

AN AGREEMENT GRANTING A CABLE TELEVISION  
FRANCHISE TO TIME WARNER CABLE NORTHEAST LCC  
TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE  
TELEVISION SYSTEM IN THE TOWN OF TUFTONBORO,  
NEW HAMPSHIRE; SETTING FORTH CONDITIONS  
ACCOMPANYING THE GRANT OF THE FRANCHISE; AND  
PROVIDING FOR REGULATION AND USE OF THE  
SYSTEM.

WHEREAS, the public interest will be served by the granting of a non-exclusive franchise to Time Warner Cable Northeast LLC to erect, install, construct, reconstruct, maintain, operate, dismantle, test, repair, replace, retain, and use a Cable Television System in, upon, along, across, above, over, under or in any manner connected with the Streets, lanes, avenues, sidewalks, alleys, bridges, and highways, and other public places in the Town of Tuftonboro as the same now or in the future may exist, for the purpose of transmission and distribution of Cable Services servicing the inhabitants of said Town, and other purposes, for a period of ten (10) years, and regulating same.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SELECTMEN OF THE TOWN OF TUFTONBORO:

## SECTION 1

### SHORT TITLE

This agreement shall be known and cited as the “Time Warner Cable Northeast LLC Cable Television Franchise Agreement.” Within this document it shall also be referred to as “this Franchise” or “the Franchise.”

## SECTION 2

### DEFINITIONS

For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, 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 words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A) “Basic Service” means that service tier which includes the retransmission of local television broadcast signals, the PEG access channel(s) described in Exhibit D, and any other programming signals required by the FCC, federal or State law.
- B) “Cable Act” means the 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. 104-458, 110 Stat. 56 (1996) and as may be further amended.

C) "Cable Television System" or "System" means a facility consisting of a set of closed transmission paths associated signal generation, reception, and control equipment that is designed to provide Cable Services and which is provided to multiple Subscribers within the Town. Such term does not include:

- 1) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
- 2) A facility that serves 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 Television System to the extent such facility is used in the retransmission 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 47 U.S.C. § 573 as it may be amended; or
- 5) Any facilities of any electric utility used solely for operating its electric utility systems.

D) "Cable Service" means (1) the one-way transmission to Subscribers of video programming (i.e., programming provided by, or generally comparable to programming provided by, a television broadcast station) and other programming; and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming.

- E) "Effective Date" shall mean December 10, 2012.
- F) "FCC" means the Federal Communications Commission or any successor thereto, having jurisdiction over cable television.
- G) "Force Majeure" means strikes, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, labor unrest, shortage of materials or supplies, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party.
- H) "Grantee" means Time Warner Cable Northeast LLC, its agents, lawful successors, transferees or assignees.
- I) "Gross Revenues" means the revenue received by Grantee from the operation of the Cable Television System in the Town to provide Cable Services, calculated in accordance with generally accepted accounting principles including, but not limited to, all Cable Service fees, premium and pay-per-view fees, installation charges, advertising and home shopping revenues, and all other fees or charges collected from the provision of Cable Services to Subscribers of the System in the Town. Gross Revenues shall not include excise taxes or sales taxes or any other taxes or fees, including the franchise fee, which are imposed on the Grantee or any Subscriber by any governmental unit and collected by the Grantee for such governmental unit.

- J) "Person" means any corporation, partnership, proprietorship or organization authorized to do business in the State or any natural Person.
- K) "Public Property" means any real property other than a street owned by any governmental unit.
- L) "State" means the State of New Hampshire.
- M) "Street" means the surface of and the space above and below any street, road highway, freeway, lane, path, way, alley, court, sidewalk, boulevard, parkway, drive, or any public easement or right-of-way now or hereafter held by the Town.
- N) "Subscriber" means a member of the general public who legally receives Cable Services distributed by the Cable Television System and does not further distribute it.
- O) "Town" shall mean the Town of Tuftonboro, and any area annexed thereto from time to time. For purposes of this Agreement, any annexation shall become effective within sixty (60) days of the Town's written notification to Grantee of the annexation including a complete and accurate listing of the affected addresses.

### SECTION 3

#### GRANT OF AUTHORITY

- A) Pursuant to the authority of RSA 53-C and the Cable Act, the Town hereby grants this non-exclusive franchise to Grantee, authorizing and permitting Grantee to construct, operate and maintain a Cable Television System in the Streets within the municipal limits of the Town. Nothing in this Franchise shall be construed to prohibit Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

B) Subject to the terms and conditions herein, the Town hereby grants to the Grantee the right to construct, operate and maintain the Cable Television System, which may include poles, wires, optical fibers, amplifiers and other property and equipment as are necessary in, under, over, along, across and upon the Streets and other Public Property under the jurisdiction of the Town, including other property over which the Town has a sufficient compatible easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video programming in accordance with federal and State law.

#### SECTION 4

##### COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

- A) This Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of State and federal laws, rules and regulations, including, but not limited to, the Cable Act, RSA Chapter 53, and the rules and regulations of the FCC.
- B) Grantee's rights are subject to the police powers of the Town to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise. Grantee shall comply with all generally applicable laws and ordinances enacted by the Town pursuant to that power.
- C) The Town specifically reserves all authority granted it under RSA 231:160 et seq. to manage, regulate and control the public right-of-way, as such authority relates to the provisions of telecommunications services including, but not limited to, RSA 33:3-g. Grantee must comply, if applicable, with all the requirements of RSA 231:160 et seq.,

for obtaining conduit or pole licenses for any conduits or poles that Town wishes to install.

- D) Pursuant to RSA 72:23, I(b), which is hereby incorporated by reference, as if restated herein, and other New Hampshire laws on taxation, it is a material term of the Franchise for Franchisee to pay lawfully assessed personal and real property taxes when due. Failure to do so shall be cause for Town to provide a written notice to Grantee to show cause by a date certain specified in the notice as to why this franchise should not be revoked pursuant to Section 17.

#### SECTION 5

##### TERRITORIAL AREA INVOLVED

This Franchise is granted for the territorial boundary of the Town. In the event of annexation by the Town, any new territory shall become part of the area covered upon sixty (60) days advance written notice by the Town to the Grantee.

#### SECTION 6

##### FRANCHISE TERM

This Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement (hereinafter "Effective Date"). The Franchise shall continue in full force and effect for a period of ten (10) years from such Effective Date unless renewed, revoked or terminated sooner as herein provided: December 10, 2012-December 9, 2022.

## SECTION 7

### FRANCHISE NON-EXCLUSIVE

Grantee acknowledges and agrees that the Town reserves the right to grant one or more additional franchises to other Cable Service providers within the Town for the right to use and occupy the Streets within the Town's jurisdiction; provided, however, that in accordance with RSA 53-C:3-b no such franchise agreement shall contain terms or conditions more favorable or less burdensome than those in any existing Franchise within the Town. If the federal government or the State issues a franchise or other authorization permitting another Person to construct, operate and maintain a Cable Television System in the Town and such Person constructs and operates a competing Cable Television System in the Town, and if Grantee believes that the obligations of that authorization or franchise are more favorable or less burdensome than this Franchise, then the Town agrees to modify this Franchise within thirty (30) days of notification of said operation, so that, taken as a whole, this Franchise is no less favorable, or more burdensome, than the franchise or authorization granted to the other Person providing Cable Television Service in the Town.

## SECTION 8

### WRITTEN NOTICE

All notices or demands required to be given under this Franchise shall be deemed to be given when delivered personally to the Persons designated below or upon the date actually received as evidenced by registered or certified mail receipt addressed as follows:

If to the Town:	Town of Tuftonboro P.O. Box 98 Center Tuftonboro, NH 03816
If to Grantee:	Time Warner Cable Attn: Government Affairs Department 400 Old County Road Rockland, ME 04841



With a copy to:

Time Warner Cable  
Law Department Regulatory Counsel  
60 Columbus Circle  
New York, NY 10023

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

## SECTION 9

### REPAIR OF STREETS AND PROPERTY

Any and all Streets or Public Property or private property which are disturbed or damaged by the Grantee during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly repaired by Grantee to a condition as good as that prevailing prior to Grantee's work.

## SECTION 10

### CONSTRUCTION AND USE OF FACILITIES

- A) Subject to Section 4 (C) above and to the Town's generally applicable permitting procedures, the Grantee shall have the right to erect and maintain its own poles at locations as it may find necessary for the proper construction and maintenance of the Cable Television System. Approval shall be procured by the Grantee from the proper Town department providing for the erection of these poles. The Town agrees that such prior approval shall be granted on a timely basis and will not be unreasonably withheld.

- B) The Grantee's transmission and distribution system poles, wires, appurtenances, shall be located, erected, and maintained in compliance with applicable law and the generally applicable, non-discriminatory conditions of any licenses granted by the Town. In particular, Grantee's facilities shall not endanger or interfere with the lives of Persons or interfere with any improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Streets, alleys, bridges, sidewalks, or other Public Property. Removal or relocation of poles or equipment when necessary to avoid such interference shall be at the Grantee's expense. However, if any user of the Street or right of way is compensated for such removal or relocation, Grantee shall be similarly compensated.
- C) Construction and maintenance of the System shall be performed in an orderly and workmanlike manner. Grantee shall at all times comply with the National Electrical Safety Code and such generally applicable, non-discriminatory ordinances and regulations of the Town affecting electrical and structural installations which may be in effect at the time the work is performed.
- D) The Cable System shall be installed in accordance with good engineering practice, so as not to unreasonably interfere with the right of the public or individual property owner and shall not interfere unduly with the travel and use of public places by the public during the construction, repair, or removal thereof, and shall not unduly obstruct or impede traffic.
- E) The Grantee shall maintain its System so that its facilities shall conform to the pattern of the existing public utility facilities, subject to the right of the Town to require relocation, either overhead or underground, of all such utility facilities when the

Town determines that such relocation is necessary and in the public interest but not for arbitrary and capricious reasons. Any such relocation shall be at the Grantee's pro-rata expense unless any other user of the Street or public right of way is compensated for such relocation, in which case the Grantee shall be similarly compensated.

- F) The Grantee shall maintain its System so that poles and other structures of public utilities which are available shall be used to the extent practicable and subject to Grantee's ability to obtain such use on reasonable terms and conditions.
- G) Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, lowering of the grade, or vacation of any Street by the Town for rehabilitating any section of the Town, it shall be deemed necessary by the Town for the Grantee to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be promptly made by the Grantee, provided, however, that all similarly located facilities of others are also required to relocate at the same time. Any such relocation shall be at the Grantee's expense unless any other user of the Street or public right of way is compensated for such relocation in which case the Grantee shall be similarly compensated. In the event the Grantee, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time, the Town shall have the authority, but not the obligation, to remove or abate such structures of facilities and to require the Grantee to pay to the Town the cost of such relocation, alteration, or modification. If the Grantee fails to complete in a timely manner, any relocation requested by the

Town and the Town incurs any costs resulting from such delay, the Grantee shall be liable to the Town for such costs.

- H) The Grantee shall, upon request of any Person holding building moving permit or permit to move oversize loads issued by the Town, temporarily raise or lower its wires to permit the moving of buildings or oversize loads. The expense of such temporary removal or raising or lowering of the wires shall be paid by the Person requesting the same and Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary changes.
- I) The Grantee shall have the authority to trim trees upon and overhanging the Streets of the Town so as to prevent the branches of such trees from coming in contact with the Grantee's wires and cables, in accordance with State law and Town ordinances and regulations, including, but not limited to, State laws governing scenic roads, including, but not limited to, RSA 231:157 and 158.
- J) All work undertaken in connection with the construction, reconstruction, maintenance, operation or repair of the Grantee's System shall be subject to and governed by all State and Federal laws, rules and regulations including those of the FCC, OSHA, and any other federal or State agency having jurisdiction.

## SECTION 11

### LEGAL OBLIGATIONS

- A) The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the Town, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities

and judgments of every kind arising out of or due to the Grantee's construction or operation of the System in the Town, including but not limited to damages for injury or death or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same. However, Grantee shall not be required to hold harmless and indemnify the Town for any claims arising out of the negligence of the Town, its officers, boards, commissions, Board of Selectmen, elected officials, agents or employees. Without in any way waiving any statutory immunity or the right to assert defenses to liability provided by law, and subject to the provisions of RSA Chapter 507-B, the Town shall indemnify and hold harmless Grantee from any damage or claims resulting from any acts of the Town, its officers, boards, commissions, Board of Selectmen, elected officials, agents or employees, including but not limited to any acts committed by the Town in connection with its use of the System and work performed by the Town on, or adjacent to, the Cable System.

- B) The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the Town, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third Persons or duly constituted authorities, against or affecting the Town, its officers, boards, commission, agents, or employees, arising out of or due to the Grantee's construction or operation of the System in the Town.
- C) The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the Town, its officers, boards, commissions, agents or employees, for the

foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder or otherwise.

D) In order for the Town to assert its rights to be indemnified, defended and held harmless, the Town must:

- 1) Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
- 2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
- 3) Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

## SECTION 12

### CUSTOMER SERVICE STANDARDS

A) Grantee shall at all times comply with the customer service standards of the FCC including without limitation those related to notifications to Subscribers, office hours and availability, installations, outages, service calls, billing, refunds, and credits as they may be amended from time to time. See current regulations attached as Exhibit A and hereby incorporated herein.

1) The Grantee shall establish a procedure for resolution of complaints by Subscribers. Grantee shall notify Subscribers of its procedures in accordance with federal law.

2) Upon reasonable notice, the Grantee shall expeditiously investigate and resolve all complaints regarding the quality of service, equipment malfunctions and

similar matters.

3) Except as limited by federal law or FCC regulations concerning privacy, the Grantee shall comply with the provisions of NH RSA 53-C:3-e, as it may be amended, regarding Subscriber complaints. Nothing herein shall be deemed to require Grantee to maintain records of oral complaints which can be handled to the Subscriber's satisfaction in the course of the initial conversation in which the complaint is made or does not require technical field response.

4) In the event that a Subscriber is aggrieved, the Town or its designee(s) shall be responsible for receiving and acting upon such Subscriber complaints and/or inquiries, subject to Subscriber privacy laws as follows:

- (i) Upon the written request of the Town or its designee(s), the Grantee shall, within ten (10) business days after receiving such request, provide a report to the Town with respect to any complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps taken by the Grantee.
- (ii) Should a Subscriber have an unresolved complaint regarding cable television operations, the Subscriber shall be entitled to file his or her complaint with the Town or its designee(s), who shall have primary responsibility for the continuing administration of this Franchise and the implementation of complaint procedures. The Subscriber shall thereafter meet jointly with the Town or its designee(s) and a representative of the Grantee within thirty (30) days of the Subscriber's filing of his or her complaint in order to fully discuss and resolve such matter.

5) Notwithstanding the foregoing, if the Town or its designee(s) determines it to be in the public interest, the Town or its designee(s) may investigate any multiple complaints or disputes brought by Subscribers arising from the operations of the Grantee.

6) In the event that the Town, or its designee(s), finds a pattern of multiple unresolved Subscriber complaints, the Town or its designee(s) and the Grantee

shall discuss, in good faith, possible amendments to the Grantee's procedures for the resolution of complaints.

7) In the event that Grantee's service to any Subscriber is completely interrupted for twenty-four (24) or more consecutive hours, Grantee will grant such Subscriber a pro rata credit or rebate upon request, 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. In the instance of other individual Subscriber service interruptions, credits shall be applied as described above after due notice to Grantee from the Subscriber.

8) All of Grantee's employees, including repair and sales personnel, and contractors entering private property shall be required to carry an employee identification card approved by Grantee and bearing a picture of said employee. If such employee(s) cannot produce such a photo identification card and, as a result, is not admitted to a Subscriber's home, such visit shall be deemed to be a missed service visit by the Grantee. All of Grantee's and/or its contractors' or subcontractors' vehicles performing work on the Cable Television System in the Town shall be placarded with proper identification making them readily identifiable.

Agents and contractors hired by the Grantee to perform any substantial work on the Cable Television System in the Streets in the Town that disrupts or has the potential to disrupt the flow of traffic and/or is for an extended period (more than half a day) shall inform the Town Police Department of the work location within the Town and provide relevant vehicle identification.



## SECTION 13

### LIABILITY INSURANCE

A) Grantee shall maintain, throughout the term of this Franchise, liability insurance insuring the Town and the Grantee with regard to all damages mentioned in Section 11 above in the following minimum amounts:

- 1) One Million Dollars (\$1,000,000) for bodily injury or death to any one Person;
- 2) One Million Dollars (\$1,000,000) for bodily injury or death resulting from anyone accident; and
- 3) Five Million Dollars (\$5,000,000) for all other types of liability, in umbrella form.
- 4) Grantee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability no less than One Million Dollars (\$1,000,000). The policy will contain a provision that the Town will receive thirty (30) days' written notice prior to any cancellation.
- 5) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this Franchise. All expenses incurred for said insurance shall be at the sole expense of Grantee. The policy will contain a provision that the Town Authority will receive thirty (30) days' written notice prior to any cancellation.
- (6) Grantee shall provide Town with certificate(s) of insurance for all policies required herein on or before the Effective Date and upon renewal of policies. The Town shall be named as an additional insured on all Grantee's insurance policies.

## SECTION 14

### PERFORMANCE STANDARDS

- A) The Grantee shall construct, operate and maintain its System according to the specifications of the FCC.
- B) The Grantee shall at all times employ a reasonable standard of care to prevent failures or accidents which are likely to cause damages, injuries or nuisances to the public.
- C) Subject to the requirements of the FCC, the Grantee shall provide a parental control device capability for a reasonable charge, upon request, to any Subscriber.
- D) No more frequently than one (1) time during each year during the term of the Franchise starting in the third (3<sup>rd</sup>) year of the term, if requested in writing by the Town, Grantee shall review with the Town changes in relevant cable television technology that might benefit Town Subscribers. Upon request and no more than once every calendar year, Grantee shall submit to the Town an annual report in the form attached as Exhibit B on or before the anniversary of the Effective Date. At the Town's written request the Grantee will attend an annual meeting with the Board of Selectmen or their designee to review compliance with the terms of this Franchise and matters of interest to either party. No later than thirty (30) days prior to such meeting either party may submit a list of items to be reviewed.

## SECTION 15

### TRANSFER OR ASSIGNMENT OF FRANCHISE

The rights granted herein shall not be transferred or assigned by the Grantee without the written consent of the Town, which consent shall not be unreasonably withheld. Notwithstanding the

foregoing, no consent or notice shall be required for any transfer or assignment of the franchise to any entity controlling, controlled by or under the same common control as the Grantee.

#### SECTION 16

##### FRANCHISE RENEWAL

This Franchise shall be renewed in accordance with applicable State and federal law.

#### SECTION 17

##### TOWN'S RIGHT TO REVOKE

In addition to all other rights which Town has pursuant to law or equity, the Town reserves the right to revoke, terminate or cancel this Franchise and all rights and privileges pertaining thereto in the event that:

- A) Grantee violates any material provision of this Franchise; or
- B) Grantee practices any fraud upon the Town; or
- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt or a receiver is appointed to it.

#### SECTION 18

##### REVOCATION PROCEDURES

- A) The Town shall notify the Grantee of its intention to revoke, terminate or cancel this Franchise. The written notice shall describe in reasonable detail the specific material violation so as to afford Grantee an opportunity to remedy the violation.
- B) Grantee shall have ninety (90) days subsequent to receipt of the notice in which to correct the material violation before the Town may formally revoke, terminate or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice,

notify the Town that there is a dispute as to whether a material violation has, in fact, occurred. Such notice by Grantee to the Town shall stay the ninety (90) day period described above.

- C) Upon receipt of the Grantee's notification of a dispute as to whether a material violation has, in fact, occurred pursuant to paragraph (B) above, the Town shall hear Grantee's dispute and shall determine whether a material default or violation by Grantee has occurred. In the event the Town shall determine that a material default or violation has occurred, the Town shall supplement the decision with written findings of fact.
- D) If after hearing the dispute, Grantee has been found to be in material default, Grantee shall then have ninety (90) days (or such longer period of time as may be reasonably necessary) from such a determination to remedy the material violation or failure. At any time after that ninety (90) day period the Town may by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke, terminate or cancel this Franchise if Grantee fails to cure such material default.
- E) Any such final decision of the Town may be appealed to any court of competent jurisdiction, which filing shall stay any such revocation, termination or cancellation of this Franchise.

## SECTION 19

### REMOVAL UPON REVOCATION

Upon the final revocation, termination or cancellation of this Franchise as herein provided, Grantee shall, upon request of the Town, remove all of its attachments and wires from poles used as authorized herein.

## SECTION 20

### FORCE MAJEURE

If by reason of a Force Majeure any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

## SECTION 21

### SERVICE AREA

- A) Subject to paragraph D hereof, Cable Service shall be provided to every single residential dwelling within the Town in existence on the Effective Date requesting Cable Service where the density of single family homes is 15 per mile as measured from Grantee's existing distribution system, provided Grantee is able to obtain from property owners any necessary easements and/or applicable permits at no cost, within six months of the Effective Date of this Franchise.
- B) Grantee shall, upon request, make Cable Service available to residents meeting the criteria outlined in paragraph (A) above, in new dwelling units on Streets within ninety (90) days after receiving all pole attachment permits and other authorizations, taking into account and subject to weather, Force Majeure, performance of make ready, availability of construction crews and materials, and the ability to obtain all necessary easements and rights-of-way at no cost. In the case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of not less than forty-five (45) days prior to such construction or development, and, if applicable, of the particular date on which open trenching will be available for Grantee's installation

of conduit, pedestals and/or vaults, and materials to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Subject to the provisions of paragraph A and D hereof, the Cable Television System shall pass new units within five (5) months after a resident requests service, subject to events of Force Majeure, utility make ready and Grantee's ability to receive access to the new units at no cost.

- C) Neither Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable Television System in the Town. It shall be the right of all Persons to receive all available Cable Service provided on the Cable Television System so long as such Person's financial or other obligations to the Grantee are satisfied.
- D) Grantee shall, within fifteen (15) days of written request by the occupant of a dwelling, connect the Cable Television System at standard installation charges if the location is within two hundred (200) aerial feet of the Cable Television System's usable trunk, if no special trenching or boring is required, completion of any required utility make ready and if the dwelling is properly internally wired to meet Grantee's specifications to prevent signal leakage.
- E) Should Grantee determine within the ninety (90) day period outlined in paragraph B of this section that it cannot meet the ninety (90) day deadline, it shall notify the Town and negotiate an equitable extension of that deadline. If requested by the

Town, Grantee shall provide a written report to the Town completely explaining its failure to meet the time frame stated herein.

- F) Buildings located over two hundred (200) aerial feet from Grantee's usable trunk or requiring special trenching or boring shall be considered non-standard installations and charged an additional installation fee for the difference between the cost of Standard Installation and the actual cost of installation to the location, computed in accordance with FCC regulations, including 47 C.F.R. §76.923, as it may be amended.
- G) Grantee commits to maintaining a two-way capable, Cable Television System utilizing addressable technology, and cable and electronics capable of transmitting a bandwidth of at least 860 MHz. The Cable Television System shall be designed and constructed so that television station broadcast signals received by Grantee in stereo can be received in stereo by Subscribers without the necessity of subscribing to any other Cable Television System service, providing Subscriber has video and audio equipment capable of receiving stereo signals. Subject to the applicable requirements of FCC regulations, currently 47 C.F.R. part 76, at Sections 76.1602, 76.1603 and 76.1619 (attached hereto as Exhibit B), Grantee shall provide the Town and Subscribers with any notice required by applicable law before making deletions, additions or relocations of programming or stations or any other change to its video program channel lineup offerings. The Town may, at its sole discretion, hold a public hearing to solicit comment regarding the proposed changes. Upon provision of fifteen (15) days' notice, Grantee shall attend such public hearing. Nothing in this Franchise shall be construed to give the Town any authority over Grantee's

programming decisions or channel-line-ups or to waive any rights or defenses that Grantee may have under applicable law.

- H) Grantee shall provide one free drop and basic Cable Service without charge to each public school and municipally owned and occupied building listed on Exhibit C and capable of an aerial installation. This obligation shall pertain throughout the term of this franchise agreement. If additional equipment is needed to view the basic cable service, the municipality or public school, as the case may be, shall be responsible for the monthly cost of said equipment. Grantee agrees to provide a free drop and free basic Cable Service to any relocated or newly constructed and occupied Town Hall, police, fire, public library or public school facility located within 200 feet of Grantee's existing distribution system and capable of an aerial install qualifying within ninety (90) days of a written request from the Town.

## SECTION 22

### UNAUTHORIZED CONNECTIONS OR MODIFICATIONS

- A) It shall be unlawful for any Person, without the expressed consent of the Grantee to make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the System for any purpose whatsoever.
- B) It shall be unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the System for any purpose whatsoever.
- C) It shall be unlawful for any Person to construct, operate or maintain a System without having first applied for and received a franchise from the Town.



- D) Any Person convicted of a violation of this Section shall be subject to all federal, State and local penalty provisions which penalty provisions are incorporated herein by reference.

## SECTION 23

### PEG ACCESS CHANNEL

Grantee will comply with the PEG Access requirements set forth on Exhibit D.

## SECTION 24

### FRANCHISE FEE PAYMENTS

- A) Subject to applicable law, the Grantee shall pay to the Town a franchise fee in the amount of two percent (2%) of the Grantee's annual Gross Revenues (the "Franchise Fee").
- B) At the option of the Town, at any time after the one year anniversary of the Effective Date, by vote of the Board of Selectmen for the Town at a public meeting, the Town may increase the Franchise Fees paid annually up to a total of five percent (5%) of the Grantee's Gross Annual Revenue, as defined herein. Changes to the Franchise Fee made pursuant to this Section shall be implemented within ninety (90) days after written notice of the requested increase from the Board of Selectmen.
- C) The Franchise Fee shall be due and payable quarterly within forty-five (45) days of the close of each calendar quarter. The first and last Franchise Fee payments may be prorated, if necessary. The Town may designate a particular Town fund or funds to which Grantee shall direct Franchise Fees hereunder. Each payment shall be accompanied by a statement certifying the factual basis for payment, including a

breakdown by category of Grantee's Gross Revenue upon which such payment is based.

D) The Town shall have the right to inspect, at the Grantee's business office during normal business hours, the books and financial records of the Grantee compiled in the ordinary course of business necessary to verify Franchise Fee payments. The Town may, at its option, inspect and subject to independent audit, at the Town's expense, the financial records of Grantee insofar as they apply to the calculation of (i) Gross Revenues in the Town, and (ii) Franchise Fees paid to the Town; provided, however, that if the Town has a reasonable belief or reasonably should have such a belief of a need to verify information, it must exercise its right to inspect and audit within one (1) year of such Franchise Fee payment. No acceptance of any payment shall be construed as an accord that the payment is, in fact, the correct amount, nor shall acceptance of payment be construed as a release of (1) any claim the Town may have for further or additional sums payable under provisions of this Franchise; or (2) any other claim whatsoever.

## SECTION 25

### SEVERABILITY

If any term, condition or Section of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or Section to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, conditions and Sections hereof shall, in all other respects, continue to be effective and to be complied with.

## SECTION 26

### PERFORMANCE BOND

A) Grantee has submitted and shall maintain throughout the duration of this Franchise and any removal period a performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000) running to the Town with a surety company satisfactory to the Town to guarantee the following terms:

- (1) satisfactory compliance with the provisions of this Franchise;
- (2) restoration of the Streets and other improvements in accordance with this Franchise;
- (3) the indemnification of the Town as provided in Section 11; and
- (4) the satisfactory removal of the Cable System pursuant to Section 19.

Pursuant and subject to the provisions of Section 18 (Revocation Procedures) herein, the Town may draw upon this bond for the purpose of curing any deficiency or breach by Grantee of the terms stated in this Section. This right to draw upon this bond shall not in any way impede or impair the right of the Grantee to appeal the basis for such action.

B) The total amount of the bond shall be forfeited in favor of the Town in the event:

- (1) Grantee abandons the Cable Television System or any part thereof at any time during the term of this Franchise; or
- (2) Grantee fails to purchase and maintain insurance as required by this Franchise; or
- (3) Grantee fails to perform its material obligations under this Franchise or in any way violates the material terms of this Franchise.

- C) The Town may not draw upon this bond until the provisions and procedures of Section 18 (Revocation Procedures) have been met. The Town may draw upon this bond and may otherwise recover any and all penalties due to the Town and any and all damages, losses, costs, and expenses suffered or incurred by the Town resulting from the failure of Grantee to comply with one or more provisions of this Section. Such losses, costs and expenses shall include, but not be limited to, reasonable attorney's fees and other legal, consulting and auditing expenses. Nothing herein shall be deemed to permit the Town to collect more than the sums that it is due. The Town may not recover these sums from multiple parties.
- D) Grantee shall not reduce the amount or cancel said bond or materially change the terms of said bond from the provisions of this Section herein without the Town's prior written consent, which consent shall not be unreasonably withheld.
- E) If Grantee is found to have violated any of the terms under (A) above, the Town shall have the right to require twice the amount listed in (A) as a performance bond on a going forward basis for the remainder of this Franchise term.

## SECTION 27

### STANDBY POWER AND EMERGENCY ALERT OVERRIDE

The Cable System shall incorporate equipment capable of providing standby powering of the head end for a minimum of forty-eight (48) hours upon failure of the power furnished by the electric utility company unless for reasons of Force Majeure. Grantee shall comply with the FCC's Emergency Alert System ("EAS") regulations.

SECTION 28

ENTIRE AGREEMENT

This Franchise contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements oral or written. This agreement may not be modified except in writing signed by both parties.

Passed and adopted this 10th day of December, 2012.

Witness:

Darlene M'Whiter

Darlene M'Whiter

Darlene M'Whiter

TOWN OF TUFTONBORO

BY:

Daniel J. Duffy  
Daniel J. Duffy, Chair

BY:

Carolyn Sundquist  
Carolyn Sundquist, Select Board Member

BY:

Lloyd P. Wood  
Lloyd P. Wood  
Select Board Member

Accepted by Time Warner Cable Northeast LCC

Date: 3/21/13

BY:

Amos Smith  
Amos Smith  
CFO Residential

EXHIBIT A

**FCC REGULATIONS**

(Pursuant to § 12 (A))

**Code of Federal Regulations 47 CFR §76.309**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A Town from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable System office hours and telephone availability--

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution System.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes Known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.

(3) Communications between cable operators and cable Subscribers--

(i) Refunds--Refund checks will be issued promptly, but no later than either--

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions--

(i) Normal business hours--The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions--The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable System.

(iii) Service interruption--The term "service interruption" means the loss of picture or sound on one or more cable channels.

**Regulations Re: Notifications**

**Sec. 76.1602 Customer service--general information.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;



(3) Installation and service maintenance policies;

(4) Instructions on how to use the Cable Service;

(5) Channel positions of programming carried on the System; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable System operator, including the address of the responsible officer of the local franchising authority.

**Sec. 76.1603 Customer service--rate and service changes.**

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify Subscribers 30 days in advance of any significant changes in the other information required by Sec. 76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable Systems shall give 30 days' written notice to both Subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a Subscriber of any increase in the price to be charged for the Basic Service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to Subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the Subscriber.

Note 1 to Sec. 76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Note 2 to Sec. 76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable Subscribers who do not subscribe to such premium channel.

Note 3 to Sec. 76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of Subscriber privacy.

#### **Sec. 76.1619 Information on Subscriber bills.**

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

EXHIBIT B

**FORM OF ANNUAL REPORT FOR TUFTONBORO FOR \_\_\_\_\_(YEAR)**

(Pursuant to §14 (E))

Location of and hours of Payment Center:

Location of and hours of Customer Service Office:

Customer Service Telephone Number:

Location of hub:

Franchise Fee Paid: \$ \_\_\_\_\_

Contact Person to Service Unresolved Customer Complaints:

Updated Labor/Material Costs (if applicable) for installation over 200 feet from existing plant:

Upon written request from the Town, Grantee shall also provide the following:

Customer Service Statistics:

- a) Number of reports of System outages and response time for such outages:
- b) A summary of written complaints and brief description re: resolution of such complaints:

EXHIBIT C

**Municipal and School Facilities Receiving Free Cable Drop and Free Service**

(Pursuant to §21 (H))

<u>Facility</u>	<u>Address</u>
Tuftonboro Town Hall	240 Middle Road
Tuftonboro Police Department	240 Middle Road
Melvin Village Fire Station	451 Governor Wentworth Highway
Mirror Lake Fire Station	11 Tuftonboro Neck Road
New Fire Station	191 Middle Road
Tuftonboro Free Library	221 Middle Road
Tuftonboro Central School	205 Middle Road
Old Town House	247 Middle Road

EXHIBIT D

**PEG Access Channels**  
(Pursuant to §23 (A))

A) PEG Access Channels. Until such time as Grantor elects to have a dedicated PEG access channel, Grantee agrees to permit the Town to deliver its programming to Grantee's Conway office for transmission on the Public, Educational and Governmental ("PEG") access channel on the Basic Service tier shared with the Town of Moultonborough. In accordance with federal law, Grantee will be entitled to use any PEG access channel capacity for the provision of other services at any time such channel capacity is not being used for the designated PEG access purposes. At any time after the first (1<sup>st</sup>) anniversary of the Effective Date, at the written request of the Town, Grantee shall provide to the Town a dedicated PEG access channel.

B) Non-Commercial. The PEG access channel(s) and channel capacity are made available to the Town by Grantee or its designee for the purpose of cablecasting locally produced non-commercial programming by Town, its designee, residents, administration and educational institutions. The Town agrees not to use the access channels to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by Grantee; provided, however, that the Town or its designee may cablecast acknowledgments of funding sources and the underwriting of programming costs.

C) Origination Point. If the Town opts for a dedicated PEG access channel, it shall request the same within five (5) years of the effective date of this Agreement in order to minimize the pass through cost to the customer. Grantee will provide an origination point for cablecasting by the Town or its designee on the access channel, at the Town Hall (240 Middle Road) or Tuftonboro Central School (205 Middle Road), within one hundred twenty (120) days of the Town's notification to Grantee that it exercises this option. The cost for construction of

this origination point shall be line-itemized, externalized as a pass-through to Subscribers on their bills.

D) The Town acknowledges that under FCC rules, certain external costs are eligible for “pass through” and itemization on the bill to Subscribers.