programming delivered for a fee or charge to Subscribers on a per-channel basis, or as a package of services, in addition to the fee or charge for the Basic Cable Services, or for such other service tier as permitted by applicable law.
- (q) Pay-Per-View: Programming delivered for a fee or charge to Subscribers on a per-program or time basis, in addition to the charge or fee to Subscribers for Basic Cable Service, or for such other service tier as permitted by applicable law.
- (r) PEG: The acronym for Public, Educational, and Governmental; used in conjunction with Access Channels, support and facilities.
- (s) PEG Access Channels: Any Channel(s) made available for the presentation of PEG Access programming.
- (t) Person: Any corporation, partnership, limited partnership, association, trust or organization, other business entity, individual or group of individuals acting in concert.
- (u) Private Way: A way shown on an approved subdivision plan, recorded in the Cumberland County Registry of Deeds, or a way which, with the approval of the Town, has sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting on the way.
- (v) Programming or Video Programming: Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (w) Public Building: All public schools, police and fire stations, public libraries, Town Hall, and other public buildings owned or leased by the Town.
- (x) Public Way or Street: The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, boulevards, concourses, driveways, bridges, land paths, sidewalks, public ways, circles, lanes, tunnels, parks, parkways, waterways, piers, bulkheads, dedicated public utility easements and public grounds or waters and all other publicly owned real property within or belonging to the Town, now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the Town that its property rights are sufficient to permit

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its use for any purpose, or that the Company shall gain or be permitted to exercise and rights to use property in the Town greater than those already possessed by the Town.

- (y) Public Works Department (DPW): The Public Works Department of the Town of Falmouth, Maine.
- (z) Franchise Agreement: The non-exclusive Cable Television Franchise to be granted to Company by this instrument.
- (aa) Service: Any Basic Service or Standard (Cable) Service, and Pay (Cable) Service, or any other Cable Service, whether or not originated by the Company, which is offered to any Subscriber in conjunction with, or which is distributed over, the Cable System.
- (bb) Signal: Any transmission of electromagnetic or optical energy which carries Video Programming from one location to another.
- (cc) Subscriber: Any lawful recipient of cable service.
- (dd) Subscriber Network: The bi-directional-capable network to be owned and operated by the Company, over which Cable Service(s) can be transmitted to Subscribers.
- (ee) Town: The Town of Falmouth, Maine.
- (ff) Transfer: The disposal by the Company, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of the ownership or control of the System or of the Franchise Agreement to a Person, or a group of Persons acting in concert.
- (gg) Upstream Channel: A channel over which Signals travel from an authorized location to a system distribution point.

## SECTION 2 - GRANT OF FRANCHISE AGREEMENT

### Section 2.1 – GRANT OF FRANCHISE AGREEMENT

Pursuant to the authority of 30-A M.R.S.A. §3008 & §3010, and subject to the terms and conditions set forth herein, the Town Council of Falmouth, as the Franchise Authority of the Town, hereby grants a non-exclusive, revocable cable television Franchise Agreement to Time Warner Entertainment Company, L.P., a Delaware Limited Partnership established for such purpose, authorizing and permitting the Company to construct, upgrade, install, operate and maintain a Cable Television System within the corporate limits of the Town of Falmouth.

This Franchise Agreement is granted under and in compliance with 30-A M.R.S.A. §3008 & §3010 of the Laws of Maine, as amended, and in compliance with all federal laws, and FCC rules and regulations and all other applicable federal, state or local rules and regulations in force and effect during the period for which this Franchise Agreement is granted.

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Subject to the terms and conditions herein and to the extent to which the Franchise Authority has the power to authorize, the Franchise Authority hereby grants to the Company the right to construct, upgrade, install, operate and maintain a Cable System in, under, over, along, across or upon the public ways, streets, lanes, avenues, alleys, sidewalks, bridges, highways, and other public places under the jurisdiction of the Town of Falmouth within the municipal boundaries and subsequent additions thereto, including property over which the Town has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, or redistribution of Signals in accordance with the laws of the United States of America and the State of Maine. In exercising rights pursuant to this Franchise, Company shall not endanger or unreasonably interfere with the lives of persons, unreasonably interfere with any installations of the town, any public utility serving the town or any other person permitted to use public ways and places, nor unnecessarily hinder or obstruct the free use of public ways and places. Grant of this Franchise Agreement does not establish priority for use over other present or future permit holders or the Town's own use of public ways and places. Disputes between Company and other parties regarding use of public ways and places shall be resolved in accordance with the Town's Department of Public Works (DPW) regulations and any nondiscriminatory, generally applicable special laws or Town bylaws or ordinances enacted hereafter.

Section 2.2 – TERM OF FRANCHISE AGREEMENT

The term of this Franchise Agreement shall be ten (10) years and shall commence upon the effective date of this agreement, unless sooner terminated as provided herein or surrendered.

Section 2.3 – TRANSFER AND ASSIGNMENT OF FRANCHISE AGREEMENT

(a) This Franchise Agreement or control thereof shall not be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, in part or as a whole, directly or indirectly, or by transfer of control of any Person holding such Franchise to any other Person, or leased or sublet, mortgaged or pledged in trust, without the prior written consent of the Franchise Authority, which consent shall not be unreasonably or arbitrarily withheld. Such consent shall be given only after a public hearing upon a written application therefor. The application for transfer consent shall be signed by Company and by the proposed transferee or assignee. Notwithstanding anything herein to the contrary, no such prior consent shall be required for a transfer or assignment resulting from the transfer of ownership interests between existing holders of ownership interests in the Company, where such holders were also holders of ownership interests in the Company at the time of the original grant of the franchise to Company.

(b) For purpose of this Section, any sale, assignment or any other disposition of a majority ownership interest of the parent company of the Franchise to any one Person or group of Persons acting in concert, in one transaction or a series of related transactions, shall be deemed to be a change of control of the Company. The word "control" as used in this Section is not limited to major stockholders but includes actual working control in whatever manner exercised and includes control of the parent company of the Company.

(c) The consent or approval of the Franchise Authority to any transfer, assignment, lease, sublease or mortgage of the Franchise Agreement granted to the Franchise shall not constitute a waiver or release of the rights of the Town in and to the streets and Public Ways or any other rights of the Town under this

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Franchise Agreement, and any such transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise Agreement.

(d) Any proposed controlling or owning Person or transferee approved by the Town shall be subject to all of the terms and conditions contained in this Franchise Agreement.

(e) Notwithstanding the foregoing, pledges in trust or mortgages of the assets of the System to secure an indebtedness may be made without the Town's prior consent; except that no such arrangement may be made which would in any respect, under any condition, prevent the Company or any successor from complying with all its obligations under the Franchise Agreement, nor may any such arrangement permit a third party to succeed to the interest of Company without the prior consent of the Town.

(f) Every transfer assignment or change of control made in violation of this Section shall make the Franchise Agreement subject to cancellation.

(g) Any Person who desires the Town to consider an application for transfer or assignment of the Franchise Agreement to it shall compensate the Town for all reasonable costs (including reasonable consultant and attorneys fees) associated with the Town's determination of the technical, legal and financial qualifications of the proposed transferee (i.e., a Form 394 review) .

#### Section 2.4 – NON-EXCLUSIVITY OF FRANCHISE AGREEMENT

This Franchise Agreement shall not affect the right of the Franchise Authority to grant to any other Person a Franchise or right to occupy or use the streets, or portions thereof, for the construction, installation, operation or maintenance of a Cable Television System within the Town of Falmouth; or the right of the Franchise Authority to permit the use of the public ways and places of the Town for any purpose whatever. Company hereby acknowledges the Franchise Authority's right to make such grants and permit such uses.

The Franchise Authority agrees that any grant of additional franchises by the Franchising Authority to any other entity to provide cable service shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth herein. Nothing in this section shall be construed to prevent the Franchise Authority from approving additional cable franchises in all or any part of the Town, under different terms and conditions than are contained in this Franchise Agreement; provided that any variations in subsequently approved cable franchise agreements, taken as a whole, do not confer an economic or competitive market advantage on the companies of such additional agreements.

#### Section 2.5 – POLICE AND REGULATORY POWERS

By executing this Franchise Agreement, Company acknowledges that its rights are subject to the powers of the Town to adopt and enforce general ordinances and regulations necessary to the safety and welfare of the public. Company shall comply with all applicable ordinances and regulations enacted by the Town. Any conflict between the terms of this Franchise Agreement and any present or future lawful exercise of the Town's police or regulatory powers shall be resolved in favor of the latter.

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Section 2.6 – REMOVAL OR ABANDONMENT

Upon termination of this Franchise Agreement by passage of time or otherwise, and unless 1) Company renews its Franchise for another term or 2) Company transfers the Cable System to a transferee approved by the Franchise Authority, Company shall remove its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the public way and places and shall restore all areas to their original condition. If such removal is not completed within six (6) months after such termination, the Franchise Authority may deem any property not removed as having been abandoned and may, at its election, remove said abandoned plant at the sole cost of Company or dispose of or use any such property in any way or manner it deems appropriate.

Section 2.7 – EFFECT OF ACCEPTANCE

By accepting the Franchise Agreement, Company: a) acknowledges and accepts the Town's legal right to issue and enforce the Franchise Agreement; b) accepts and agrees to each and every provision contained herein; and c) agrees that the Franchise Agreement was granted pursuant to process and procedures consistent with applicable law.

**SECTION 3 – SYSTEM DESIGN**

Section 3.1 – SUBSCRIBER NETWORK

(a) Company shall operate and maintain a hybrid fiber/coax system with a fiber-optic backbone to a minimum of 750 MHZ, with a minimum capacity of 70 downstream video channels.

Section 3.2 – PARENTAL CONTROL CAPABILITY

In order to restrict the viewing of programming which the viewer may find objectionable, upon the request of a Subscriber Company shall make available for sale or lease a device by which the Subscriber can prohibit viewing of a particular Cable Service during periods selected by that Subscriber.

**SECTION 4 - CONSTRUCTION, INSTALLATION AND MAINTENANCE STANDARDS**

Section 4.1 – LOCATION OF CABLE TELEVISION SYSTEM

Company shall construct, upgrade, operate and maintain the Cable Television System within the Town of Falmouth. Poles, towers and other obstructions shall be erected so as not to unreasonably interfere with vehicular or pedestrian traffic over public ways and places. The erection and location of all poles, towers and other obstructions shall be in accordance with any applicable Town or State laws and regulations and shall be fixed with the prior written approval of the Town Council and under the supervision of the Public Works Department, which approval shall not be unreasonably withheld.

Section 4.2 – UNDERGROUND FACILITIES

In the areas of the Town having telephone lines and electric utility lines underground, whether required by law or not, all of Company's lines, cables and wires shall be underground. At such time as these

facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the Town, the Company shall likewise place its facilities underground at its sole cost and expense. All underground cable lines shall be placed beneath the pavement subgrade. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

#### Section 4.3 – TREE TRIMMING

In the installation and maintenance of amplifiers, poles, other appliances or equipment and in stringing or repair of cables and/or wires as herein authorized, Company shall avoid all unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, public ways and places and private property in the Town. Company shall comply with all the rules established by the Town or its designee during the term of this Franchise Agreement. All tree and/or root trimming and/or pruning shall be done pursuant to any applicable regulations of the Town. Company shall use its best efforts to obtain the prior written permission of the owner of any privately owned tree or other vegetation before it trims or prunes the same.

#### Section 4.4 – RESTORATION TO PRIOR CONDITION

Whenever Company takes up or disturbs any pavement, sidewalk or other improvement of any public way, public place or private property, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable. If Company fails to make such restoration within a reasonable time, the Franchise Authority may fix a reasonable time for such restoration and repairs and shall notify the Company in writing of the restoration and repairs required and time fixed for performance thereof. Upon failure of Company to comply within the specified time period, the Franchise Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by Company upon demand by the Franchise Authority.

#### Section 4.5 – TEMPORARY RELOCATION

Company shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person, including without limitation, a Person holding a building moving permit issued by the Town. The expense of such raising or lowering shall be paid by the Person requesting the same, and Company shall have the authority to require such payment in advance. Company shall be given reasonable notice necessary to maintain continuity of service.

#### Section 4.6 – DISCONNECTION AND RELOCATION

Company shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other public ways and places, or remove from any street or any other public ways and places, any of its property as required by the Franchise Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Town department acting in a governmental capacity.

#### Section 4.7 – COMPLETION OF WORK BY TOWN

Upon failure of Company to commence, pursue or complete any work required by law or by the provisions of this Franchise Agreement in any street or other public place within the time prescribed and to the satisfaction of the Franchise Authority, the Franchise Authority may, at its option, cause such work to be done with reasonable expenditures therefor and Company shall pay to the Town the cost thereof in the itemized amounts reported by the Franchise Authority to the Company within thirty (30) days after receipt of such itemized report. In the event that the Town implements the provisions of this Section 4.8, it shall notify Company at least seven (7) days in advance and shall endeavor to have such work performed at the lowest practicable cost.

#### Section 4.8 – SAFETY STANDARDS

Company shall construct, upgrade, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the Maine Electrical Code, the National Electric Code, the National Electric Safety Code, the Bell Telephone System Code of Pole Line Construction, the rules and regulations of the FCC, all building and zoning codes, and all land use restrictions as they may now exist or amended or adopted hereafter.

#### Section 4.9 – PRIVATE PROPERTY

Company shall be subject to all laws, ordinances, bylaws or regulations regarding private property in the course of constructing, upgrading, installing, operating or maintaining the Cable System in the Town. Company shall promptly protect, repair or replace all private property, real and personal, damaged or destroyed as a result of any construction, upgrade, installation, operation, maintenance or repair of the Cable System at its sole cost and expense.

#### Section 4.10 – USE OF COMPANY FACILITIES

The Town shall have the right to attach to any pole owned and erected by Company and to place in any of the conduits owned by Company, its own facilities to be used for fire, police or other non-commercial governmental communications purposes where space permits. All such placements by the Town shall be in conformity with all applicable rules and regulations, shall cause no additional expense to Company and shall not interfere with the routine operation by Company of its Cable Television System.

#### Section 4.11 – RIGHT TO INSPECTION OF CONSTRUCTION

The Town or its designee shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this Franchise Agreement and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this Franchise Agreement and all other applicable law. The Town shall give Company reasonable notice of any such inspection, and such inspection shall not interfere with Company's operations except in emergency situations. Company has the right to be present at any such inspection.



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Section 4.12 – CONSTRUCTION MAPS

Company shall file with the Franchise Authority or its designee accurate maps of all existing and proposed installations. Such maps shall be available to Franchise Authority within a reasonable time upon request.

Section 4.13 – MAINTENANCE LOG

Company shall maintain an annual log, showing the date, approximate time and duration, type and probable cause of all Cable Television System outages, whole or partial. All entries in such log shall be retained by Company for one (1) additional year and shall be subject to inspection and copying by the Franchise Authority or its designee during Company's regular business hours upon reasonable request.

Section 4.14 – SERVICE INTERRUPTION

Except where there exists an emergency situation necessitating a more expeditious procedure, Company may interrupt service for the purpose of repairing, upgrading or testing the Cable Television System, only during periods of minimum use, and only after a minimum of forty-eight (48) hours notice to affected Subscribers, unless extenuating circumstances beyond Company's control make such notice impossible. Such notice may be made via a character generated notice on the System.

Section 4.15 – SYSTEM MONITORING AND MAINTENANCE

The Company shall monitor the Cable System and the headend on a regular basis and shall conform to maintenance and monitoring procedures directed toward maximizing the reliability and maintainability of the Cable System with respect to its delivery of service to subscribers at or above the performance standards set forth in this Agreement.

Section 4.16 – PEDESTALS

In any cases in which pedestals housing passive devices are to be utilized, in Town Public Ways or within the Town public lay-out, such equipment must be in accordance with procedures applicable to all utility companies; provided that the Company may place active devices (amplifiers, power supplies, line extenders, etc.) in a low-profile electronic control box, at Town approved locations to be determined when the Company applies for an underground permit, which shall not be unreasonably denied. All such equipment shall be shown on the construction maps, submitted to the Town in accordance with Section 4.12.

Section 4.17 - DAMAGE TO PUBLIC OR PRIVATE PROPERTY

Company, at its sole cost and expense, shall protect or support public or private property to prevent damage caused by construction, installation, upgrade, maintenance, repair or operation of its Cable System. If the Company fails to protect such property, the Town may do so and the Company shall compensate the Town for all reasonable expenses incurred thereby. Company, within ten (10) days of completion of work and at its own expense, shall repair, replace or compensate property owners for damage to public or private property caused by Company or its agents. The Town may elect to repair or

replace damaged public property, such as sewage lines, and bill Company for the reasonable cost of repair.

## **SECTION 5 – LINE EXTENSION**

### **Section 5.1 – GENERAL LINE EXTENSION POLICY**

Throughout the term of this Franchise, Company shall make Cable Television Service(s) available to all residents of the Town where the density of homes is twelve (12) per mile as measured from the Company's existing distribution system. Notwithstanding the above, Company shall make a reasonable effort to make Cable Television Services available to Town residents whose homes do not meet the technical density requirements, provided that such extension of service is technically and financially feasible.

## **SECTION 6 – SERVICES AND PROGRAMMING**

### **Section 6.1 – BASIC SERVICE**

The Company shall provide a basic or "Antenna" service which shall include at least: 1) all broadcast television signals in the Falmouth, Maine area which are required to be carried by a Cable Television System serving the Town pursuant to state or federal statute or regulation; and 2) a minimum of two (2) PEG Access Channels for public, educational and governmental use; and 3) additional programming which is available to Cable Television Systems for distribution as part of a Basic Service which the Company may determine to provide.

### **Section 6.2 – PROGRAMMING**

Company shall provide a wide array of programming services in an effort to fill the requests of its customers and will do so in full conformity of all applicable federal laws and rules. The Company shall use its best efforts to provide a wide diversity of alternative programming options to its Subscribers.

### **Section 6.3 – CONTINUITY OF SERVICE**

It shall be the right of all Subscribers to receive service insofar as their financial and other obligations to Company are honored. In the event that Company rebuilds, modifies or upgrades the Cable Television System, Company shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When necessary Service interruptions can be anticipated, Company shall notify Subscribers forty eight (48) hours in advance. Such notice may be made via a character generated notice on the System. In the event that a new Franchise acquires the Cable System, Company shall cooperate with the Town and such new Company to assure continuity of Service(s) to all Subscribers.

### **Section 6.4 – CHANGES IN CABLE TELEVISION TECHNOLOGY**

(a) From time to time, Company shall review with the Town changes in relevant cable technology that might benefit Company's Subscribers. Such review may take into account the state of the art in

relevant cable technology, the characteristics of the existing system, the benefits to Subscribers of any upgrade in relevant cable technology, the cost to Subscribers of any such upgrade, the technical feasibility of upgrading the existing system, the demand for such upgrade or change in technology, the remaining life of the Franchise over which the cost of such upgrade would have to be amortized, Company's unamortized investment in the existing system, and additional factors that the Company or the Franchise Authority deem relevant.

- (b) If, based on such review, and to the extent allowed by applicable law, the Franchise Authority requests a change in relevant cable technology, the parties shall negotiate in good faith to amend this Franchise to establish the terms and conditions for an upgrade or change in relevant cable technology.
- (c) Nothing in this Section shall be deemed to prohibit Company from upgrading its system with any cable television technology at its own discretion.

#### Section 6.5 – FREE CONNECTIONS AND BASIC SERVICE TO PUBLIC BUILDINGS

(a) Throughout the term of this Franchise Agreement, the Company shall provide one (1) Subscriber Network Drop, Outlet, Converter (if necessary) and the monthly Basic Service, without charge, to all public schools, police and fire stations, public libraries, and all other buildings specified in Schedule A. The Company shall verify the location of each connection, specified in this Section 6.7(a), with the proper officials of each of the institutions entitled to such free Drop, Outlet, Converter, and Basic Service prior to installation.

(b) The Company shall provide at cost, upon written request, within thirty (30) days, all necessary wire, connectors, amplifiers, splitters and wall plates to enable the Town to wire any and all classrooms in the Falmouth Public Schools to receive Subscriber Service. The Company shall advise the Town and provide assistance to ensure the proper wiring and installation of said wiring and service to the school classrooms.

### SECTION 7 – PEG ACCESS COMMITMENTS AND POLICIES

#### Section 7.1 – GENERAL

(a) Pursuant to the Cable Act, Section 611(a), (b) and (c) and Section 6.1 above, Company shall provide two (2) channels, for the exclusive non-commercial Public, Educational and Government (PEG) Access use, on the Basic Tier of the Subscriber Network. Upon the request of the Franchise Authority, Company will make a third PEG access channel available for use as a Public, Educational and Government channel upon sixty (60) days' prior written notice from the Town. The Town's notice requiring provision of an additional channel must be based upon demonstrated utilization of the then-existing PEG channels or must otherwise be based upon demonstrated needs or interests of the community. Switching capability between Falmouth High School and the Falmouth Town Offices will be required for the Public and Governmental channels upon completion of construction of the high school facility. The specifications and arrangements for switching capability will be provided to the Town by the Company upon request.

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(b) Company may submit, from time-to-time, notices of importance to subscribers, such as notices of System outages, change of channel lineup, etc., to be displayed on the PEG Access channel(s) Community Bulletin Board system(s) in accordance with the PEG Access Rules and procedures that apply to use of this service by the community.

Section 7.2 – CAPITAL FUNDING FOR PUBLIC ACCESS

Company shall provide capital funding for public access throughout the duration of this franchise agreement in accordance with the following formula: Company shall make payments to the Town on an annual basis for each year of the franchise agreement in an amount equal to 0.366% of gross annual revenues. Payments for each year of the franchise agreement shall be made on April 1<sup>st</sup> of that same year based upon the gross annual revenues from the preceding fiscal year.

Within 30 days of the effective date of this agreement Company shall also pay the Town a one-time public access support grant in the amount of \$5,900.00.

Capital funds provided under this section shall be used exclusively for public access purposes, and all equipment and capital items purchased by the Town or its designee(s) from such funds shall be the sole property of the Town.

Company agrees that funds provided under this section are not franchise fees as defined under federal law, pursuant to 47 U.S.C. § 542(g)(2)(C).

Section 7.3 – PEG ACCESS EQUIPMENT PURCHASING

Upon the Town's request, Company shall assist the Town in the Town's purchase of equipment for the PEG Access facility through the Company's access to wholesale, discounted or otherwise competitive rates on equipment purchases, where applicable.

Section 7.4 – ACCESS CHANNEL(S) MAINTENANCE

Company shall monitor the PEG access channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels. Upon request, Company shall make available a copy of its most recent annual performance tests required by the FCC.

Section 7.5 – ACCESS INFORMATION FOR SUBSCRIBERS

Company shall insert in its monthly billing mailing a non-commercial promotional public, educational and/or government Access announcement, at least once per calendar year; provided, however, that said inserts are delivered to Company in a format that is acceptable to the Company's standards and the billing service utilized by the Company and is of acceptable weight. The Company shall attempt to give a minimum of sixty (60) days written notice prior to any such change of standards but in no case shall it give less than a minimum of thirty (30) days written notice prior to any such change of standards. The Company shall not be required to insert any message provided if (1) the insert(s) are not in full conformity to the specifications required by the Company or its billing service; and (2) the insertion of

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those items in subscriber statements will cause the Company to be required to pay any additional US postage charges in accordance with the postal rates in effect at that time. Said printed announcements shall be prepared and printed by the various access entities at their sole cost and expense.

**Section 7.6 – CHANGE IN PEG ACCESS CHANNEL ASSIGNMENT**

Company shall not change the channel designation of any of the PEG Access Channels without prior written notice to the Franchise Authority. If the Company elects to change the channel designation of any Access channel, the Company shall reimburse the Town and/or the designated access provider(s) for the reasonable costs associated with the channel change.

**Section 7.7 – LIVE PROGRAMMING ORIGINATION POINTS**

To facilitate live programming within the Town of Falmouth, the Company shall install Origination Points at each of the sites listed in Schedule A, attached hereto and made a part hereof.

**Section 7.8 – TRAINING**

When resources are reasonably available, Company shall provide periodic training sessions to the public in use of public access studio and video equipment.

**SECTION 8 – FRANCHISE FEES**

**Section 8.1 – FRANCHISE FEE**

- (a) Company shall provide a franchise fee equal to five percent (5%) of Company's Gross Annual Revenues.
- (b) With respect to said franchise fee, Company shall make quarterly payments on or before the fifteenth day of January, April, July and October equal to five percent (5%) of the previous quarter's gross revenues.
- (c) The payment for the last quarter of the last year of the term of this Franchise shall be due and payable fifteen (15) days after the end of that quarter.

**Section 8.2 – LATE PAYMENT**

In the event that the fees herein required are not tendered on or before the dates fixed in Section 8.1 above, interest due on such fee shall accrue from date due at one and one-half percent (1.5%) per month.

**Section 8.3 – RECOMPUTATION**

- (a) Tender or acceptance of any payment shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Town of Falmouth may have for additional sums including interest payable under this Section 8.3. All amounts

paid shall be subject to audit and recomputation by the Town at any time during the term of this Franchise Agreement. If, after audit and recomputation, an additional undisputed fee is owed to the Town, such fee shall be paid within thirty (30) days after audit and recomputation. The interest on such additional fee shall be charged from the due date at one and one-half percent (1.5%) per month during the period that such additional amount is owed.

(b) If after such audit and recomputation no additional fee is owed then the cost, if any, of such audit and recomputation shall be the responsibility of the Town of Falmouth. If after such audit and recomputation an additional fee in excess of ten (10%) of the franchise fee due in any calendar year is owed to the Town of Falmouth then the Company shall bear the reasonable out-of-pocket costs, if any, of such audit and recomputation.

#### Section 8.4 – TAXES

Payment of the Franchise Fee made by Company to the Town pursuant to the provisions of this Franchise Agreement shall not be considered in the nature of a tax, but shall be in addition to any and all generally applicable taxes which are now or may be required hereafter to be paid by any law of the State of Maine, the Town of Falmouth, or the United States.

### SECTION 9 – RATES AND CHARGES

#### Section 9.1 – MONTHLY RATES AND INSTALLATION CHARGES

The Town hereby reserves the right to regulate the Company's subscriber rates and charges to the extent allowable under federal and state law, as amended from time to time, now in existence or hereafter adopted during the term of this Franchise Renewal.

#### Section 9.2 – NOTIFICATION OF RATE CHANGE

Company shall notify all Subscribers of any impending rate increases no later than thirty (30) days prior to such increase and provide each Subscriber with a schedule describing proposed rates for each service offered. No rates or charges shall be effective except as they appear on a schedule so filed.

At the time of initial solicitation of service, Company shall also provide each Subscriber with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate cable service. Subscribers shall have at least thirty (30) days from receipt of notification of any rate increase to either downgrade service or terminate service altogether without any charge. Once a Subscriber has requested a change in service, Company shall commence billing said Subscriber at the new rate within said thirty (30) day period from the date of the request for a change in Service, regardless of whether Company actually changes the level of service within that time period.

#### Section 9.3 – PUBLICATION

All rates for Subscriber services and leasing of channels shall be published and nondiscriminatory. A written schedule of all rates shall be available upon request during business hours at Company's business office. Nothing in this Franchise Agreement shall be construed to prohibit the reduction or waiver of

charges in conjunction with promotional campaigns for the purpose of attracting Subscribers, or the establishment of charges and rate schedules that may vary with volume or nature of usage or programs.

#### Section 9.4 – CREDIT FOR SERVICE INTERRUPTION

In the event that Company's service to any Subscriber(s) is interrupted for twenty-four (24) or more consecutive hours, Company shall grant expeditiously each Subscriber(s) a pro-rata credit if the interruption was not caused by the Subscriber(s) and the Company knew or should have known of the Service interruption.

### SECTION 10 – INSURANCE BONDS

#### Section 10.1 – INSURANCE

(a) Company shall purchase and maintain such insurance as will protect the Company and the Town from claims set forth below caused by the construction, installation, operation, or maintenance of any structure, equipment, wires or cables authorized or used pursuant to this Franchise, whether caused by Company or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Company's insurance policies shall protect the Town against the following:

- (1) Claims under Workers' Compensation, disability benefit and other similar employee benefit acts;
- (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;
- (3) Claims for damage because of bodily injury, sickness or disease, or death by any person other than its employees, and claims insured by usual personal injury liability coverage; and
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

(b) The Insurance required by the above shall be written for not less than (1) the minimum limits of liability required by the Workers' Compensation Act and (2) five million dollars (\$5,000,000) for general liability coverage. The above insurance policies shall also be subject to the following requirements:

- (1) Certificates of Insurance reasonably acceptable to the Town shall be addressed to and filed with the Town prior to the Effective Date of this Franchise Agreement. New and renewal certificates shall be addressed to and filed with the Town at least ten (10) days prior to the expiration date of required policies.
- (2) No insurance coverage shall be subject to cancellation without at least sixty (60) days prior written notice forwarded by registered or certified mail to the Town. The Town shall also be notified of the attachment of any restrictive amendments to the policies.

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- (3) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State of Maine.
- (4) The above policies shall name the Town as an additional insured as its interests may appear.
- (5) The Company's failure to obtain or procure or maintain the required insurance shall constitute a material breach of this Franchise Agreement under which the Town may suspend operations under this Franchise Agreement following reasonable notice to the Company and an opportunity to cure.

Section 10.2 – PERFORMANCE BOND

(a) Company shall maintain at its sole cost and expense throughout the term of this Franchise Agreement a faithful performance bond running to the Town, in the sum of fifty thousand dollars (\$50,000.00). Said bond shall be conditioned upon the faithful performance and discharge of all of the material obligations imposed by this Franchise Agreement.

(b) The performance bond, as per Section 10.2(a) above, shall be effective throughout the term of this Franchise Agreement including the time for removal of facilities provided for herein, and shall be conditioned that in the event that Company shall fail to comply with any one or more material provisions of this Franchise Agreement, the Town shall be entitled to recover from the surety of such bond all damages by the Town as a result thereof, in accordance with the following procedures:

- (1) The Town shall notify Company in writing and describe in reasonable detail the specific violation so as to afford Company an opportunity to remedy the violation.
- (2) Company shall have ninety (90) days or such additional period of time as may be reasonably necessary subsequent to receipt of the notice in which to correct the violation before the Town may seek to recover under the bond. Company may, within thirty (30) days of receipt of the notice, notify the Town that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Company to the Town shall stay the ninety (90) day period described above.
- (3) The Town shall hear Company's dispute and shall determine whether a default or violation by Grantee has occurred. In the event that the Town shall determine that a default or violation has occurred the Town shall supplement the decision with written findings of fact.
- (4) If after hearing the dispute Company has been found to be in default, Company shall then have ninety (90) days from such a determination to remedy the violation or failure. At any time after that ninety (90) day period if Company has failed to remedy the violation or failure, the Town may seek recovery under the bond.

The bond shall be a continuing obligation of this Franchise Agreement, and thereafter until Company has liquidated all of its obligations to the Town that may have arisen from the grant of this



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Franchise Agreement or from the exercise of any privilege therein granted. In the event that the Town recovers from said surety, Company shall take immediate steps to reinstate the performance bond to the appropriate amount as per Section 10.2(a).

Section 10.3 – INDEMNIFICATION

(a) The Company further agrees to indemnify and hold harmless the Town and the Franchise Authority, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or resulting from the construction, upgrade, installation, maintenance or removal of the Cable Television System under this Franchise Agreement, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Company, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, up to the extent of Company's negligence.

(b) In order for the Town to assert its rights to be indemnified, defended, or held harmless, the Town must:

- (1) Promptly notify Company of any claim or legal proceeding which gives rise to such right;
- (2) Afford Company the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding, unless, however, the Town, in its sole discretion, determines that its interest cannot be represented in good faith by Company; and
- (3) Fully cooperate with the reasonable requests of Company in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph 2 above.

(c) The Company shall be responsible for all damage or injury to property of any character resulting from any act, omission, neglect, or misconduct in the manner or method of executing this Franchise Agreement or due to the non-execution of its obligations or at any time due to defective work or materials.

(d) Except for claims covered by the insurance referred to in Section 10.1(a)(2) in any and all claims against the Town or any of their agents or employees by any employee of the Company, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or any Subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

(e) The obligations of the Company under this provision shall not extend to the liability of the Town, its agents or employees, arising out of (a) the preparation of approval of maps, drawings, opinions,

reports, surveys, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the Town, its agents or employees provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

(f) The Town shall, at its sole cost and expense, but only to the extent lawful for local governments, indemnify and hold harmless Company against any claims arising out of the Town's (including its officials, boards, agents or employees) use of or acts in connection with the Cable System. Indemnified expenses shall include but not be limited to all out-of-pocket expenses such as attorney's fees and shall also include the reasonable value of any services rendered by the Town.

#### Section 10.4 – NOTICE OF CANCELLATION OR REDUCTION OF COVERAGE

The insurance policies and performance bond required herein shall each contain an endorsement stating that such policies and bond are intended to cover the liability assumed by Company under the terms of this Franchise Agreement and shall contain the following endorsement:

It is hereby understood and agreed that this policy (bond) shall not be canceled, materially changed or the amount of coverage thereof reduced until sixty (60) days after receipt by the Town counsel of the Town of Falmouth, Maine, by certified mail of one (1) copy of a written notice of such intent to cancel, materially change or reduce the coverage required herein.

If Company fails to maintain the insurance policies required herein, the Franchise Authority shall have the option to obtain said policies and require Company to pay for same.

#### Section 10.5 – NO LIABILITY

The Town shall not be liable to the Company for any damages or loss which the Company may suffer as the result of the Town's lawful exercise of the authority granted under the Franchise Agreement.

### **SECTION 11 – ADMINISTRATION AND REGULATION**

#### Section 11.1 – REGULATORY AUTHORITY

The Franchise Authority and/or its designee(s) shall be responsible for the day to day regulation of the Cable Television System. The Franchise Authority or its designee(s) shall monitor and enforce Company's compliance with the terms and conditions of this Franchise Agreement. The Franchise Authority shall notify Company in writing of any instance of non-compliance pursuant to Section 12.2 below.

#### Section 11.2 – PERFORMANCE EVALUATION HEARINGS

(a) The Franchise Authority may, at its discretion, hold a performance evaluation hearing within thirty (30) days of each anniversary of the Effective Date of this Franchise Agreement. All such evaluation hearings shall be open to the public. The purpose of said evaluation hearing shall be to,

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among other things, review Company's compliance with the terms and conditions of this Franchise Agreement, review current technological developments in the cable television field and hear comments, suggestions or complaints from the public. The Franchise Authority shall have the right to question Company on any aspect concerning the construction, upgrade, installation, operation or maintenance of the Cable Television System. During review and evaluation by the Franchise Authority, Company shall fully cooperate with the Franchise Authority or its designee(s), and produce such documents or other materials as are reasonably requested by the Town.

(b) Within thirty (30) days after the conclusion of such review hearing(s), the Franchise Authority may issue a written report with respect to the adequacy of Cable System performance, quality of service and compliance with provisions of this Franchise Agreement. If inadequacies are found which result in a violation of any of the provisions of this Franchise Agreement, the Company shall be informed of same pursuant to Section 12.2 below.

Section 11.3 – NONDISCRIMINATION

Company shall not discriminate against any Person in its solicitation, services or access activities, if applicable, on the basis of race, religion, ancestry, national origin, geographical location within the Town (subject to the provisions of Section 5 herein), sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. Company shall be subject to all other requirements of federal, state or existing local laws, regulations, and all executive and administrative orders relating to nondiscrimination through the term of the Franchise Agreement.

Section 11.4 – SUBSCRIBER AND USER COMPLAINTS

Company shall keep a record of all Subscriber and user complaints on file in its local business office for a minimum of three (3) years. Records of complaint shall indicate: date complaint received, nature of complaint; resolution of complaint; and date of resolution. The Franchise Authority or its designee(s) shall have the right to examine, review and copy said information at its own expense during Company's business hours upon reasonable notice. Company shall also submit said information for each Performance Evaluation hearing, at the request of the Franchise Authority.

Section 11.5 – EMERGENCY REMOVAL OF PLANT

If, at any time, in case of fire, disaster, or other emergency in the Town, it shall become necessary in the reasonable judgment of the Franchise Authority or any designee, 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 Company.

Section 11.6 – REMOVAL AND RELOCATION

The Franchise Authority shall have the power at any time to order and require Company to remove or relocate any pole, wire, cable or other structure that is unnecessarily dangerous to life or property. IN the event that Company, after notice, fails or refuses to act within a reasonable time, the Franchise Authority shall have the power to remove or relocate the same at the sole cost and expense of Company.

Section 11.7 – INSPECTION

The Franchise Authority or its designee(s) shall have the right to inspect, inventory or appraise the plant, equipment or other property of Company as it reasonably related to establishing compliance with this Franchise. Company shall fully cooperate and otherwise assist in these activities.

Section 11.8 – JURISDICTION

Jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of Maine and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any, dispute, action, or suit.

**SECTION 12 - DAMAGES- FRANCHISE REVOCATION**

Section 12.1 – DAMAGES

The Franchise Authority shall be entitled to recover from Company any actual damages, losses, costs and expenses in the event that the Company violates any material provisions of this Franchise Agreement, including, but not limited to, reasonable attorneys' and/or consultants' fees as may have been suffered or incurred by the Franchise Authority by reason of or arising out of such breach of the franchise.

Section 12.2 - DEFAULT PROCEDURES

(a) In the event that the Franchise Authority has reason to believe that the Company has defaulted in the performance of any or several material provisions of this Franchise Agreement, except as excused by Force Majeure, the Franchise Authority shall notify the Company in writing, by certified mail, of the provision or provisions which the Franchise Authority believes may have been or is in default and the details relating thereto.

(b) The Company shall have thirty (30) days to cure such default. Upon failure to cure such default within thirty (30) days or such longer period as the Franchise Authority and Company reasonably agree upon, the Franchise Authority shall issue public notice of a hearing on the matter to be held by the Franchise Authority prior to any assessment of damages. At such hearing the Company may present evidence and be heard as to why it is not in default. Within thirty (30) days of the conclusion of such hearing, the Franchise Authority shall issue a written statement as to its decision and the grounds therefor. In the event that the Franchise Authority, after such hearings, determines that the Company is in such default, the Franchise Authority may determine to pursue any one or more of the following remedies:

- (1) seek specific performance of any provision in the Franchise Agreement which reasonably lends itself to such remedy as an alternative to damages;
- (2) foreclose on all or any appropriate part of the security provided pursuant to Section 10.2 herein;

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- (3) commence an action at law for monetary damages;
- (4) declare the Franchise Agreement to be revoked subject to Section 12.3 below and applicable law;
- (5) invoke any other lawful remedy available to the Town.

**Section 12.3 - REVOCATION OF FRANCHISE AGREEMENT**

In the event that the Company fails to comply with any material provision of this Franchise Agreement the Franchise Authority may revoke the Franchise Agreement granted herein, subject to the procedures of Section 12.2 above.

**Section 12.4 - TERMINATION**

The termination of this Franchise Agreement and the Company's rights herein shall become effective upon the earliest to occur of: 1) the revocation of the Franchise agreement by action of the Franchise Authority, pursuant to Section 12.2 and Section 12.3 above; 2) the abandonment of the Cable System, in whole or material part, by the Company without the express, prior approval of the Franchise Authority; or 3) the expiration of the term of this Franchise Agreement and non-renewal. In the event of any termination, the Town shall have all of the rights provided in this Franchise Agreement.

**Section 12.5 - NON-EXCLUSIVITY OF REMEDY**

No decision by the Franchise Authority or the Town to invoke any remedy under this Franchise Agreement or under any statute, law or ordinance shall preclude the availability of any other such remedy.

**SECTION 13 - SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

**Section 13.1 - LOCAL CUSTOMER PAYMENT CENTER**

Company shall maintain an area customer payment center and/or a payment dropbox where subscribers can, at minimum, pay their cable bills. Such center and/or dropbox shall be open, at a minimum, three (3) evenings until 9:00 p.m. per week and at least six (6) hours on a weekend day to accommodate the work schedules of Falmouth subscribers. This location shall be handicapped accessible. Said customer payment center and/or dropbox shall be a continuing obligation of this Franchise Agreement.

**Section 13.2 - CUSTOMER SERVICE TELEPHONE**

Company shall have a live telephone operator between the hours of 8:00 a.m. and 11:00 p.m. seven days a week to respond to customer calls. Company's telephone response system shall be usable with state-of-the-art telecommunications devices for the hearing impaired.

### Section 13.3 - CUSTOMER SERVICE

- (a) Company shall comply with the FCC Customer Service Regulations (47 CFR § 76.309) in all respects.
- (b) Company shall ensure that flexible hours are available to customers for service and installation visits. The office will be open for such visits between 8:00 a.m. and 6:00 p.m., Monday through Friday, and service calls will be made Saturdays between 8:00 a.m. and 1:00 p.m.

### Section 13.4 - SUBSCRIBER SOLICITATION PROCEDURES

Company shall provide all prospective Subscribers with complete, clear and concise information, in writing and prior to or at the time of installation of cable service(s), information concerning the following:

- (1) All services and rates, deposits if applicable, installation costs, service upgrade or downgrade charges (if any), stolen or lost converter charges and relocation of cable outlet charges.
- (2) Complete information concerning billing and collection procedures, procedures for ordering changes in or termination of service(s), and refund policies.
- (3) Complete written information concerning Company's privacy policies, pursuant to state and federal law.

### Section 13.5 - CONSUMER SALES STANDARDS

Company shall, in soliciting prospective customers for cable service(s), provide full and complete information concerning its available cable services and shall, upon request, provide the following:

- (1) A description of each level of service in detail.
- (2) A description of the benefits offered by each level of service, such as the number of channels, programming and exact price.
- (3) A description of all premium services and prices therefor.
- (4) A description of the lowest cost service in an objective manner.
- (5) A description of billing procedures and policies.
- (6) A summary for the prospective customer what the total bill could be expected to be.

### Section 13.6 - CUSTOMER SERVICE PROCEDURES AND NOTICE

- (a) Company shall respond to all requests for service by making a service call at the subscriber's residence within two (2) business days of receiving such request and within a 4-hour window on a designated day. Company shall respond to all requests for installation and disconnection within seven (7) business days of such requests, or at such other time as is mutually agreed upon by Company and said Subscriber. Company's policies are to give service calls priority over installation calls.

#### Section 13.7 - BILLING DISPUTE PROCEDURES

In the event that a billing dispute arises, Company shall resolve said dispute within fourteen (14) days of receiving either verbal or written notification of said dispute from the subscriber. Said subscriber shall be responsible for paying only that portion of the bill that is not in dispute during said fourteen (14) day period.

#### Section 13.8 - DISCONNECTION AND TERMINATION OF CABLE SERVICE

(a) Company shall only disconnect and/or terminate a Subscriber's cable service(s) upon a showing of good and just cause. In no event shall Company disconnect said cable service for nonpayment without the prior written notification to the affected Subscriber at least eight (8) business days prior to such disconnection or termination.

(b) Pursuant to Section 13.6 above, said period shall in no case commence during the billing dispute resolution period.

(c) Upon the issuance of said eight (8) business day disconnection or termination notice above, Company shall meet, at the request of the Franchise Authority or its designee, with the Franchise Authority or designee and the said Subscriber to negotiate, in good faith, a resolution to the billing dispute.

#### Section 13.9 -- SIGNAL QUALITY

Company shall comply with all applicable FCC regulations and standards relating to quality of the Signals transmitted over the Cable Television System.

#### Section 13.10 - EMPLOYEE IDENTIFICATION CARDS

All of Company's employees entering upon private property, including repair and sales personnel, shall be required to wear an employee identification card issued by Company and bearing a picture of said employee. Employees entering upon private property shall be required to wear said identification card in a conspicuous place easily seen by Subscribers.

#### Section 13.11 - PRO-RATED SERVICE

In the event that a Subscriber's service is terminated, monthly charges for service shall be prorated on a daily basis and, where advance payment has been made by Subscriber, the appropriate refund, if exceeding one dollar (\$1.00) shall be made by Company to the Subscriber within forty-five (45) days of such termination.

#### Section 13.12 - PRIVACY PROVISIONS

(a) Company shall respect the rights of privacy of every Subscriber and/or commercial user of the Cable Television System and shall not violate such rights through the use of any device or Signal associated with the Cable System, and as hereafter provided.

(b) Company shall comply with all applicable Federal, State and local laws and regulations respecting Subscriber and commercial user privacy and shall adhere to applicable industry codes of conduct which promote or enhance Subscriber privacy.

#### Section 13.13 – SUBSCRIBER ACCESS TO INFORMATION

Subscribers shall be entitled to examine and copy any information developed by Franchise pertaining to them at Company's premises upon reasonable notice and during regular business hours. Copying costs shall be borne by said Subscriber(s). Company shall promptly correct such records upon a reasonable showing by the Subscriber that information contained therein is inaccurate.

#### Section 13.14 – PRIVACY STANDARDS REVIEW

The Franchise Authority and Company will continually review this Section 13 to determine that it effectively addresses appropriate concerns about privacy. This Section may be amended periodically by agreement of the Franchise Authority and Company.

### **SECTION 14 – REPORTS AND PERFORMANCE TESTS**

#### Section 14.1 – GENERAL

Upon request of the Franchise Authority, the Company shall promptly submit to the Town any information regarding the Company, its business and operations, with respect to the Cable System, any Service, or any Service related activity, in such form and containing such detail as may be reasonably specified by the Town pertaining to the subject matter of this Franchise Agreement which may be reasonably required to establish the Company's compliance with its obligations pursuant to this Franchise Agreement.

#### Section 14.2 – FINANCIAL REPORTS

Company shall furnish to the Franchise Authority, no later than ninety (90) days after the end of Company's Fiscal Year, a sworn statement of its Gross Annual Revenues (as defined in Section 1(m) above) pertaining to the Falmouth Cable Television System only provided, however, that said information shall be for official use only. Said statements shall be sworn to by the person preparing same by Company or an officer of Company.

#### Section 14.3 – NUMBER OF SUBSCRIBERS

Company shall file with the Franchise Authority upon request a report containing the number of Subscribers, as of December 31<sup>st</sup>, and the number of connections and disconnections.



Section 14.4 – SUBSCRIBER COMPLAINT REPORT

Upon request, Company shall provide the Franchise Authority with a list of complaints by Subscribers received during the year and the manner in which the complaints have been met, including the time required to make any necessary repairs or adjustments.

Section 14.5 – SERVICE INTERRUPTION REPORT

Upon request, Company shall submit a list of all significant service interruptions during the year.

Section 14.6 – ANNUAL PERFORMANCE TEST

Proof of performance tests made to ensure compliance with FCC standards for system technical operation shall be available in the Company's Public Files.

Section 14.7 – QUALITY OF SERVICE

Where there exists other evidence which in the reasonable judgment of the Franchise Authority casts doubt upon the reliability of technical quality of cable service(s), the Franchise Authority shall have the right and authority to require Company to test, analyze and report on the performance of the Cable System. Company shall fully cooperate with the Franchise Authority in performing such testing and shall prepare the results and a report, if requested, in writing, within thirty (30) days after notice for the same. Such report shall include the following information.

- (1) the nature of the complaint or problem which precipitated the special tests;
- (2) the system component tested;
- (3) the equipment used and procedures employed in testing;
- (4) the method, if any, in which such complaint or problem was resolved;
- (5) any other information pertinent to said tests and analysis which may be required.

The Franchise Authority, at its expense, may require that said tests be supervised by a professional engineer, knowledgeable in cable systems, who is not an employee or agent of Company.

Section 14.8 – DUAL FILINGS

(a) Upon request or if required by applicable law and regulation, Company shall make available to the Town at the Company's expense, a copy of any petitions or communications with any State or Federal agency or Commission pertaining to any aspect of the Cable System operation hereunder or the financial arrangement therefor, except for submissions which are proprietary and considered for "official use only."

(b) Upon request or if required by applicable law and regulation, in the event that either party requests from any state or federal agency or commission a waiver or advisory petition, it shall immediately notify the other party in writing of said request, petition or waiver.

Falmouth/Time Warner  
Franchise Agreement

Section 14.9 – NOTICE OF DEFICIENCY

Company shall forward to the Town any notice of deficiency; forfeiture; or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding; regarding the Falmouth Cable System or Company to the extent that same may directly affect or bear upon operations in Falmouth.

Section 14.10 – BANKRUPTCY

Company shall forward to the Town any request for protection under Bankruptcy laws, or any judgment related to a declaration of bankruptcy by Company or any Affiliate.

Section 14.11 – ADDITIONAL INFORMATION

At any time, upon the reasonable request of the Franchise Authority, Company shall make available any further information which may be required to establish Company's compliance with its obligations pursuant to this Franchise Agreement. To the extent consistent with applicable laws and the express requirements of this Franchise Agreement, all documents submitted by Company for inspection by the Franchise Authority, including without limitation Reports required by Section 14, shall be kept confidential and utilized by the Franchise Authority only for the purposes set forth in the Franchise Agreement. Company shall have the right to require that examination of its records be conducted on its premises.

**SECTION 15 – EMPLOYMENT**

Section 15.1 – EQUAL EMPLOYMENT OPPORTUNITY

Company shall be an Equal Opportunity/Affirmative Action Employer adhering to all federal and state laws and regulations.

**SECTION 16 – MISCELLANEOUS PROVISIONS**

Section 16.1 – FRANCHISE AS CONTRACT UNDER SEAL

Upon its execution by the Franchise Authority and Company this Franchise Agreement shall be deemed to constitute a contract under seal by and between Company, on the one hand, and the Town Council of the Town of Falmouth, on the other hand.

Section 16.2 – ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed and agreed to by both parties.

Falmouth/Time Warner  
Franchise Agreement

Section 16.3 – CAPTIONS

The captions to Sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the Sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

Section 16.4 – TIME OF ESSENCE, MAINTENANCE OF RECORDS OF ESSENCE

In determining whether Company, has substantially complied with this Franchise Agreement, the parties agree that time is of essence to the agreement. As a result, Company's failure to complete construction, extend service, seek approval of transfers, or provide information in a timely manner shall constitute substantial breaches. The maintenance of records and provision of reports in accordance with the Franchise Agreement is also of essence to the agreement.

Section 16.5 – SEVERABILITY

If any Section, sentence, paragraph, term or provision of this Franchise Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Franchise Agreement.

Section 16.6 – FORCE MAJEURE

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall be any case or event not reasonably within the control of the disabled party.

Section 16.7 – REMOVAL OF ANTENNAS

Company shall not remove any television antenna of any Subscriber but shall, at cost, offer to said Subscriber and maintain an adequate switching device to allow said Subscriber to choose between cable and non-cable television reception.

Section 16.8 – TERM

All obligations of Company and the Franchise Authority as set forth in this Franchise Agreement shall commence upon the expiration of the existing Franchise and shall continue for the term of this Franchise Agreement as expressly provided herein.

Section 16.9 – FRANCHISE AUTHORITY'S DESIGNEE

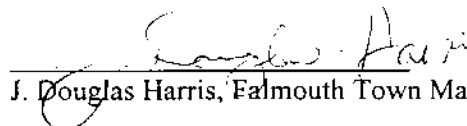
In the event that the Franchise Authority's designee is other than the Town Manager, the Franchise Authority shall notify Company in writing of said designee.

Falmouth/Time Warner  
Franchise Agreement

SIGNATURE PAGE

In witness whereof, this Agreement is hereby signed and sealed by the parties, duly authorized, at Falmouth, Maine.

For the Town of Falmouth, Maine

  
Date: 1/29/00  
J. Douglas Harris, Falmouth Town Manager (Thereunto duly authorized)

For Time Warner Entertainment Company, L.P.

  
Date: 2/1/00  
Thomas Kinney  
President

**SCHEDULE A**  
**ORINATION POINT SITES FOR LIVE PROGRAMMING**

School Buildings

Falmouth High School (new)

Falmouth Athletic Field Grandstand (new Falmouth High School)

Town Buildings

Emergency Operating Center, Falmouth Town Office Building

18305