Executive Summary of Proposed Cable Franchise Renewal

Basic Background:

The current franchise agreement is dated January 24, 2000, and had an initial term of ten (10) years, which was extended through July 26, 2011, to allow for completing the negotiation process with Time Warner.

The proposed renewal franchise agreement is based on Maine's Model Franchise Agreement, which itself was the product of nearly two years of negotiations and discussions between stakeholders from both the cable industry and Maine municipalities. The result is that the proposed agreement is more comprehensive than the expiring agreement, and incorporates current provisions of law governing cable franchises.

The proposed franchise agreement was negotiated by a team of persons at the Town, including legal counsel, the Assistant Town Manager, Cable TV Manager, and Director of Information Systems.

Key Provisions:

Term: The proposed franchise agreement, like the current agreement, has a term of 10 years. That term is the maximum duration permitted by the Town's current cable ordinance. The ten-year contract term both provides long-term certainty for the Town's residents respecting cable service, and mitigates the costs and administrative expenses attendant to the renewal progress.

PEG: "PEG" stands for Public, Educational, and Governmental, and refers generally to the Town's public access channel and related facilities. The current franchise agreement provided for the payment by Time Warner of a fixed percentage of revenue (0.366 percent) to the Town as a grant for PEG-related purposes. The proposed franchise agreement instead provides for set capital grant amounts, with the first such grant in 2011 in the amount of $57,015, and two subsequent grants of $15,000 each, for a total of $87,015. The Town's negotiating team is satisfied that these funds will be sufficient to meet the Town's equipment-related needs for the term of the proposed franchise.

Franchise Fee: Like the current franchise agreement, the proposed franchise agreement provides for the payment by Time Warner to the Town of a quarterly franchise fee equal to 5% of Time Warner's gross sales from its cable TV operations in Falmouth. This is the maximum amount allowed by Federal law, and is expected to continue to be a meaningful source of revenue for the Town throughout the term of the proposed franchise agreement, assuming that subscribership for Time Warner's cable service does not decrease markedly.

Pass-Through of Capital Grant Amounts and Franchise Fees: One of the more contentious aspects of the negotiation with Time Warner focused on the interpretation of the current franchise agreement, and whether Time Warner had the authority to "pass through" (meaning, recover from its customers through the billing process) capital grants to the Town from its Falmouth subscribers. The proposed franchise expressly permits such "pass through"—an allowance which is consistent with Federal Law.

Town-Protective Provisions: The proposed franchise includes provisions for insurance, indemnity, and performance bonds protective of the Town's interests. *See* sections 12 and 13. Importantly, relative to the current franchise agreement, the amount of the performance bond has been increased to account for modern construction costs.

Resident-Protective Provisions: The proposed franchise agreement preserves current population density standards which ensure cable connectivity for persons throughout the Town.

Additional Benefits to the Town: The proposed franchise agreement, like the current agreement, provides for free cable service to key town facilities.

Related Settlement Agreement:

The team negotiating the new franchise agreement on the Town's behalf also negotiated with Time Warner regarding the payment of certain past-due capital grants under the current franchise agreement. As a result of those negotiations, Time Warner paid more than $85,000 in past-due capital grant funds to the Town in 2010, and has further agreed to not pass those amounts through to subscribers. That agreement is reflected in the draft settlement agreement which as also being considered in conjunction with approval of the proposed franchise agreement.

General Commentary:

The proposed franchise agreement was the result of a protracted, and often contentious, negotiation with Time Warner. The challenges in the negotiations were occasioned, in large measure, by provisions in the current franchise agreement that Time Warner refused to agree to again, either because they were inconsistent with its current company policies, or were inconsistent with its obligations as defined by Federal law. The Town's negotiation team worked hard to preserve key benefits for the Town, and to ensure that the Town's PEG access facility would have adequate equipment over the term of the proposed franchise agreement. The Town's negotiation team is satisfied that the proposed franchise agreement secures benefits for the Town which exceed those that Time Warner could be expected to provide as a matter of Federal law, and will provide a stable framework for the provision of cable services in the Town for the coming decade.