



David J. Whalen
Director of Franchising

February 11, 2014

Honorable Kathleen H. Burgess, Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Franchise Renewal – Time Warner Cable, Central New York Division
With the Town of Bethlehem

Dear Secretary Burgess:

We are herewith filing, via email, the following:

1. R-2 Application for Franchise Renewal, channel lineup and rates
2. Municipal Resolution granting renewal dated November 13, 2013
3. Fully executed copy of Franchise Renewal Agreement dated November 14, 2013
4. Copy of latest annual test data compiled for this part of the Division's CATV system (via separate email)
5. Published legal notices
6. Method of Service Form

We hereby request approval by the Commission of this application pursuant to Section 222 of the Public Service Law.

Respectfully,

A handwritten signature in black ink, appearing to read "David J. Whalen".

David J. Whalen
Director of Franchising
Northeast Region

DJW/e
Enclosures

cc: Honorable Nanci Moquin, Town Clerk (w/copy of Encs.)

Time Warner Cable
Final
August 28, 2013

FRANCHISE AGREEMENT
TO PROVIDE CABLE TELEVISION SERVICES

Between

Town of Bethlehem, New York

AND

Time Warner Cable Northeast LLC
d/b/a Time Warner Cable

FRANCHISE AGREEMENT

Nov. 14, 2013
JME THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered as of (insert date) between Town of Bethlehem, New York (the "Grantor") and Time Warner Cable Northeast LLC d/b/a Time Warner Cable, a limited liability company organized and existing in good standing under the laws of Delaware ("Grantee").

WHEREAS, the Grantee has applied under the provisions of Federal law to Grantor for a renewal of its franchise granting it the right to construct and operate a cable television system and provide cable service; and

WHEREAS, the Company is providing such service pursuant to a franchise dated (date) and has substantially complied with the material terms of the franchise and applicable law; and

WHEREAS, the technical ability, financial condition and character of the Grantee and Grantee's plans for constructing and operating the cable system were considered and found adequate and feasible and approved by Grantor at a full public proceeding affording due process; and

WHEREAS, this proposed Franchise Agreement complies with the standards of the New York State Public Service Commission ("NYPSC"); and

WHEREAS, the franchise granted herein is non-exclusive,

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein:

IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1. SHORT TITLE

This Franchise Agreement shall become known and may be cited as the [name of Town of Bethlehem]/Time Warner Cable Franchise Agreement.

SECTION 2. DEFINITIONS.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 2. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 2.1 "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. § § 521-611) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) and the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996), as may be further amended.
- 2.2 "Cable Service" shall have the meaning provided under Section 602(6) of the Cable Act (47 U.S.C. §522(6) as may be amended.
- 2.3 "Cable System" or "System" shall have the meaning provided under Section 602(7) (47 U.S.C. §522(7) as may be amended.
- 2.4 "Channel" means a portion of the electromagnetic frequency spectrum or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available) which is used in a cable television system and is capable of delivering a television channel as television channel is defined by FCC regulation.
- 2.5 Educational Access Channel: A Channel available for non-commercial use solely by local public schools and public school districts in the franchise areas served by the System and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the franchise areas served by the System.
- 2.6 "Effective Date" has the meaning given to it in Section 3.4 of this Agreement.
- 2.7 "FCC" means the Federal Communications Commission, its designee, or any successor thereto.
- 2.8 "Franchise Area" means the territorial area of the Town of Bethlehem. Such area shall include all areas annexed by the Town of Bethlehem. For purposes of this Agreement, annexations shall be effective upon sixty (60) days notice from the Grantor to Grantee, including a list of affected addresses. If Grantee is operating a cable system in an annexed area immediately prior to the date of annexation under the terms of another franchise, Grantee may, at its option, continue to operate under the terms of such other franchise until any date up to the expiration of said franchise at which time Grantee will operate its system in the annexed area under the terms of this Franchise.
- 2.9 "Government Access Channel" means a Channel available for the sole non-commercial use of the municipal governments in the areas served by the System.
- 2.10 "Grantee" means Time Warner Cable Northeast LLC or any successor thereto.
- 2.11 "Gross Revenues" means all revenue as determined in accordance with generally accepted accounting principles ("GAAP") received by Grantee and derived from the

operation of the cable system to provide cable service in the Town of Bethlehem, net of bad debt, including monies received by the company which are attributable to franchise fees to the extent consistent with applicable law. Non-subscriber revenue shall be allocated to the Town of Bethlehem based on the number of cable subscribers in the Town in proportion to the number of cable subscribers covered by the relevant compensation arrangement. Gross Revenues shall not include any taxes on services or equipment furnished by Grantee which are imposed by the state, county, local or other governmental unit and collected by Grantee on behalf of said governmental unit, bad debt, the sale of Cable Services to customers which are exempt as required or allowed by the Town of Bethlehem, including without limitation, the provision of Cable Services to public institutions as required or permitted herein, any fees or charges collected from Subscribers or other third parties for any PEG Grant or franchise grant payments, or monies received by Grantee as program launch fees that Grantee is required to expend for promotional activities.

- 2.12 "NYPSC" means the New York Public Service Commission or any successor agency.
- 2.13 "PEG Channels" means Public, Educational, and Governmental Access Channels.
- 2.14 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, private or public, whether for profit or not-for-profit.
- 2.15 "Public Access Channel" means a Channel available for non-commercial use solely by the residents of the franchise areas served by the System on a first-come, first-served, non-discriminatory basis.
- 2.16 "Public Property" means any real property owned by any governmental unit.
- 2.17 "Streets" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held and/or maintained by the Grantor.
- 2.18 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of or in connection with the Cable System whether or not a fee is paid for such Cable Service.

SECTION 3. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

- 3.1 Grant of Franchise. Upon the Effective Date and subject to the terms and conditions of this Agreement and of applicable law, Grantee is granted a non-exclusive franchise for the occupation and use of the Grantor's Streets for the installation, operation, maintenance, repair, upgrade, and removal of the Cable System (the "Franchise"). This

Agreement specifically gives Grantee the right to provide Cable Service via the Cable System within the Franchise Area.

3.2 Authority for Use of Streets.

- A. For the purpose of operating, maintaining, and constructing a Cable System in the Franchise Area, Grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the Streets within the Franchise Area such lines, cables, conductors, poles, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the Cable System.
- B. Grantee shall operate and maintain the Cable System so as not to interfere with other uses of Streets. Grantee shall participate and cooperate in any "one-call" or similar system for the exchange of information on the utility location or work to be conducted.

3.3 Provision of Cable Service.

- A. Grantee shall construct plant and make its cable service available consistent with the provisions of Section 895.5 of the regulations of the NYPSC.
- B. Grantee shall not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the area in which such group resides.
- C. Grantee shall provide free aerial installation and first set basic subscriber service at:

Town of Bethlehem, Town hall, 445 Delaware Avenue and
Bethlehem Public Library, 451 Delaware Avenue

3.4 Franchise Term. The terms of this Franchise are subject to the approval of the NYPSC. Therefore, the Franchise shall commence on the date of approval by the NYPSC (Effective Date") and shall expire ten (10) years thereafter on (insert date) (the "Franchise Term") unless renewed, revoked or terminated sooner as herein provided. Grantee shall file applications for all necessary approvals from the NYPSC or FCC within sixty days of the approval of the Franchise or any amendment thereto by the Grantor.

3.5 Extension of System. (A) Throughout the term hereof, the Company shall extend the Cable Television System to all areas of the Town that are contiguous to the existing service are and contain at least twenty (20) occupied residential dwelling units per cable mile. No contributions in aid of construction shall be required of residents in such areas. Density per cable mile shall be computed by dividing the number of residential dwelling units in the area by the length, in miles or fractions thereof, of the total amount of aerial or underground cable necessary to make service available to the residential dwelling units in such area in accordance with Grantee's system design parameters. The cable length

shall be measured from the nearest point of access to the then-existing system, provided that extension is technically feasible from that point of access, and located within the Public Rights-of-Way. The total cable length shall exclude the drop cable necessary to serve individual Subscriber premises. In any area containing less than twenty (20) occupied residential dwelling units per cable mile, the Grantee shall have the right to extend service thereto, and it shall be entitled to and shall receive from each Subscriber therein, as a condition precedent to its obligation to commence construction, a contribution-in-aid of construction in such amount as shall be determined by application of the formula in the NYPSC rules and regulations on cable television.

- 3.6 Police Powers. Grantor shall not enact any local laws that are inconsistent with this Franchise, provided, however, that nothing in this Franchise shall be construed to prohibit the reasonable, necessary and lawful exercise of the police powers of the Grantor in a manner not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.
- 3.7 Written Notice. All notices, reports or demands shall be given either by email with designated email address or by paper notice, hand-delivered or deposited in the United States mail in a sealed envelope with certified mail postage prepaid thereon, or by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to Grantor: Town of Bethlehem
445 Delaware Avenue
Delmar, NY 12054
Attn: Supervisor

with a copy to: Town of Bethlehem
445 Delaware Avenue
Delmar, NY 12054
Attn: Comptroller

If to Grantee: Time Warner Cable
1021 Highbridge Road
Schenectady, NY 12303
Attn: Government Relations

With a copy to: Time Warner Cable
Attn: Law Department/Regulatory
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. In addition, either party may agree to receive certain notices, reports or demands by email at an email address which it provides to other party.

3.8 Franchise Non-Exclusive.

- A. The Franchise granted herein is non-exclusive. The Grantor specifically reserves the right to grant, at any time, additional franchises for a cable television system in accordance with state and federal law. The Grantor agrees that any grant of additional franchises by the Grantor to any other entity to provide cable or video service shall not be on terms and conditions that when taken as a whole are more favorable or less burdensome to the Grantee of any such additional franchise, than those which are set forth herein.
- B. If the Grantor grants a cable television franchise or other right to provide cable service to another person on terms which overall provide greater benefits or impose lesser burdens than provided herein, the Grantor agrees to amend this Franchise (effective upon the grant to said other person) to overall provide such greater benefits or lesser burdens.
- C.(i) Grantee agrees that it will not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of another Grantee without the prior written consent of such other Grantee. Grantee shall indemnify such other Grantee against any damages or expenses incurred by such other Grantee as a result of any removal, damage, penetration, replacement or interruption of the services of such other Grantee caused by the Grantee.
- (ii) In the event Grantor grants to any other Person (being referred to as "Other Person" in the below quoted paragraph) a franchise, consent or other right to occupy or use the Streets, or any part thereof, for the construction, operation or maintenance of all or part of a cable television system or any similar system or technology, the Grantor shall include the following language or language to similar effect into any such franchise, consent or other document and/or promptly pass a resolution, conditioning the use of the Streets or any part thereof by any such Person, as follows:

"Other Person agrees that it will not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of another Grantee without the prior written consent of such other Grantee. Other Person shall indemnify such other Grantee against any damages or expenses incurred by such other Grantee as a result of any removal, damage, penetration, replacement or interruption of the services of such other Grantee caused by the Other Person."

In any event, under no circumstances will the Grantor be liable to Grantee for damages caused by a third-party cable provider.

- D. Notwithstanding any other provision in this Franchise: In the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any

person desiring to construct, operate or maintain a cable system in the Franchise Area to obtain a franchise from the Grantor for the construction, operation or maintenance of a cable system, then, Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise. Grantee shall not abandon cable service in any portion of the Franchise Area without Grantor's consent and shall remain subject to all applicable laws and regulations with respect to abandonment of service including those of the NYPSC. Furthermore, in the event any change to state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the Franchise Area in a way that reduces the regulatory or economic burdens for such person, then, at Grantee's request, Grantor shall agree with Grantee to amend this Franchise to similarly reduce the regulatory or economic burdens on Grantee. It is the intent of this section that, at Grantee's election, Grantee shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct, operate or maintain a cable system in the Franchise Area. To the extent any acts pursuant to this section, including Grantee's choice to terminate this Franchise, result in an amendment to the Franchise, any such amendment shall be subject to such approval by the NYPSC as required by law and regulation.

- 3.9 Continuing Administration. The Town Supervisor is responsible for the continuing administration of the Franchise.

SECTION 4. TECHNICAL STANDARDS.

- 4.1 Technical Standards. (A) The Cable System shall be designed, constructed, and operated so as to meet the technical standards promulgated by the FCC relating to Cable Communications Systems contained in part 76 of the FCC's rules and regulations, as may be amended from time to time. The Grantor may, upon written request, witness tests of the Cable System being conducted pursuant to FCC rules and regulations, and the results of those tests shall be made available to the Grantor free of charge within thirty (30) days of completion of the tests if the Grantor requests them in writing.

SECTION 5. EAS AND PEG.

- 5.1 Emergency Alert System. Grantee shall comply with the Emergency Alert System regulations of the FCC. The emergency alert system shall meet all Federal and State requirements.
- 5.2 PEG Access Channels. Grantee shall provide on its Basic Service tier one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel and one (1) dedicated Government Access Channel (collectively, "PEG Channels") and comply with

the PEG Access standards of the NYPSA. Any PEG channel shall be shared with other franchising authorities served by Grantee's cable system. The Grantor shall indemnify, save and hold Grantee harmless from and against any liability resulting from the Grantor's use of the PEG Channels for municipal access.

5.3 Origination Sites

Grantee shall maintain the facilities necessary to permit the transmission of programming signals for carriage on the PEG channels from the Town Hall at 445 Delaware Avenue, Delmar, NY 12054 and Bethlehem Public Library at 451 Delaware Avenue, Delmar, NY 12054.

5.4 PEG Channels Grant

Provided that all other franchise cable operators in the Town contribute the same per-subscriber amount, Grantee shall pay to the Grantor an annual PEG grant equal to seventeen cents (\$.17) per subscriber per month. Such payment shall be due forty-five days after each anniversary of the effective date of the Franchise.

5.5 Use of PEG Grants

The PEG Grants shall be used solely by the Grantor for PEG access capital equipment, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities. Upon request, Grantor shall provide Grantee information detailing the expenditures of the PEG Grant funds.

5.6 Indemnity for PEG

The Grantor shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Grantee to transmit programming consistent with this Agreement and to defend and hold harmless Grantee and the Grantor from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The Grantor shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

SECTION 6. CONSTRUCTION PROVISIONS.

6.1 Construction Standards.

- A. Grantee shall construct and maintain its cable system using materials of good and durable quality. All work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough, and reliable manner.
- B. All construction practices shall be in accordance with all applicable Federal and state law and generally applicable local codes.
- C. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the applicable National Electrical Safety Code and National Electrical Code.
- D. The Town shall have the power at any time to order and require the Grantee to remove and abate any pole, tower, wire, cable electronic conductor or other structure or facility that is dangerous to life or property upon reasonable demonstration thereof and the giving of appropriate written notice, and in the event the Grantee, after written notice, fails or refuses to act, the Grantor shall have the power to remove or abate the same at the expense of the Grantee.
- E. All of Grantee's plant and equipment (a) shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices; and (b) shall not endanger or interfere with ordinary use of the rights-of-way or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- F. Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- G. The Grantee currently provides a 750MHz state of the art, 2-way hybrid fiber/coax system. Grantee will continue to provide throughout the term of the franchise Cable Television Services comparable to those provided to communities served by the Grantee's main Capital Region head end facility located in Albany, New York.

6.2 Construction Codes.

- A. Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction in the Franchise Area.
- B. The Grantor shall have the right to inspect all construction or installation work in the public rights-of-way performed pursuant to the provisions of this Agreement.

6.3 Repair of Streets and Property.

- A. Any and all Streets, municipal property, or private property, which are destroyed or damaged by Grantee during the construction, repair, replacement, relocation, operation,

maintenance or reconstruction of the Cable System shall be promptly replaced or repaired by Grantee, at its expense, and restored to a serviceable condition as good as that prevailing prior to Grantee's disturbance of, or damage to, the property. If Grantee fails to repair, replace, or otherwise correct a Street or property following reasonable written notice by the Grantor, the Grantor may complete any repair, replacement, restoration or other correction and invoice Grantee for the same.

6.4 Use of Existing Poles.

- A. No poles, underground conduits or other wire-holding structures shall be erected by the Company without the prior approval of the appropriate Town official through established permit procedures to the extent that same now or hereafter may exist, with regard to the location, height, type and any other pertinent aspect of such wire holding facilities; however, such approval may not unreasonably be withheld. The Company shall have the right to attach its wires to existing poles owned by the Town or any agency of the Town without payment of additional annual rental fees to the Town provided the Company shall pay in advance for all costs of rearrangement of existing wires necessary to achieve clearances as specified by the National Electrical Safety Code.
- B. All structures, lines and equipment erected by the Company within the Town shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places. Existing poles, posts and other such structures of the electric power company or any telephone company or any other public utility which may be available to the Company on reasonable terms and conditions shall be used to the extent practicable in order to minimize interference with travel.

6.5 Undergrounding of Cable.

- A. Cable shall be installed underground where the existing telephone and electrical utilities are already underground. In the event the Grantor reimburses any utility for undergrounding, Grantee shall be similarly reimbursed.

6.6 Reservation of Street Rights.

- A. Nothing in this Agreement shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- B. All such work shall be done, insofar as practicable in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

- C. In the case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense in a manner provided and approved by the Town official designated by the Town, and within 30 days replace and restore all paving, sidewalk, driveway or surfacing so disturbed in as good condition as before said work was commenced. In the event that any municipal property is damaged or destroyed in the course of operations of construction by the Company, such property shall be repaired or replaced by the Company within 30 days and restored to serviceable condition. The Company will provide notice to the Town, as generally required, before commencing any disturbance of such surfacing.
- D. Nothing contained in this Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, re-grading, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system or with any other work.
- 6.7 Trimming of Trees. Grantee shall have the right and authority to remove, trim, cut and keep clear trees and bushes upon and overhanging all streets, alleys, easements, sidewalks and public places in the Town so as to keep same clear of poles, wires, cables, conduits and fixtures. Forty eight hours prior to commencing any tree trimming, the Grantee will inform affected landowners and the Town as required by generally applicable regulations.
- 6.8 System Abandonment.
- The Company is expressly prohibited from abandoning cable service to any area of the Town or any portion thereof without the written consent of the Town.
- 6.9 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Agreement, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the Franchise Area, upon two (2) weeks written notice by the Grantor to Grantee, Grantee shall move, such of its facilities as may be required to facilitate such movements. The Person requesting the temporary removal shall pay Grantee in advance the costs Grantee incurs in moving its facilities. Any service disruption provisions of this Agreement shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities pursuant to this Section results in temporary service disruptions.

SECTION 7. REPORTING PROVISIONS.

- 7.1 Audit and Inspection. The Grantor, its agents and its representatives shall have the right to inspect all of the Grantee's books, records, maps, plans, financial statements and other similar material of the Company, insofar as they relate to the terms and conditions of this Agreement and performance of the obligations hereunder, upon reasonable notice to the Company and during normal business hours. Grantee shall promptly make such materials

available at its local business office. Nothing contained herein shall require the Company to make available personally identifiable information about a subscriber in violation of Federal law.

- 7.2 Communications with Regulatory Agencies. Copies of all publicly available petitions, applications, communications and reports submitted by Grantee, to any federal or state regulatory commission or agency relating to the Cable System operated pursuant to this Franchise shall also be made available to the Grantor upon request. Copies of publicly available responses from the regulatory agencies to Grantee shall likewise be made available to the Grantor upon request.
- 7.3 Confidentiality. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area. The Grantor shall treat any information disclosed by Grantee as confidential and shall only disclose it to employees, representatives, and agents thereof who have a need to know, or in order to enforce the provisions hereof. Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.
- 7.4 Reporting. Any report required by this Franchise may be satisfied with system-wide statistics, except for reporting requirements related to franchise fees and customer complaints.

SECTION 8. CONSUMER PROTECTION PROVISIONS.

- 8.1 Rate Regulation. Grantee's rate and charges for cable service shall be subject to regulation in accordance with Federal law.
- 8.2 Customer Service.
- A. Grantee shall comply with the cable customer service and consumer protection standards of the FCC and NYSPSC.
- B. Any bill, notice or other communication provided or issued by Grantee to any Subscriber may be provided or issued, if such Subscriber so consents, solely by electronic means.

SECTION 9. FRANCHISE FEES.

- A. Grantee shall pay to the Grantor on a quarterly basis throughout the term of this Franchise a sum equal to Five percent (5%) of Gross Revenues, as defined herein subject to applicable law including the regulations of the PSC. Franchise fees provided shall be paid within forty-five (45) days after the end of each calendar quarter. All fees shall be

accompanied by a brief report of Grantee's Gross Revenues showing the basis for the computation.

- C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the Grantor.
- D. Grantor shall not conduct an audit more frequently than once every three (3) years and may not audit any period earlier than six (6) years prior to the time the audit is conducted.
- E. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise granted by Grantor.
- F. If Grantee charges a combined or "bundled" rate for a package of services which includes Cable Services subject to the franchise fee and other services which are not subject to the franchise fee, the franchise fee shall be imposed on the portion of the bundled charge applicable to the cable services subject to the franchise fee as reflected in the books and records of Grantee, subject to any applicable laws and regulations.

10. INDEMNITY AND INSURANCE.

10.1 Indemnity

- A. Grantee shall indemnify, defend, and hold harmless the Grantor for all damages and penalties incurred by Grantor as a result of Grantee's conduct or performance under this Agreement or exercise of the Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Grantee's exercise of the Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement; such indemnification shall include, but not be limited to, reasonable attorney's fees and costs. Grantee's obligations hereunder shall not extend to any claim or loss to the extent arising from the Grantor's negligence; misconduct; the content of programming carried on any channel set aside for public educational or governmental use, or channels leased pursuant to 47 U.S.C. §532; and, the Grantor's use of Grantee's emergency alert system ("EAS") capability. Upon request, Grantee shall provide Grantor with a Certificate of Insurance evidencing required coverage from an insurance company or companies qualified to do business in the State of New York.
- B. In order for the Grantor to assert its rights to be indemnified and held harmless, the Grantor 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.

10.2 Liability Insurance.

- A. Grantee shall maintain, throughout the term of the Franchise, liability insurance with a company licensed to do business in the State of New York with a rating by Best of not less than "A-," insuring Grantee and the Grantor (wherein the Grantor is named as additional insured) with respect to Grantee's activities in the Franchise Area in the minimum amounts of:
1. One Million Dollars (\$1,000,000.00) for bodily injury or death to any one (1) person;
 2. Three Million Dollars (\$3,000,000.00) for bodily injury or death resulting from any one (1) accident or occurrence;
 3. One Million Dollars (\$1,000,000.00) for all other types of liability.
 4. Five Million Dollars (\$5,000,000.00) excess liability or umbrella coverage.
- B. Grantee shall maintain in force, during the term of this Agreement and any renewal thereof, Workers' Compensation Insurance, covering its obligations under the Workers' Compensation statute.
- C. Upon request, Grantee shall furnish to the Grantor a certificate evidencing that a satisfactory insurance policy has been obtained. Such insurance policy shall require that the Grantor be notified thirty (30) days prior to any expiration or cancellation.

SECTION 11. ENFORCEMENT AND TERMINATION OF FRANCHISE

- 11.1. **Notice of Violation:** If at any time the Grantor believes that Grantee has not complied with the terms of the Franchise, the Grantor shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem in a reasonable time, the Grantor shall then notify Grantee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").
- 11.2 **Grantee's Right to Cure or Respond:** Grantee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the Grantor, if Grantee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to remedy such noncompliance and notify the Grantor of the steps being taken and the date by which Grantee projects

that it will complete cure of such noncompliance. Upon cure of any noncompliance, the Grantor shall provide written confirmation that such cure has been effected.

- 11.3 **Public Hearing:** The Grantor shall schedule a public hearing if the Grantor seeks to continue its investigation into the alleged noncompliance (i) if Grantee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Grantee has not remedied the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The Grantor shall provide Grantee at least sixty (60) business days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Grantee the opportunity to be heard.
- 11.4 **Enforcement:** Subject to Section 12.11 below and applicable federal and state law, in the event the Grantor, after the public hearing set forth in Section 11.3, determines that Grantee is in default of any provision of this Franchise, the Grantor may:
- 11.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
 - 11.4.2. Commence an action at law for monetary damages or seek other equitable relief; or
 - 11.4.3. In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.
- 11.5 **Revocation:** Should the Grantor seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the Grantor shall give written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek termination of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- 11.5.1. At the designated public hearing, Grantee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

- 11.5.2. Following the second public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the Grantor in writing and thereafter the Grantor shall determine (i) whether an event of default has occurred under this Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Grantee to effect any cure. If the Grantor determines that it will revoke the Franchise, the Grantor shall promptly provide Grantee with a written determination setting forth the Grantor's reasoning for such revocation. Grantee may appeal such written determination of the Grantor to an appropriate court, which shall have the power to review the decision of the Grantor *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the written determination of the Grantor.
- 11.5.3. The Grantor may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

SECTION 12. TRANSFER

12.1 Sale or Transfer of Franchise.

- A. Grantee may not sell, assign or otherwise transfer the franchise without the consent of Grantor which shall not be unreasonably withheld except that the Franchise may transfer the Franchise to an entity under common control with Grantee without such consent.
- B. Within thirty (30) days of the consummation of any Franchise transfer, Grantee shall notify the Grantor of the closing of such Franchise Transfer.
- C. Any change in actual working control of Grantee shall also requires the consent of Grantor which shall not be unreasonably withheld.

SECTION 13. RIGHTS OF INDIVIDUALS PROTECTED.

13.1 Discriminatory Practices Prohibited.

- A. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of age, race, creed color, national origin or sex. Grantee shall comply at all times with all applicable federal and state laws relating to non-discrimination.

- B. Grantee will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment on the basis of age, race, creed, color, national origin or sex.

SECTION 14. MISCELLANEOUS PROVISIONS.

- 14.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Agreement, the provisions of this Agreement shall govern.
- 14.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable, that provision will be ineffective but the remainder of this Agreement will not be affected, and it will in all other respects, continue to be effective and enforceable. If the holding of invalidity or unenforceability is subsequently repealed, unenforceable or otherwise changed so that the provision which had been held invalid is no longer in conflict with the law, rules and regulations then in effect, the provision will return to full force and effect.
- 14.3 Controlling Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.
- 14.4 No Third Party Beneficiaries. This Agreement is not intended to, and does not create any rights or benefits on behalf of any person other than the parties to this Agreement.
- 14.5 Captions. The paragraph captions and headings in this Agreement are for convenience and reference purpose only and shall not affect in any way the meaning of interpretation of this Agreement.
- 14.6 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period, or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.
- 14.7 Amendments. This Agreement may be amended only by the mutual consent of the Grantor and Grantee and in accordance with the regulations of the NYPSC. Any amendment must be in writing and executed by the Grantor and Grantee.
- 14.8 Force Majeure. In no event, and notwithstanding any contrary provision in this Franchise, shall this Franchise be subject to revocation or termination, or Grantor or

Grantee be subject to penalty or prejudice or in any way liable for non-compliance with or delay in the performance of any obligations hereunder, where its failure to cure or take reasonable steps to cure is due to reason of Acts of God; acts of public enemies; order 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; strikes; failure of suppliers; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; partial or entire failure of utilities or any other cause or event not reasonably within the control of the party. Neither Grantor nor Grantee shall be deemed to be in violation or default during the continuance of such inability and such party shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of the obligations hereunder shall automatically extended for a period of time equal to the period of the existence of any such events or conditions and such reasonable time thereafter as shall have been necessitated by any such events or conditions.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be signed by their duly authorized officials and officers as of November 14, 2013. (w)

TOWN OF BETHLEHEM, NEW YORK

TIME WARNER CABLE
NORTHEAST LLC

By: [Signature]

By: [Signature]

Title: SUPERVISOR

Title: SVP & CFO, Retail Services

P.

Approved as to form:

Resolution # 2013-48

**RESOLUTION
APPROVING THE RENEWAL OF THE
CABLE TELEVISION FRANCHISE AGREEMENT**

BE IT RESOLVED, that the Town of Bethlehem Town Board does hereby authorize the Town Supervisor to sign the renewal Cable Television Franchise Agreement between Time Cable Northeast LLC d/b/a Time Warner Cable and the Town of Bethlehem, New York.

The Town Board voted as follows:

AYES – Supervisor Clarkson, Councilwoman Dawson, Councilman Kotary, Councilman Kuhn, Councilman Reinhardt

NAYS - none

ABSENT - none

Said Resolution was duly adopted on November 13, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Bethlehem, Albany County, New York.


Clerk

Dated: November 13, 2013