

CITY OF KEENE
NEW HAMPSHIRE

TO: PATTY LITTLE, CITY CLERK
CC: JOHN MACLEAN, CITY MANAGER
FROM: GERALD J. CARNEY, CITY ATTORNEY *DN*
RE: RENEWAL OF CABLE FRANCHISE AGREEMENT BETWEEN
THE CITY OF KEENE AND TIME WARNER CABLE, INC.
DATE: APRIL 18, 2006

It has come to my attention that special counsel never filed the attached original Renewal of Franchise between the City of Keene, New Hampshire and Time Warner Cable, Inc., dated May 28, 2003, with your office. If you have any questions regarding this document, please contact Rob Ciandella, Esq., Donahue, Tucker & Ciandella, Exeter, New Hampshire.

Thank you.

RENEWAL OF FRANCHISE
BETWEEN THE CITY OF KEENE, NEW HAMPSHIRE
AND
TIME WARNER CABLE INC.

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**RENEWAL OF FRANCHISE
BETWEEN THE CITY OF KEENE,
NEW HAMPSHIRE
AND
TIME WARNER CABLE INC.**

WHEREAS, Time Warner Cable Inc. (hereinafter "Time Warner" or "Franchisee"), is now the duly authorized holder of a Franchise to operate a cable communications system in the City of Keene (hereinafter "the City"), said Franchise having originally commenced on 18 April 1985; and

WHEREAS, the City Council, as the Franchising Authority, finds that the renewal of the Time Warner Franchise is appropriate in light of its past performance, compliance with the terms of its existing Franchise, and based on the Council's finding that the terms contained in the negotiated Time Warner Franchise renewal meet the future cable-related needs of the City of Keene taking into account the costs thereof; and

WHEREAS, the City Council has determined that the services and programming of such a Franchise can contribute significantly to the cable-related needs and interests of the City and its residents and institutions;

NOW THEREFORE, after due and full consideration, the City Council and Time Warner agree that this Franchise is issued upon the following terms and conditions:

ARTICLE I

DEFINITIONS

SECTION 1.1 - DEFINITIONS

The following terms used in this Franchise shall have the following meanings:

(a) Access Channel: One or more channels which the Franchisee shall make available on a shared use basis with other communities without charge to the users for the purpose of transmitting locally produced, non-commercial public, governmental and educational programming.

(b) Access Programming: (i) "Educational": Non-commercial local programming produced by Public Schools, or other educational organizations as designated by the Franchising Authority and other non-commercial locally produced educational programming offered; (ii) "Governmental": Non-commercial local programming produced by Community departments or agencies and other non-commercial locally produced programming offered by them or a duly authorized designee; (iii) "Public": Non-commercial locally produced programming produced by the Communities, or produced by an access corporation or nonprofit corporation operating within the Communities, and other non-commercial locally produced programming.

(c) Addressable Technology: The capability of a Cable System to electronically add, change or delete certain programming or services from a remote location.

(d) Affiliate or Affiliated Person: Any person who or which directly or indirectly controls and/or owns an interest in the Franchisee; any person which the Franchisee directly or indirectly controls and in which the Franchisee owns an interest; and any person directly or indirectly subject to control and owned in whole or in part by a person who or which directly or indirectly controls and/or owns an interest in the Franchisee.

(e) Basic Service: That service tier which includes at a minimum the retransmission of local television broadcast signals, public, educational and governmental access channels and other signals as defined by the FCC and services required by the Cable Act.

(f) Broadcast: Over-the-air transmission by a radio or television station.

(g) Cable Act: Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. 521 et seq., amending the Communications Act of 1934, as further amended by the 1992 Cable Consumer Protection and Competition Act, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-104, Section 101(a), 110 Stat. 56 (1996); 47 U.S.C. §253 et. seq. (1996).

(h) Cable Service: The one way transmission to Subscribers of video programming, or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by, a television broadcast station, and “other programming service” is information that a cable operator makes available to all subscribers generally. Cable Service shall include the provision of Internet service if such service is classified as a Cable Service under applicable Federal law.

(i) Cable Television System or Cable System: 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 term does not include:

1. A facility that services only to retransmit the television signals of one or more television broadcast stations;
2. A facility that services Subscribers without using any public right-of-way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on demand services;

4. An open video system that complies with Section 653 of the Communications Act; or

5. Any facilities of any electric utility used solely for operating its electric utility systems.

(j) Channel: Capacity on the Cable System to carry either one standard video signal in the analog or digital format.

(k) City: City of Keene, New Hampshire.

(l) Communities: City of Keene, Town of Marlborough and Town of Swanzey, New Hampshire.

(m) Converter: An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and any channel selector which permits a Subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

(n) Drop: The coaxial cable that connects a home or building to the Residential System.

(o) Effective Date: The effective date shall be thirty (30) days following adoption by the City, subject to execution by Franchisee.

(p) FCC: Federal Communications Commission.

(q) Feeder Cable: The cable, connected to the trunk cable, from which Cable Service is distributed to multiple Subscribers, as distinguished from trunk cable (which distributes Cable Service throughout the franchise area).

(r) Franchisee: Time Warner Cable Inc.

(s) Franchise or Franchise Agreement: The Franchise granted herein.

(t) Franchising Authority: The City of Keene, New Hampshire, or its designee, in accordance with applicable federal and state law.

(u) Franchise Fee: The payments to be made to the Franchising Authority as consideration for the Renewal Franchise granted herein which shall have the meaning set forth in Section 622 (g) of the Cable Act. The Franchise Fee shall not include capital costs incurred by the cable operator pursuant to the terms of this agreement for educational or governmental access facilities. In addition, the Franchise Fee shall not include any fee imposed under Title 17, United States Code or any charge incidental to the awarding or enforcing or renewal of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification penalties or liquidated damages.

(v) Gross Revenues: Any and all consideration of any form or kind or compensation received by the Franchisee which is the result of the provision of Cable Service on the Cable System in the City including, but not limited to, all monthly service fees including premium services, all commercial Subscriber revenues, franchise fees, all other service fees including pay-per-view services and others sold on a per-channel basis; installation, reconnection, downgrade, upgrade and any similar fees; advertising fees, revenues received by the Franchisee which are derived from the sale of products in any way advertised or promoted on the Cable System to provide Cable Service; and converter and remote control rentals, leases or sales.

(w) Leased Channel or Leased Access: The channel(s) which the Franchisee shall make available pursuant to Section 612 of the Cable Act.

(x) Other Definitions: Any term defined in FCC rules and/or regulations or by Federal Law, as of the effective date of this Franchise Renewal, but not included in the foregoing definitions. Other Definitions shall be incorporated herein by reference as if set forth in full and shall be defined as appears in such rules and/or regulations.

(y) Outlet: An interior receptacle that connects a television set to the Cable System.

(z) Pay Cable or Pay Cable Services: Programming delivered for a fee or charge to Subscribers on a per channel basis, in addition to the fee or charge for the Basic Service.

(aa) Pay-per-view: Programming delivered for a fee or charge to Subscribers on a per program basis, in addition to the charge or fee to Subscribers for Basic Service.

(bb) Person: Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert.

(cc) Private Roads: Private rights-of-way or non-public roadways not classified as highways by Chapter 231 of the Revised Statutes Annotated of New Hampshire which provide access to two or more free-standing, non-connected residential buildings as residential buildings.

(dd) Programming: Any video, audio, text, data or other signal carried over the Cable System.

(ee) Public Way: The surface of, and the space above and below, any public street, highway, freeway, bridge, lane, path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right of way now or hereafter existing, including, but not limited to, public utility easements, dedicated utility strips or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or thereafter held by the Franchising Authority and the Franchisee for the purpose of installing, operating, repairing and

maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for compatible uses, and shall include other easements or rights of way and shall, within their proper use and meaning, entitle the Franchising Authority and the Franchisee to the use thereof for the purpose of the installing and transmitting of Franchisee's Cable Services or other services over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

(ff) Residential System: The trunk and feeder signal distribution network with bi-directional capability to be operated by the Franchisee over which video, audio, text and data signals can be transmitted to Subscribers, as is described in Section 3.3.

(gg) Scrambling: The electronic distortion of a Signal in order to render it unintelligible or unreceivable without the use of a converter or other decoding device.

(hh) Service Interruption: The loss of any Signal, video picture or sound on one or more channels carried over the Cable System for distribution to a Subscriber.

(ii) Service Tier: A category of Cable Service or other services provided by a cable operator for which a separate rate is charged, as may be described and regulated by Federal law.

(jj) Signal: Any transmission of electromagnetic or optical energy which carries information from one location to another.

(kk) Street: The surface of and the space above and below any public street, road, highway, freeway, lane, path, Public Way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the City, and dedicated for use by the City, use by the general public, or use compatible with the Cable System operations.

(ll) Subscriber: A person, firm, company, municipality, corporation or association lawfully receiving either Basic Services or additional services from the Franchisee under the schedule of charges filed with the City.

(mm) Transfer: The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise of the ownership or control of the Cable System or the Renewal Franchise granted herein to a person or a group of persons acting in concert, as described in Section 2.5.

(nn) Upstream Transmissions: Signals traveling from Subscribers or other originating points on the Cable System to a head-end or sub-headend.

ARTICLE 2

GRANT OF FRANCHISE

SECTION 2.1 - GRANT OF FRANCHISE

Pursuant to the authority of the Cable Act and RSA 53-C of the laws of New Hampshire, as amended from time to time, the City Council, acting as the Franchising Authority, hereby grants a non-exclusive Franchise to the Franchisee authorizing and permitting said Franchisee to construct, upgrade, activate, operate and maintain a Cable System within the municipal limits of the City of Keene.

The Franchise is granted under and in compliance with and subject to the Cable Act and RSA 53-C of the laws of New Hampshire, and in compliance with all rules and regulations of the FCC and all other federal and state applicable rules and regulations in force and effect during the period for which this Franchise Agreement is granted. The Franchising Authority specifically reserves all authority granted it under RSA 231:160 et. seq. to manage, regulate and control the public right-of-way, including such authority as it relates to the provision of telecommunications services.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee the right to construct, operate and maintain the Cable System, which may include poles, wires, optical fibers, amplifiers and other property and equipment as are necessary in the Public Ways and other public places and property under the jurisdiction of the City including other property over which the City has a sufficient compatible easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video, audio, text, data or other signals in accordance with the laws of the United States of America and the State of New Hampshire and City of Keene.

SECTION 2.2 -TERM: NON-EXCLUSIVITY

(a) The term of this non-exclusive Franchise Agreement shall be for a period of fifteen (15) years from the Effective Date. The term of this Franchise Agreement is subject to the future technology review which shall occur on the tenth (10th) anniversary date of the Effective Date of this agreement and is described more fully at Section 3.4 hereof, and the term is subject to all provisions of New Hampshire law and applicable federal law, as such laws may be from time to time amended, and is subject further to the performance by Franchisee of all terms and conditions set forth herein.

(b) The right to use and occupy the streets, Public Ways and public places shall not be exclusive, and the City reserves the right to grant similar or other uses of the said streets, Public Ways and public places to any persons for a similar Cable System or otherwise at any time during the term of the Franchise Agreement. The Franchisee hereby acknowledges the City's right to make such grants and permit such uses.

The grant of any additional cable television Franchises shall not be on terms and conditions more favorable or less burdensome, taken on the whole, than those contained in this Renewal Franchise. The grant of any such additional Franchises shall be at the sole discretion of the Franchising Authority.

SECTION 2.3 - RENEWAL OF FRANCHISE

The renewal of this Franchise shall be governed by applicable federal law and regulations promulgated thereunder and by applicable New Hampshire law.

SECTION 2.4 - FRANCHISE FEE

(a) Within ninety (90) days of the Effective Date of this Agreement, Franchisee shall prepay the City the sum of One Hundred Fifty-Three Thousand Four Hundred Fifty-Eight Dollars (\$153,458) in Franchise Fees. Said sum shall be collected by Franchisee from subscribers over a period of approximately four and a half years and shall be shown as a line item Franchise Fee charge of .75% on subscribers' bills. Following the collection of said sum, the Franchise Fee shall be eliminated. Thereafter, the City shall have the right to institute the collection of a Franchise Fee following a public hearing affording the public the opportunity for full comment. Any Franchise Fee adopted following such public hearing shall not be greater than 1% of Gross Revenues and Franchisee shall implement the same following ninety (90) days written notice from the City.

Any further increase in Franchise Fees over and above 1% shall be preceded by a public hearing and shall not occur earlier than the second anniversary date of the implementation of the initial 1% Franchise Fee and only upon ninety (90) days advance written notice to Franchisee. Payments, if any, shall be made semi-annually within ninety (90) days after the end of the calendar year, and the six (6) month anniversary thereof. Each payment shall be accompanied by a statement certified by one of Franchisee's certified public accountants documenting the factual basis for payment in reasonable detail, including a breakdown by category and source of Franchisee's Gross Revenues upon which such payment is based. The City may designate a particular City account or fund, including any reserve or trust fund duly established, to which the Franchisee shall direct Franchise Fees due hereunder.

(b) In the event that the payment(s) required herein are not tendered on or before the dates fixed herein, interest due on such payment(s) shall accrue from the date due at the Prime Rate.

(c) Within one hundred twenty (120) days of the payment of the Franchise Fee described above, the City may, as needed to verify the appropriateness of such payment, request and the Franchisee shall make available its financial records and books insofar as they apply to the calculation of Gross Revenues and the Franchise Fee, and the City may subject said records and books to an independent audit at the City's expense so as to verify the amount due to the City for Franchise Fees. At any other time during the life of this Franchise, the City may, as needed to verify the information provided hereunder, upon reasonable belief and after notice and an opportunity by the Franchisee to be heard, inspect and subject to independent audit, at the City's expense, the financial records and books of Franchisee insofar as they apply to the calculation of Gross Revenues and Franchise Fees paid to the City; provided, however, that the City must exercise its right to inspect and audit within three (3) years of the tender of any payment. If, after audit and recomputation, an additional undisputed payment is owed, such payment shall be paid within thirty (30) days after notice of deficiency. The interest on such additional payment shall be charged from the due date at the Prime Rate during the period that such additional amount is owed.

(d) No acceptance of any payment shall be construed as an accord that the payment is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of (i) any claim the City may have for further or additional sums, including interest, payable under provisions of this Franchise or (ii) any other claim whatsoever, provided, however, that the City's right to challenge any payment shall expire within three (3) years of the tender of each payment.

(e) The City agrees to protect any proprietary information supplied from disclosure by treating such information as confidential to the extent permitted by RSA 91-A.

SECTION 2.5 - TRANSFER OR ASSIGNMENT

(a) This Franchise, any part of this Franchise, or any future Renewal Franchise shall not be transferred or assigned without the prior consent of the Franchising Authority, which consent shall not be arbitrarily or unreasonably withheld or delayed, and which shall be governed by applicable provisions of the Cable Act.

(b) For purposes of this Section, a transfer or assignment of this Franchise or control thereof between commonly controlled entities, between affiliated companies or between parent and subsidiary corporations shall not constitute a transfer or assignment. Control shall mean majority (over 50%) voting control of the Franchisee. An affiliated company is one that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity.

(c) If there shall be filed against Franchisee in any Court, pursuant to any statute either of the United States or of any State, a Petition at Bankruptcy or insolvency or for reorganization or for the appointment of the receiver or trustee of all or a portion of Franchisee's property, and if, within sixty (60) days thereof, Franchisee fails to secure a discharge thereof, or if Franchisee shall voluntarily file any such petition or make an assignment for the benefit of creditors, Franchisee shall notify the City of such fact within five (5) days of its occurrence. Any subsequent sale of the Cable System, or any part thereof, or cable property or facilities, or the Franchise shall be treated as a transfer or assignment and the provisions of this section requiring approval of the City shall apply. The term "bankruptcy" as used herein shall include an assignment for the benefit of creditors.

(d) In reviewing any request to transfer or assign control or ownership, the City shall analyze whether the Transferee has the appropriate technical, legal and financial capacity to operate the Cable System.

(e) Any transfer of the Cable System, done without complying with this Section 2.5, shall be null and void and shall be deemed a material breach of this Renewal Franchise.

(f) If the Franchising Authority denies its consent to any such action and the transfer has nevertheless been effected, the Franchising Authority may revoke and terminate this Renewal Franchise if permissible under Federal law.

(g) The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City.

(h) All terms of this Agreement shall be binding on Transferees except as otherwise agreed to. The City, as part of its review process, may impose reasonable conditions on the Transferee before granting consent. Such conditions shall be calculated to insure performance of this Franchise. Such conditions may include but are not limited to the requirement that all terms of the current Franchise be upheld by the Transferee.

SECTION 2.6 - EQUAL PROTECTION PROVISION

(a) In the event the Franchising Authority grants an additional Franchise or Franchises, such Franchise(s) shall not contain terms and conditions which violate the standard set forth in NH RSA 53-C:3-b.

(b) Any such additional Franchise(s) shall be granted on the condition that such Franchise(s) shall indemnify and hold harmless the City and the Franchisee from and against all costs and expenses incurred in strengthening poles, rearranging attachments, placing underground facilities and all other costs (including those of the City and Franchisee) incident to inspections, make-ready and construction of an additional Cable System in the Franchise area.

SECTION 2.7 - POLE ATTACHMENT RIGHTS

(a) Pursuant to RSA 231:161, permission is hereby granted to the Franchisee to attach or otherwise affix cables, wires, or optical fibers comprising the Cable System to the existing poles on Streets and Public Ways, provided the Franchisee secures permission and consent of the public utility companies to affix the cables and/or wires to their pole facilities and provided further that the Franchising Authority shall have the right or option to determine the location of all such cables or wires in accordance with generally applicable laws or regulations that do not conflict with federal or state law, or national codes. Franchisee may erect its own poles and install its own conduit, with the advance written approval of the location of such installation by the Franchising Authority, which approval shall not be unreasonably withheld. The Franchising Authority grants Franchisee equal standing with the power and telephone utilities in the matter of placement of facilities on Streets and Public Ways subject to the ultimate authority of the Franchising Authority to determine the location of all installations as hereinbefore described.

(b) All poles and conduit owned by public utilities and installed within the Service Area, as defined herein at Section 3.1, shall be made available for attachment or use by Franchisee, at just and reasonable rates applied to public utilities under the formula presently established by 47 U.S.C., Section 224. All poles and conduit owned by the City and installed within the Service Area shall be made available for attachment or use by Franchisee at just and reasonable rates. Such pole rental expense shall not be included within the calculation of Franchise Fee expenses.

(c) In all areas of the City where public utility lines are aerially placed, if subsequently during the term of the Franchise such utility lines required by local ordinance or State law to be relocated aerially or underground, Franchisee shall similarly relocate its Cable System. Any costs of relocating utility poles or trenching for the placement of underground conduits shall be equally shared by all affected companies.

SECTION 2.8 - POLICE AND REGULATORY POWERS

Franchisee's rights are subject to the powers of the City to adopt and enforce general ordinances necessary for the safety and welfare of the public, provided that such ordinances are of general applicability and not specific to the Cable System, the Franchisee, or this Franchise including ordinances and regulations pertaining to management, control and regulation of public rights-of-way but only to the extent authorized or allowed by state law and federal law.

ARTICLE 3

SYSTEM SPECIFICATIONS AND CONSTRUCTION

SECTION 3.1 - SERVICE AREA; LINE EXTENSIONS

(a) Present Service Area: Cable Service shall be provided to areas where the number of dwelling units per mile as measured from Franchisee's existing distribution system equals fifteen (15), provided Franchisee is able to obtain from property owners any necessary easements at no cost and/or any applicable permits. The boundaries of the present service territory are identified in Exhibit A.

(b) Future Service Area: The Franchisee shall extend cable service to areas not meeting the density requirements outlined in Section 3.1(a) in accordance with the provisions of Exhibit B.

SECTION 3.2 - SUBSCRIBER CONNECTION

(a) The Franchisee shall, within fifteen (15) days of a request by the occupant of a dwelling, connect the Cable System to a dwelling at standard installation charges if the dwelling is within one hundred fifty (150) aerial feet of the nearest Feeder Cable and only if the dwelling is properly internally wired to meet the Franchisee's specifications to prevent signal leakage.

(b) Residences located over one hundred fifty (150) aerial feet from Feeder Cable shall be charged an additional installation fee in accordance with federal law.

(c) Franchisee shall complete construction of any such Subscriber connections within fifteen (15) days of either a request for such connection by the occupant or owner of the dwelling or within fifteen (15) days of the date any necessary easements are obtained, whichever occurs later, taking into account and subject to weather, *force majeure*, performance of make ready, and availability of construction crews and materials. If requested by the Franchising Authority, Franchisee shall provide a written report to the City completely explaining its failure to meet the time frame stated herein.

SECTION 3.3 - RESIDENTIAL SYSTEM

(a) The Franchisee commits to maintaining a residential Cable System capable of utilizing Addressable Technology, and cable and electronics capable of transmitting a bandwidth of at least 550 MHz. Within four (4) years of the Effective Date of this Agreement, Franchisee shall upgrade the Cable System to a minimum capacity of 750 MHz.

(b) The Cable System shall be designed and constructed so that television station broadcast signals received by the Franchisee in stereo can be received in stereo by Subscribers without the necessity of subscribing to any other Cable System service, provided Subscriber has video reception equipment capable of receiving stereo signals.

(c) Pursuant to Section 624 of the Cable Act, the Franchisee shall maintain the mix, quality and broad categories of programming set forth in Exhibit C, attached hereto and made a part hereof. Franchisee shall provide the Franchising Authority and Subscribers with thirty (30) days notice before making any deletions, additions, relocations to programming or stations or any other change to its channel offerings that are within its control.

SECTION 3.4 - FUTURE TECHNOLOGY REVIEW

The City may require, at its sole discretion, an evaluation session following the tenth (10th) anniversary of the Effective Date.

A. Topics which may be discussed at the evaluation session include channel capacity, system capability, system performance and services offered.

B. During the evaluation session, Franchisee shall cooperate with the City and shall provide information and documents prepared by Franchisee in the ordinary course of business as the City may request to perform the evaluation. To the extent such information or documents contain confidential information, such confidential information shall not be disclosed, except to the extent permitted by RSA 91-A.

C. As a result of the evaluation session, the parties will in good faith review the results thereof.

SECTION 3.5 - PARENTAL CONTROL CAPABILITY

Upon Subscriber's request, the Franchisee shall block reception, including audio, of particular channels of the Cable System through Franchisee's Addressable Technology.

SECTION 3.6 - ACCESS PROGRAMMING

(a) Franchisee shall provide at a minimum one (1) Access Channel for Public, Educational, and Governmental Access for shared use with the Towns of Marlborough and Swanzey. Franchisee shall allocate an additional channel when the first Channel is programmed at least eighteen (18) hours per day with seventy-five (75%) percent non-character generated, non-duplicated, locally produced programming over an eight (8) week period. A third channel shall be added when the first two channels both meet the foregoing criteria.

(b) The Franchising Authority shall establish rules for the use of the Access Channels consistent with the provisions of the Cable Act.

(c) If an Access Channel location change is necessary, the Franchisee shall (i) notify the Franchising Authority in writing of such change 60 days in advance, if possible; and (ii) assist the Franchising Authority in advertising and promoting any new channel locations. Any change in

channel location must be in compliance with the Cable Act, Sections 614 and 615, which require mandatory carriage of the signals of local commercial and non-commercial television stations and Section 623(b)(7) which requires the cable operator to carry all signals fulfilling the “must-carry” provisions on the Basic Service Tier.

(d) The Franchisee shall provide repair service for the Communities’ Access Channels at no cost to the users.

(e) To enable the City to transmit live Access Programming, origination sites shall be installed and maintained by the Franchisee from Keene City Hall and the library. Each location shall be responsible for the purchase and maintenance of all end user equipment. Should the City elect to add additional origination locations, Franchisee shall provide the same at the City’s cost and expense.

(f) The Franchisee shall provide the City with the capability to ensure that said Programming is properly switched, either manually or electronically, to the appropriate downstream Access Channel, if more than one is activated in accordance with Section 3.6(a), in an efficient and timely manner.

(g) The Franchisee shall provide and maintain all necessary processing equipment at the headend to switch Upstream Signals from the City to the designated downstream Access Channel.

SECTION 3.7 - EMERGENCY OVERRIDE

Franchisee shall provide an emergency alert system in accordance with Federal law.

SECTION 3.8 - GOVERNMENTAL CABLE DROP TO RESIDENTIAL SYSTEM

Franchisee shall continue to provide (a) one cable drop connected to the Residential System, (b) one outlet, and (c) the monthly Basic Service and the next level of programming service above the Basic Service taken by the larger number of Subscribers in the City, without charge, to each

accredited public school and public building, located within one hundred and fifty feet (150) of Franchisee's Cable System.

SECTION 3.9 - PUBLIC SCHOOL CABLING

Franchisee shall internally wire public schools at Cost, as such term is defined under FCC rules and regulations. In addition, Franchisee shall make good faith efforts to coordinate installations in conjunction with the scheduling outlined by the school, provided Franchisee is provided adequate advance written notice.

ARTICLE 4

TECHNOLOGICAL AND SAFETY STANDARDS

SECTION 4.1 - SYSTEM MAINTENANCE

(a) When installing, operating and maintaining equipment, cable and wires, the Franchisee shall avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Franchising Authority except as may be approved by the Franchising Authority if required for the proper installation, operation and maintenance of such equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable System for which this Franchise is granted shall be done in conformance with OSHA, the National Electrical Safety Code, rules and regulations of the FCC and applicable state and generally applicable local laws and ordinances.

(c) The Cable System shall be constructed, operated and maintained so as to comply, at a minimum, with all FCC requirements as to signal quality and characteristic and so as to avoid interference with television reception, radio reception, telephone communications or other electronic installations in the City. Upon request by the Franchising Authority or its designee, Franchisee shall provide proof of compliance of FCC signal requirements. Upon request, and upon completion of

annual FCC required signal quality tests, Franchisee shall provide the Franchising Authority with a summary of each non-compliant measurement and the corrective action taken.

(d) Franchisee's operations and maintenance personnel shall be thoroughly trained in the use of all safety equipment and the safe operation of vehicles and equipment. All areas of the Cable System shall be routinely inspected and maintained so that conditions that could develop into safety hazards for the public and/or operations and maintenance personnel can be corrected before they become a hazard. The Franchisee shall install and maintain its wire, cable, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City.

(e) All structures and all lines, equipment and connections in the Public Ways and Private Roads and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

(f) The signal of any television or radio station carried on the Cable System shall be carried without material degradation in quality at all Subscriber locations within the limits imposed by the technical specifications of the Cable System and as set forth by the FCC. The Cable System shall be operated and maintained so as to comply with the technical standards set forth in the FCC's rules and regulations as they apply to Cable Systems.

The Franchisee shall monitor the Access Channel(s) for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of Access Programming. Upon request, the Franchisee shall make available a copy of its most recent annual performance tests.

(g) All lines, cables and distribution structures and equipment, including poles and towers, erected by Franchisee within the City shall be located so as not to obstruct or interfere with the proper use of the Public Ways, as defined herein, and to cause minimum interference with the

rights of property owners who abut any of the said Public Ways, and not to interfere with existing public utility installations. Franchisee shall have no vested right in a location except as granted herein by the Franchise, and such construction shall be removed by Franchisee at its own cost and expense whenever the same restricts or obstructs or interferes with the operation or location of any future operation or location of said Public Ways, provided, however, that this standard shall apply to all persons or entities owning lines, cables, distribution structures and equipment, and provided further that the Franchisee shall not be required to remove any such construction solely to accommodate needs of competing Cable Systems.

SECTION 4.2 - REPAIRS AND RESTORATION

(a) Franchisee shall promulgate and adhere to a preventive maintenance policy directed toward maximizing the reliability (mean-time-between-malfunctions) and maintainability (mean-time-repair) of the Cable System with respect to its delivery of service to Subscribers at or above the performance standard set by the FCC. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments, installation or other maintenance activities, Franchisee shall endeavor to do so at such time as will cause the least inconvenience to Subscribers. Except in an emergency, and except for insignificant interruptions of thirty (30) minutes or less which may occur during the course of normal maintenance, service is to be interrupted only between the hours of midnight and 7:00 a.m.

(b) Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any Public Way or private roads or place, the same shall be replaced and the surface restored to as good condition as before entry as soon as practicable. In no event shall such restoration be made later than ten (10) business days, weather permitting and excepting events beyond the reasonable control of Franchisee, after Franchisee's receipt of written notification from the property owner so damaged unless otherwise agreed by Franchisee and the property owner.

Upon failure of the Franchisee to comply within the time specified (unless the Franchising Authority sets an extended time period for such restoration and repairs) or if such damage presents an emergency situation presenting a threat to public safety, the Franchising Authority may cause proper restoration and repairs to be made and the expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

(c) In addition, upon the failure, refusal or neglect of Franchisee to cause any work or other act required by law or by this Franchise to be properly completed in, on, over or under any Public Way within any time prescribed, the Franchising Authority may cause such work or other act to be performed or completed in whole or in part, and upon so doing shall submit to Franchisee an itemized statement of the out of pocket cost thereof. Franchisee shall, within thirty (30) days after receipt of such statement, pay to the Franchising Authority the entire amount thereof. The City, at its option, and in its sole discretion, may draw upon the bond described herein to recover any cost incurred pursuant to this section, should Franchisee fail to pay such costs within sixty (60) days of receipt of the statement of those costs.

SECTION 4.3 - CABLE LOCATION

(a) Except where the location of public utilities and Franchisee's Cable System differ as of the Effective Date of this agreement, in all areas of the City where the cable or wire facilities of the public utilities are subsequently installed underground, Franchisee shall, at its pro rata expense, install its Cable System underground. In the event the City reimburses any utility or right-of-way user for such undergrounding. Franchisee shall be similarly reimbursed. Vaults and pedestals shall be suitably restored to a similar condition prior to underground work.

(b) Where public utility cable or wire facilities are above ground, Franchisee shall follow the then current pole placements in the City.

(c) The Franchisee's Drops shall be located underground at the request of the property owner, provided the excess cost over aerial cost for such Drops shall be borne by the property owner making the request.

All Drops which are intended to be underground shall be buried within ten (10) days of placement, weather and ground conditions permitting.

(d) At such time as the Franchising Authority requires all utilities to place facilities underground, Franchisee shall, at its pro rata expense, likewise place its Cable System underground. In the event the City reimburses any utility or right-of-way user for such undergrounding, Franchisee shall be similarly reimbursed.

(e) The rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvements, and should the Cable System in any way interfere with the construction, maintenance or repair of such public works or improvements, Franchisee shall, at its own expense, protect or relocate its Cable System or part thereof, as directed by the City or other authority having jurisdiction.

SECTION 4.4 - TREE TRIMMING

The Franchisee shall have the authority to trim trees upon and overhanging Public Ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of the Franchisee, in accordance with applicable state law and any City ordinances and regulations.

SECTION 4.5 - STRAND MAPS

Within sixty (60) days from a request in writing from the Franchising Authority, the Franchisee shall provide to the City a complete set of strand maps of the Service Area, the location

of all streets and the locations of all residences. Upon reasonable request by the Franchising Authority, Franchisee shall provide updated maps.

SECTION 4.6 - BUILDING MOVES

In accordance with applicable laws, the Franchisee shall, upon the request of any person holding a building move permit issued by the City, temporarily raise or lower its wires to permit the moving of the building(s). The Franchisee shall be given not less than twenty-one (21) days advance notice to arrange for such temporary wire changes. The cost to raise or lower wires shall be borne exclusively by the person(s) holding the building move permit.

SECTION 4.7 - EMERGENCY POWER

The Cable System shall incorporate equipment capable of providing standby powering of the headend for a minimum of twenty-four (24) hours upon failure of the power furnished by the electric utility company unless for reasons of *force majeure* as defined in Section 8.2 hereof.

SECTION 4.8 - RESIDENTIAL EXTERIOR WIRING

Franchisee shall adhere to Subscriber's reasonable request for location of entry and shall in other respects observe standard specifications for Drop connections into the residence. Exterior wiring on a residence shall be installed as unobtrusively as possible.

ARTICLE 5

CUSTOMER SERVICE, MARKETING OF SERVICES AND CONSUMER PROTECTION

SECTION 5.1 - CUSTOMER SERVICE

(a) Franchisee shall comply with the federal customer service standards as set forth by the FCC in accordance with the Cable Television Consumer Protection and Competition Act of 1992, as amended from time to time, and as set forth in applicable New Hampshire statutes.

(b) Franchisee shall provide and maintain 24-hour, toll-free answering lines which Subscribers may call without incurring added message units or toll charges so that prompt maintenance and service is available.

(c) At the time of initial subscription and annually thereafter, the Franchisee shall give each subscribing household a written notice which shall include full disclosure of (i) products and services offered, (ii) prices and options for programming services and conditions of subscription to programming and other services, (iii) installation equipment and service maintenance charges and policies, (iv) instructions on use of the Cable Service(s) and channel assignments of programming carried on the system; (v) instructions for cable converter boxes, an explanation of the Franchisee's policy for converter box use and instructions for the use of various Cable Services; (vi) billing and complaint procedures for reporting and resolving Subscriber complaints, including the address and telephone number of the local Franchising Authority; (vii) information regarding availability of parental control devices; and (viii) a list of monthly and non-recurring fees and charges.

(d) The Franchisee shall make all reasonable efforts to respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible. A serious system malfunction shall be serviced as soon as possible after its discovery.

(e) Except as limited by federal law or FCC regulations concerning privacy, Franchisee shall maintain a record of all such complaints and such records shall be available at Franchisee's local offices for at least two years for inspection by the Franchising Authority as it may from time to time request, during regular business hours and upon reasonable notice. Nothing herein shall be deemed to require Franchisee to maintain records of oral complaints which can be handled to the customer's satisfaction in the course of the initial conversation in which the complaint is made or does not require technical field response. Upon request, the Franchisee shall provide to the Franchising Authority an accounting of the number and nature of such complaints.

(f) The Franchisee shall maintain its records as required by and in a manner consistent with applicable federal or state law or regulation.

(g) The Franchisee shall either maintain a customer equipment return/exchange location within the corporate limits of the City, or the Franchisee shall offer one or more equipment exchange options to Subscribers in the City:

(i) Subscribers may return/exchange equipment to said location, and pick-up replacement equipment the next business day or have such exchanged equipment delivered to the Subscriber's home within three (3) days; and/or

(ii) Subscribers may return/exchange equipment to said location on a scheduled basis; and/or

(iii) Subscribers may return/exchange equipment by appointment when the Franchisee's service technicians are expected to be in such Subscriber's area on other calls; and/or

(iv) Subscribers may return/exchange equipment by using a pre-paid, insured overnight mailer provided by the Franchisee at no charge to Subscribers, with exchanged equipment returned to the Subscriber by overnight mail; and/or

(v) Any other equipment return/exchange provision(s) acceptable to the Franchising Authority.

SECTION 5.2 - TERMINATION OF SERVICE

(a) In the event a Subscriber's service is terminated, monthly charges for service shall be pro-rated on a daily basis and, where advance payment has been made by a Subscriber, the appropriate refund shall be made by Franchisee to the Subscriber within forty-five (45) days of such termination.

(b) Franchisee shall have the right to disconnect a Subscriber for failure to pay an overdue account; provided, that:

(i) Franchisee billing practices and policy statement sets forth the conditions under which an account will be considered overdue; and

(ii) Franchisee mails, at least twelve (12) days prior to the proposed disconnection, written notice of intent to disconnect for delinquency in payment; and

(iii) The Subscriber's account is at least thirty (30) days delinquent.

SECTION 5.3 - SERVICE INTERRUPTIONS

In the event of a Cable System failure resulting in a Subscriber experiencing a service interruption for twenty-four (24) or more consecutive hours, Franchisee shall grant such Subscribers a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle or, at its option, apply such credit to any outstanding balance then currently due. Credits shall be applied as described above if Franchisee knew of the interruption or after due notice to the Franchisee from the Subscriber.

Franchisee shall consider a similar credit for any service interruptions lasting less than twenty-four (24) hours, upon notice excluding interruptions which are beyond the control of the Franchisee, such as, but not limited to, electrical outages, acts of God, or for any reason of *force majeure*.

SECTION 5.4 - IDENTIFICATION

Franchisee shall ensure that all of its vehicles, employees, agents and subcontractors are reasonably identified to the general public. Agents and contractors hired by the Franchisee to perform any substantial work on the Cable System during any rebuild period in the City shall inform the Keene Police Department of the work location within the City and provide relevant vehicle identification prior to commencing such work.

SECTION 5.5 - SUBSCRIBER ANTENNAE

Notwithstanding a required disconnection of Subscriber's existing antennae and downloads to receivers connected to the Cable System, Franchisee shall not remove such antennae and downloads. Subscribers may request and Franchisee shall provide and install AB switches or other appropriate switch technology at initial installation at a charge in accordance with Federal law. Franchisee may require payment of an installation charge by each Subscriber for switch installations made after initial installation of service to that Subscriber. Such charge shall be in accordance with Federal law.

SECTION 5.6 - SUBSCRIBER PRIVACY AND RIGHTS TO INFORMATION

The Franchisee shall comply with Section 631 of the Cable Act, "Protection of Subscriber Privacy." Any Subscriber may, upon written request, examine all records maintained by Franchisee relating to the Subscriber's account. Franchisee shall insure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.

ARTICLE 6

RATES AND CHARGES

SECTION 6.1 - RATES AND CHARGES

(a) A price schedule for service and installation in effect on the Effective Date of this Franchise Agreement is attached hereto as Exhibit "D". Any changes in price for Cable Service, equipment and installation will be in conformance with the Cable Act and the rules and regulations of the FCC, and any currently or hereinafter applicable federal and/or state laws and regulations.

(b) The City shall have the right, to the extent granted under state law, the Cable Act and FCC regulations, to regulate rates, equipment, installation and service charges to Subscribers.

(c) The Franchisee may require a deposit or refuse service to any applicant for a bona fide credit reason which relates to the applicant's overdue or delinquent account with the Franchisee.

The Franchisee may require that the account of any Subscriber requesting work be current before such work is performed.

(d) Franchisee shall notify the Franchising Authority and Subscribers in writing of its intent to adjust cable rates at least thirty (30) days prior to any adjustment in price for Cable Service provided by the Cable System. The notice shall state the date on which the adjustment in price is to occur.

(e) The Franchisee may levy collection charges consistent with the prevailing law of New Hampshire.

ARTICLE 7

REGULATORY OVERSIGHT

SECTION 7.1 - INDEMNIFICATION

The Franchisee, shall at its sole cost and expense, indemnify and hold the City harmless at all times during the term of this Franchise Agreement, and subsequent renewals, if any, from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation or maintenance of any structure, equipment, wire or cable within the Franchise area. Receipt of prompt notice of any such claim in writing from the City is required to trigger Franchisees' obligations hereunder. The Franchisee shall then, at its own expense with the full cooperation of the City, defend any action or proceeding against the City in which it is claimed that personal injury or property damage was caused by activities of the Franchisee, its employees and/or agents in the installation, operation or maintenance of its Cable System.

SECTION 7.2 - INSURANCE

(a) The Franchisee shall carry insurance with the City listed as an additional insured with an insurance company that has an A-VII AM Best financial rating or an A- or better Standard & Poors rating, indemnifying the City and the Franchisee from and against any and all claims for injury

or damage to persons or property, both real and personal, caused by construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance against Commercial General Liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person(s) shall be no less than One Million Dollars (\$1,000,000) and Five Million Dollars (\$5,000,000) in the aggregate. Such Commercial General Liability insurance shall include products and completed operations, independent contractors, and personal injury. The amount of such insurance against Commercial Auto Liability shall be in an amount no less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage. Both insurance policies shall be endorsed to include the full indemnity for the City.

(b) Worker's Compensation, including Employer's Liability and any other legally required employee benefits, shall be supplied in statutory amounts.

(c) All insurance coverage, including Worker's Compensation, shall be maintained throughout the period of this Franchise Agreement. All expenses incurred for said insurance shall be at the sole expense of the Franchisee. No later than thirty (30) days after the Effective Date of this Franchise, Franchisee shall furnish to the City certificates of insurance.

(d) All such Franchisee insurance policies and certificates of insurance shall stipulate that the coverage afforded by the policies shall not be canceled, modified or not renewed until at least thirty (30) days prior notice has been given to City.

(e) The City shall have the right, any time after the fifth year of this Franchise, to require an increase in the amounts of insurance to reflect changes in the Consumer Price Index.

SECTION 7.3 - ANNUAL REPORTING BY FRANCHISEE

(a) Upon request after the end of each year of the Franchise term, the Franchisee shall report to the City in writing, in substantially the form attached hereto as Exhibit "E", such annual report to include, at a minimum, the information described in that Exhibit "E".

(b) The City agrees to protect any proprietary information supplied from disclosure by treating such information as confidential to the extent permitted by RSA 91-A.

SECTION 7.4 - PERFORMANCE BOND

(a) Franchisee shall obtain and maintain during the entire term of this Franchise, at its sole cost and expense, and file with the City, an irrevocable performance bond to guarantee performance of the following terms and conditions:

(i) the satisfactory completion of the cable installation and satisfactory compliance with provisions of this Agreement;

(ii) the satisfactory restoration of pavements, sidewalks and other improvements in accordance with this Franchise;

(iii) the satisfactory operation of the Cable System, in compliance with the material terms and conditions of this Franchise.

This performance bond shall be in the amount of Ten Thousand Dollars (\$10,000). During the period of the upgrade of the Cable System, as outlined in Section 3.3 hereof, the performance bond shall be increased to \$25,000. Upon completion of the upgrade, the bond shall be reduced to \$10,000 and maintained at \$10,000 throughout the remaining term of the Agreement. The City may draw upon this bond for the purpose of curing any deficiency or breach by Franchisee of the terms stated in this Section 7.4. This right to draw upon this bond shall not in any way impede or impair the right of the Franchisee to appeal the basis for such action.

(b) The total amount of the bond shall be forfeited in favor of the City in the event:

(i) Franchisee abandons the Cable System or any part thereof at any time during the term of the Franchise;

(ii) There is any change in ownership or control of the Franchisee, the Franchise or the Cable System in non-compliance with the provisions hereof;

(iii) Franchisee fails to purchase and maintain insurance as required by this Agreement;

(iv) Franchisee fails to perform its material obligations under this Agreement or in any way violates the material terms of this Agreement; or

(v) Franchisee fails to comply with future technology requirements as provided in Section 3.4.

(c) The City may draw upon this bond and may otherwise recover any and all penalties due to the City and any and all damages, losses, costs, and expenses suffered or incurred by the City resulting from the failure of Franchisee to comply with one or more provisions of this Section 7.4. Nothing herein shall be deemed to permit the City to collect more than the sums that it is due. The City may not recover these sums from multiple parties.

SECTION 7.5 - NOTICE OF OPPORTUNITY TO CURE

Prior to instituting any action against the Franchisee under Section 7.4 (Performance Bond), Section 7.6 (Revocation of Franchise), or Section 7.7 (Liquidated Damages), the Franchising Authority shall notify the Franchisee in writing of the specific failure and shall give the Franchisee the specific time period identified in Section 7.6, or such longer time as may be granted by the Franchising Authority in its reasonable discretion, in which to demonstrate that a failure does not exist or to rectify such failure, and shall not proceed further if the matter is resolved to the reasonable satisfaction of the Franchising Authority within the specified time period.

SECTION 7.6 - REVOCATION OF FRANCHISE; DEFAULT

(a) The Franchise issued hereunder may, after due notice and hearing as defined herein, be revoked by the Franchising Authority for any of the following reasons:

(i) For failure to comply with any of the material terms and conditions of the Franchise;

(ii) The repeated failure to maintain signal quality pursuant to FCC standards;

(iii) The repeated failure to correct degraded picture quality in accordance with FCC standards as identified in Subscriber complaints to Franchisee;

(iv) For any transfer or assignment of the Franchise Agreement or control thereof without consent of the Franchising Authority;

(v) For failure to maintain a performance bond as described in Section 7.4 or to maintain insurance as described in Section 7.2;

(vi) For failure to comply with future technology requirements as provided in Section 3.4.

(b) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Renewal Franchise, except as excused by *force majeure*, the City shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the City believes may have been in default and the details relating thereto. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(i) respond to the City in writing, contesting the City's assertion of default and providing such information or documentation as may be necessary to support the Franchisee's position; or

(ii) cure any such default (and provide written evidence of the same) or, in the event that by nature of the default such default cannot be cured within such thirty (30) day period, to

take reasonable steps to cure said default and diligently continue such efforts until said default is cured. The Franchisee shall report to the City, in writing, by certified mail, at thirty (30) day intervals as to the Franchisee's efforts, indicating the steps taken by the Franchisee to cure said default and reporting the Franchisee's progress until such default is cured.

(iii) In the event that (A) the Franchisee fails to respond to such notice of default; and/or (B) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; and/or (C) the City is not reasonably satisfied with (1) the Franchisee's response herein and/or (2) the Franchisee's efforts to cure pursuant to this Section, the Franchising Authority or its designee shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to the Franchisee. The Franchisee shall be provided reasonable opportunity to offer evidence, question witnesses, if any, and be heard at such public hearing.

(c) Within thirty (30) days after said public hearing, the City shall issue a written determination of its findings. In the event that the Franchising Authority determines that the Franchisee is in such default, the Franchising Authority may determine to pursue any of the following remedies:

(i) assess liquidated damages in accordance with the schedule set forth in Section 7.7;

(ii) seek specific performance of any provision in this Franchise which reasonably lends itself to such remedy as an alternative to damages;

(iii) commence an action at law for monetary damages; foreclose on all or any appropriate part of the security provided pursuant to Section 7.4;

(iv) declare the Franchise to be revoked subject to Section 7.6 and applicable law;

(v) invoke any other lawful remedy available to the Franchising Authority.

Franchisee shall have the right to appeal any decision of the Franchising Authority to a court of competent jurisdiction.

SECTION 7.7 - LIQUIDATED DAMAGES

(a) For the violation of any of the following provisions of this Renewal Franchise, liquidated damages shall be paid by the Franchisee to the City, subject to Section 7.5 above. Any such liquidated damages shall be assessed as of the date that the Franchisee received written notice, by certified mail, of the provision or provisions which the City believes are in default, provided that the City made a determination of default pursuant to Section 7.6 above.

(i) For failure to activate, operate and maintain the Residential System in accordance with Section 3.3 herein, One Hundred Dollars (\$100.00) per day, for each day that any such non-compliance continues.

(ii) For failure to comply with the Access Programming provisions in accordance with Section 3.6 herein, Fifty Dollars (\$50.00) per day, for each day that any such non-compliance continues.

(iii) For failure to comply with the FCC's Customer Service Obligations in accordance with Article 5, et. seq., Fifty Dollars (\$50.00) per day for each day that any such non-compliance continues.

(iv) For failure to provide, install and/or fully activate the Cable System or Outlets in accordance with Sections 3.3 and 3.8 herein, Fifty Dollars (\$50.00) per day for each day that any of such Drops and/or Outlets are not provided, installed and/or activated as required.

(v) For failure to submit material reports, pursuant to Section 7.3 herein, Fifty Dollars (\$50.00) per day for each day that any of said reports are not submitted as required.

(b) Such liquidated damages shall not be a limitation upon any other provisions of this Franchise and applicable law, including revocation, or any other statutorily or judicially imposed

penalties or remedies; provided, however, that in the event that the Franchising Authority collects liquidated damages for a specific breach for a specific period of time, pursuant to Section 7.6 above, the collection of such liquidated damages shall be deemed to be the exclusive remedy for said specific breach for such specific period of time only.

(c) Each of the above-mentioned cases of non-compliance shall result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult to ascertain. The Franchisee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Franchisee agrees that said foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term “franchise fee” provided by Section 622 (g) (2) (A) - (D) of the Cable Act.

SECTION 7.8 - TERMINATION

The termination of this Franchise and the Franchisee’s rights herein shall become effective upon the earliest to occur of:

- (1) the revocation of the Franchise by action of the Franchising Authority, pursuant to Sections 7.5 and 7.6 above;
- (2) the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or the expiration of the term of this Franchise subject to Franchisee’s renewal rights under applicable law. In the event of any termination, the Franchising Authority shall have all of the rights provided in this Franchise.

SECTION 7.9 - REMOVAL OF CABLE SYSTEM

Upon termination of the Franchise Agreement and non-renewal thereof in accordance with applicable law, the Franchisee shall remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the Public Ways and other public places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such

removal is not completed within six (6) months of such termination, the Franchising Authority may deem any property not removed as having been abandoned, or at the Franchisee's expense remove or cause to be removed any components of the Cable System and restore the areas to their original condition.

SECTION 7.10 - INCORPORATION BY REFERENCE

All presently and hereafter applicable conditions and requirements of federal and state law and the rules and regulations of the FCC, as they may be amended from time to time, are incorporated herein by reference and shall control the interpretation and performance of this Franchise to the extent that any provision of this Franchise conflicts with or is inconsistent with such laws, rules or regulations.

ARTICLE 8

MISCELLANEOUS

SECTION 8.1 - SEVERABILITY

If any section, 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 any other section, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this Franchise Agreement or any renewal or renewals hereof.

SECTION 8.2 - FORCE MAJEURE

If for any reason of *force majeure* the Franchisee is unable in whole or in part to carry out its obligations hereunder, said Franchisee shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Franchise Agreement, the term *force majeure* as used herein shall have the following meaning: strikes; acts of God; acts of public enemies; orders of any kind of government of the United States of America or of the State of

New Hampshire or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within the Franchisee's control.

SECTION 8.3 - NOTICES

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by certified mail (postage prepaid) to City Manager, 3 Washington Street, Keene, New Hampshire 03431, or such other address as the Franchising Authority may specify in writing to the Franchisee. Every notice served upon the Franchisee shall be delivered or sent by certified mail (postage prepaid) to Time Warner Cable, 11 Eagle Court, Keene, New Hampshire 03431, or such other address as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

(b) Except in an emergency situation, in the event that the Franchisee or the City intends to take legal action against the other party for any reason, it shall first:

- (i) give the other party reasonable notice that an action will be filed;
- (ii) meet with the other party promptly before it files any such action; and
- (iii) negotiate the issue, which is the subject of any proposed legal action, in good

faith with the other party and/or its representatives.

SECTION 8.4 - AMENDMENT OR MODIFICATION

This Franchise shall not be amended or modified except by written agreement by the parties following publication of the proposed amendment in a manner consistent with the publication and notice provisions of RSA 33:8-a.

SECTION 8.5 - NON-EXCLUSIVITY OF REMEDY

(a) No failure on the part of the Franchising Authority or the Franchisee to exercise, and no delay in exercising, any right in this Franchise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations contained in this Franchise.

(b) The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Franchise shall impair any of the rights of the City under applicable law, subject in each case to the terms and conditions in this Franchise and non-duplicative recovery by the City.

(c) No waiver of nor failure to exercise any right or remedy by the Franchising Authority at any one time shall affect the exercise of such right or remedy or any other right or remedy by the Franchising Authority at any other time. In order for any waiver of the Franchising Authority to be effective, it shall be in writing.

(d) The failure of the Franchising Authority to take any action in the event of any breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Franchising Authority to take any action permitted by this Franchise at any other time in the event that such breach has not been cured, or with respect to any other breach by the Franchisee.

SECTION 8.6 - NO RECOURSE AGAINST THE FRANCHISING AUTHORITY

Pursuant to Section 635(a) of the Cable Act, the Franchisee shall have no recourse against the Franchising Authority, and/or its officials, boards, commissions, committees, agents or employees, other than injunctive relief or declaratory relief arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise.

SECTION 8.7 - ANNUAL CITY REVIEW

At the Franchising Authority's request, the Franchisee shall attend annual meetings with authorized City official(s) to review compliance with the terms of this Franchise and matters of interest to either party. No later than five (5) days prior to such meeting either party may submit a list of items to be reviewed.

SECTION 8.8 - DELEGATION

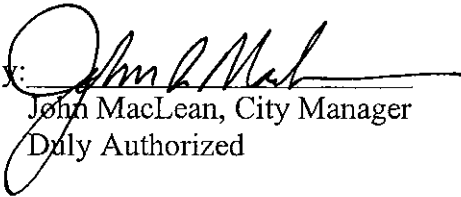
The Franchising Authority may delegate to any City official, employee, agency or commission the authority to exercise any of the Franchising Authority's rights hereunder which may lawfully be so delegated.

SECTION 8.9 - FINAL AGREEMENT

The Agreement stated herein, in writing, constitutes the final and entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise to be executed by their duly authorized representative this 28th day of May, 2003.

THE CITY OF KEENE

By: 
John MacLean, City Manager
Duly Authorized

Accepted By:

TIME WARNER CABLE INC.



By: Nancy L. Sanders
Its: Group VP of Operations

EXHIBIT A

MAP OF CURRENT SERVICE AREA

