

**BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION**

Petition of the Utica City School District)
for an Order Directing Time Warner)
Entertainment-Advance/Newhouse, L.P.)
to Provide a Second Educational/)
Governmental Channel for the City of)
Utica Cable Franchise Viewing Area.)

Matter No. 12-02576

**TIME WARNER CABLE NORTHEAST LLC'S RESPONSE
TO UTICA CITY SCHOOL DISTRICT'S
PETITION FOR AN ORDER TO PROVIDE A SECOND
EDUCATIONAL AND GOVERNMENTAL CHANNEL**

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Dated: December 18, 2012

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Time Warner Cable Northeast LLC ("Time Warner Cable" or "TWC"), successor franchisee to Time Warner NY Cable LLC, respectfully submits this Response to the Utica City School District's ("School District") petition for an order directing that a second Educational/Government channel be provided on its cable system serving the City of Utica.

INTRODUCTION AND BACKGROUND

Time Warner Cable Northeast LLC, a Delaware limited liability company, is an indirect, wholly owned subsidiary of Time Warner Cable Inc. ("TWC"). On June 20, 2012, the Commission granted an order approving the transfer of cable system assets and franchises from Time Warner Entertainment-Advance/Newhouse Partnership and Time Warner NY Cable LLC

to Time Warner Cable Northeast LLC.¹ This transfer was part of internal restructuring conducted by TWC which was complete on September 30, 2012.²

Prior to this transfer, the City of Utica (the “City”) franchise was held by Time Warner NY Cable LLC, which had acquired the franchise in 2005 from Adelphia Communications Corporation.³ The Adelphia Communications Corporation was the successor in interest of Harron Cablevision of New York, which had executed the Franchise Agreement with the City of Utica on October 1, 1998⁴ as well as a separate Agreement with the Utica City School District on November 4, 1998.⁵ These agreements are the same as referred to by the School District in the present Petition.

Currently there are two channels on Time Warner Cable’s system serving the City of Utica utilized for PEG access: Channel 99 which is used for public access and Channel 3 which is used for educational/governmental access. The programming on Channel 3 originates from Utica Proctor High School, a Utica City School District facility and the District has thereby taken total control over the programming on the channel.

¹ Case No. 12-V-0134 – *Petition of Time Warner Cable Pursuant to 16 NYCRR 897.4 for Internal Restructuring from TWEAN and Time Warner NY Cable to Time Warner Cable Northeast LLC*, Order Approving Transfers (Issued and Effective Jun. 20, 2012).

² See Letter from Rory Whelan, Regional Vice President, Government Relations, Time Warner Cable, Inc. to Hon. Jaclyn A. Brilling, Secretary to the Commission, New York State Public Service Commission, Case 12-V-0134 (Oct. 10, 2012).

³ Case 05-V-0771 – *Joint Petition of Time Warner Cable Inc. and Adelphia Communications Corporation for the Approval of the Transfer of Certain Assets*, and Case 05-V-0747 – *Joint Petition of Adelphia Communications Corporation, Comcast Corporation and Time Warner Cable, Inc. for Approval of the Transfer of Certain Assets*, Order Approving Petitions (Issued and Effective Nov. 7, 2005).

⁴ Franchise Agreement between Harron Cablevision of New York and the City of Utica, executed Oct. 1, 1998 [hereinafter “Franchise Agreement”] (attached as Exhibit A).

⁵ Agreement between Harron Cablevision of New York and the Utica City School District, executed Nov. 4, 1998 [hereinafter “School Agreement”] (attached as Exhibit B).

Upon information and belief, the City of Utica requested that the Utica City School District carry City Council meetings (approximately 3-4 hours per month) on the educational and governmental Channel 3 that the School District purported to control under the November 4, 1998 School Agreement. Upon the refusal of the School District to grant access to the educational and governmental channel, the City utilized the public access channel until it was advised against doing so by the Department of Public Service Staff.

Time Warner Cable Northeast LLC has had ongoing discussions with the City of Utica to establish a new franchise renewal agreement. A draft franchise agreement was the subject of a public hearing on March 8, 2012 ⁶ and negotiations with the City are approaching closure. As part of the discussion to close the franchise negotiations, Time Warner Cable offered to provide equipment to the City to allow it to tape its meetings for carriage on the educational and governmental channel. A provision was thereafter included in the draft franchise agreement (Section 16 (b)) wherein “Time Warner Cable shall install transmission facilities and the equipment set forth on the list attached as Exhibit A to permit the insertion of programming signals from Utica City Hall on the channels designated for Government access programming.”⁷

THE PRESENT PETITION

In its Petition filed on November 28, 2012 (“the Petition”), the School District requests that Time Warner Cable be directed to add a second educational and governmental access channel. According to the School District, it is the entity designated for the operation and

⁶ *Area Events and Meetings*, UTICA OBSERVER DISPATCH, Feb. 29, 2012 available at <http://www.uticaod.com/mid-yorkweekly/x1481615963/Area-events-and-meetings>; *Area Events and Meetings*, UTICA OBSERVER DISPATCH, Mar. 7, 2012 available at <http://www.uticaod.com/mid-yorkweekly/x1785612940/Area-events-and-meetings>.

administration of the “franchise area’s Educational Channel (Channel 3).”⁸ The School District incorrectly states that the City of Utica requested that Time Warner Cable provide the additional channel, and that Time Warner Cable refused such request. The School District bases its request for a second channel on its claim that “the level of educational programming by the District [is] clearly in excess of 12 hours per day during any 90 day period during the year on the existing dedicated Educational Channel (Channel 3).”⁹ As such, the School District argues that Time Warner Cable is obligated to add a second educational and governmental access channel. Programming logs for July 2012, August 2012, September 2012, and a portion of October 2012 were submitted in support of the Petition.

SUMMARY OF TIME WARNER CABLE POSITION

The School District’s Petition should be denied for the following reasons. First, the programming logs provided by the School District fail to provide support for a second educational and governmental channel insofar as they are replete with an excessive amount of repeat and rebroadcast programs. Second, the City of Utica is the appropriate governmental entity to request a second channel and its pending franchise renewal the appropriate venue in which to resolve these issues. Finally, reasonable alternatives to a second channel are readily

⁷ Draft Franchise Agreement between the City of Utica and Time Warner Cable, Inc. (Dec. 13, 2011) (attached as Exhibit C).

⁸ Matter No. 12-02576 - *Petition of the Utica City School District for an Order Directing Time Warner Entertainment-Advance/Newhouse, L.P. to Provide a Second Educational and governmental Channel for the City of Utica Franchise Viewing Area*, para. 8 (Nov. 28, 2012) [hereinafter “Petition”]. By letter dated November 28, 2012, Brian Ossias, Assistant Counsel to the State of New York Department of Public Service, transmitted a copy of the Petition to Time Warner Cable with a cover that provided notice for a response pursuant to 16 NYCRR § 8.2, relating to declaratory rulings. Respondent assumes this is in reference to § 8.2(2), whether the Commission should take action pursuant to a rule. As this Response illustrates, this matter involves significant factual, as well as legal, issues.

⁹ Petition, *supra* note 8, para. 15.

available including sharing the existing Channel 3 and broadcasting governmental and educational programs on the public access channel when channel time is not otherwise utilized.

ARGUMENT

I. THE UTICA CITY SCHOOL DISTRICT HAS FAILED TO PROVIDE SUPPORT FOR A SECOND EDUCATIONAL AND GOVERNMENTAL CHANNEL.

A. The Excessive Amount of Repeat Programming is an Inefficient Use of the Existing Channel and Should Not be the Basis for a Second Educational and governmental Access Channel Under 16 NYCRR 895.4(b)(1)

16 NYCRR 895.4(b)(1) states that a franchisee shall designate a second educational and governmental channel whenever the first channel shall have been used for such educational **and** governmental programming on the average of at least 12 hours per day during any 90-day period.

Between July 2012 and September 2012, the School District aired over 2,046 hours of programming.¹⁰ However, over 1,964 hours of that programming was repeat programming from a total of 141 programs.¹¹ One minute long public service announcements were aired over 800 times; at times once every hour.¹² Not including the public service announcements, programs were repeated an average of 26 times during this three month span. Of note, three programs were repeated over 125 times.¹³

¹⁰ Utica City School District, *Program Log for July 2012*, Certified 10/24/12; Utica City School District, *Program Log for August 2012*, Certified 10/24/12; Utica City School District, *Program Log for September 2012*, Certified 10/24/12 [hereinafter "Programming Logs"].

¹¹ Programming Logs, *supra* note 10.

¹² Programming Logs, *supra* note 10. Public Service Announcements referenced are coded as "20120719_DONO_PSA2MEANGIRLS" and "20120719_DONO_PSA3CBRBULLY."

¹³ Programming Logs, *supra* note 10. Note that "20120611_RttT_Albany_7" was repeated 149 times, "20120620_DoAR_Karam" was repeated 134 times, and "20120621_CONK_1ST_YEAR" was repeated 125 times between July 2012 and September 2012.

Time Warner Cable appreciates and understands that some programs may sometimes need to be repeated on a reasonable basis to serve the public interest and reach a wide audience. However, the considerable amount of repetitive programming by the School District is not only an inefficient use of this valuable community resource, it is an unreasonable basis for a second channel.

Time Warner Cable respectfully submits that the repetitive programming contained in the Programming Logs negates counting much of the programming towards the thresholds contained in 16 NYCRR 895.4 and is also evidence of an extraordinarily inefficient use of this resource.

B. The Rebroadcast of Programs on Already Existing Cable Networks Should Not be the Basis for a Second Channel.

Contrary to the goal of PEG access to facilitate the programming of locally produced shows, the School District makes extensive use of programs from non-local sources such as PBS, ESPN, and the Discovery Channel.¹⁴ Similar to the repetitive programming, the rebroadcast of other existing cable channels should not be considered in the assessment of need for purposes of requiring a second channel pursuant to the Commission's regulations. The Cable Act (47 U.S.C. § 535 (b)(3)(C)) does not require cable operators that carry a "qualified local noncommercial educational station affiliated with a State Public Television network" to "carry the signal of any additional qualified local noncommercial educational television station affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television

¹⁴ Time Warner Cable does not believe that **any** programming of this type should be included on PEG access channels; however, for purposes of this Response, Time Warner Cable recognizes that the Commission need not reach this issue.

station receiving carriage.”¹⁵ Likewise, the PSC should not require a cable operator to add channel capacity to accommodate a PEG access channel that is rebroadcasting from existing cable networks.

The extensive use of repeat programming coupled with the rebroadcasting of programs from existing cable channels are evidence of the fact that the School District is not efficiently utilizing the existing educational and governmental channel. Therefore, Time Warner Cable respectfully submits that an additional educational and governmental access channel is not warranted and the School District’s request should be denied.

II. THE CITY OF UTICA, NOT THE SCHOOL DISTRICT, IS THE APPROPRIATE OPERATING ENTITY AND FRANCHISE AUTHORITY.

A. The Utica City School District Assumed Exclusive Control Over the Educational and Governmental Access Channel and Improperly Barred Governmental Programs from being Aired on the Channel.

Contrary to the School District’s assertion, it is not the entity currently designated by the City of Utica to operate and administer the educational and governmental access channel, Channel 3, and was not the correct authority to have previously assumed operation and control over the Channel.¹⁶ Under the October 1, 1998 Franchise Agreement and 16 NYCRR § 895.4 (c)(2), the educational and government access channel was to be “operated and administered by a committee or a commission appointed by local government and shall include appropriate representation of local school districts within the service area of the cable system and may include for purposes of coordination an employee or representative of the cable television

¹⁵ 47 U.S.C. § 535 (b)(3)(C) (2012).

¹⁶ See Petition, *supra* note 8 para. 8.

franchise.”¹⁷ The November 4, 1998 Agreement between the School District and a predecessor to Time Warner Cable inappropriately attempted to grant authority over an Educational Channel to the School District.¹⁸ However, such authority is inconsistent with both the Franchise Agreement and the Commission’s regulations, under which the City of Utica is the appropriate operating authority. There is no indication that the City delegated this role to the School District; indeed the opposite appears to be true.

In 2011, the City of Utica adopted Ordinance No. 158 (“Governmental and Educational Operating Committee”) to establish a committee to “operate and administer the Governmental and Educational Access Channel(s).”¹⁹ The Committee was to be comprised of members designated by the Cable Television Franchise, the Utica Common Council, members from the Madison-Oneida Board of Cooperative Education Services, as well as the Utica City School District.²⁰ Therefore, this Committee is the current operating and administration authority for Channel 3, not the School District.

The November 4, 1998 Agreement between the School District and the franchisee’s predecessor also implied that the channel was to be a dedicated educational channel, which is also inconsistent with the October 1, 1998 Franchise Agreement. The Franchise Agreement stated that there shall be “at least one full-time activated channel for educational and governmental use”²¹ However, since the 1998 Agreements, the School District assumed

¹⁷ Franchise Agreement, *supra* note 4, Exhibit B- Provisional (C)(2); N.Y. COMP. CODES R. & REGS. tit. 16, § 895.4(c)(2) (2012).

¹⁸ See School Agreement, *supra* note 5 at 2.

¹⁹ CITY OF UTICA, N.Y., CODE, § 2-2-186.

²⁰ *Id.*

²¹ Franchise Agreement, *supra* note 4, Exhibit B-Provisional, B.1 at 25.

operation of Channel 3 as an exclusively educational programming channel, and upon information and belief, barred local governmental programs. This effectively left the City of Utica and other local governments with no access channel on which to air important local programming, including City Council meetings.

The attempt to dedicate a channel to educational purposes only may also violate the Commission's regulations. 16 NYCRR 895.4(b)(1) indicates that where one channel is in use it shall be dedicated to educational and governmental purposes. It is only where a second channel is required due to the thresholds discussed above that one channel shall be dedicated to educational purposes and one to governmental purposes.²²

Prohibiting access to the City of Utica, the correct operating entity, to the channel designated as the educational and governmental channel squandered a valuable resource granted to the serve the community as a whole. As noted above, had the School District utilized the channel more efficiently, there would have likely been more than sufficient capacity to air governmental programming in addition to the educational programming.

B. The City of Utica, as the Franchise Authority, Should Appropriately Resolve These Issues in the Franchise Renewal Process

Contrary to the School District's claim in paragraph 11,²³ upon information and belief, Time Warner Cable has never received a request from the City of Utica to provide a second Educational and governmental Channel for the City of Utica franchise. Negotiations between Time Warner Cable and the City of Utica regarding the renewal of its franchise agreement have

²² In the latter case, the regulation also provides that while each channel will be dedicated to the relevant educational or governmental purpose, either channel may be used for either purpose if necessary to satisfy the demand for channel time, 16 NYCRR § 895.4(b)(1).

²³ Petition, *supra* note 8, para. 11.

been ongoing since 2008, and the renewal process is approaching closure. No provisions for the addition of a second educational and governmental channel have been included in the franchise negotiation process and Time Warner Cable has not been able to identify any communication of a request by the City for a second channel.

The City of Utica, as the local franchising authority, is in the best position to establish the requirement for the designation and use of channel capacity for educational and governmental use. Under 47 U.S.C. § 531, “[a] franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator’s proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use . . . and may require rules and procedures for the use of the channel capacity designated pursuant to this section.”²⁴

Considering that the City of Utica and Time Warner Cable will likely be executing the new franchise agreement soon, the franchise renewal process is the appropriate venue for resolution of these issues.

III. REASONABLE ALTERNATIVES TO A SECOND CHANNEL ARE READILY AVAILABLE

A. The Existing Educational and governmental Channel Should Be Used to Air Governmental Programming as well as Educational Programming

The use of Channel 3 has been monopolized by the School District which has prohibited access to this channel, including access by the City of Utica, in violation of the Commission’s regulations as well as the franchise agreement. The regulations state in pertinent part that “[l]ocal use of educational and governmental access channels shall have preferred status in the

²⁴ 47 U.S.C. § 531 (2012)

event of competing requests for channel time” and “priority may be afforded to local governments within the service area of the system.”²⁵ Therefore, not only should the City of Utica have “preferred status” over the non-locally produced rebroadcasts from existing cable channels currently aired on Channel 3, the City of Utica may, in fact, have a legal priority over the School District with respect to the administration of all programming on Channel 3. And, as stated herein, there appears to be more than adequate capacity on channel 3 to air the governmental programming if the channel is used efficiently.

B. As an Additional Alternative, The Public Access Channel Can Be Used To Air Governmental And Educational Programs

The Public Service Commission (PSC) determined in a 2005 declaratory ruling that “Commission regulations do not prohibit government programs on the public access channel.”²⁶ In that case, the petitioner claimed that Time Warner violated 16 NYCRR § 895.4 by “allowing governmental programs to be shown on the public access channel.”²⁷ The PSC noted that there is no such prohibition and that petitioner did not show that “public access programs were denied space on the public access channel because governmental programs were shown.”²⁸

The Franchise Agreement also supports the notion that educational and governmental programs can be shown on the public access channel. Exhibit B to the Franchise Agreement entitled “Public Access”, section B.1 states that “[u]se of this channel shall be limited to

²⁵ 16 NYCRR § 895.4 (c)(5) (2012).

²⁶ Case 04-V-1129 – *Petition of William A. Huston for a Declaratory Ruling of Time Warner Entertainment Advance/Newhouse d/b/a Time Warner Cable – Binghamton’s noncompliance with 9 NYCRR 595.4*, Order Dismissing Petition (Issued and Effective Dec. 16, 2005).

²⁷ *Id.* at *1.

²⁸ *Id.* at *6.

residents of the City and other contiguous communities served by OPERATOR, **and their educational and governmental institutions.**”²⁹ (emphasis added).

Therefore, while the most efficient resolution to this issue appears to be that the City and School District share the use of the current educational and governmental channel, the use of the public access channel by the City when needed is consistent with Commission precedent and the Franchise Agreement. Under either alternative a second channel is unnecessary and has not been supported by the School District’s petition.

CONCLUSION

Utica City School District has attempted to continue its current practice of preventing the City’s legitimate access to the governmental/educational channel by asking the Commission to require Time Warner Cable to provide a second educational and governmental channel. It purports to support this request with Programming Logs that only illustrate that the channel is currently being inefficiently utilized and is filled with redundant programming which includes significant amounts of rebroadcast, non-local material available on other cable channels. The Commission should not support the School District’s attempts to illegally prevent the City from taking advantage of the valuable asset it is entitled to use under its franchise and applicable law. Rather, Time Warner Cable respectfully submits that the Commission should recognize the City’s right to access the educational and governmental channel and also recognize the City and its franchising process as the appropriate venue for discussions regarding any need, should one arise, for additional channels.

WHEREFORE, for the above-stated reasons, Time Warner Cable Northeast LLC respectfully requests that the Commission deny the Petition filed in this matter on November 28, 2012 by the Utica City School District.

²⁹ Franchise Agreement, *supra* note 4, Exhibit B, “Public Access,” (B)(1), at 23.

Respectfully submitted,

TIME WARNER CABLE NORTHEAST LLC.
By: /s/ *Maureen O. Helmer*

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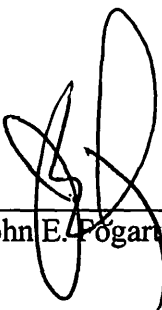
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SCHOOL DISTRICT AND BY OVERNIGHT MAIL TO THE CITY OF UTICA

Dated: December 18, 2012

INDIVIDUAL VERIFICATION

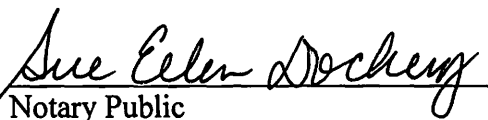
STATE OF NEW YORK):
COUNTY OF NEW YORK): ss.

John E. Fogarty, Esq., being duly sworn, deposes and says that deponent is the Vice President and Assistant Chief Counsel, Regulatory, for the Respondent within the action; that deponent has read the Response and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.



John E. Fogarty, Esq.

Sworn to before me this
18th day of December, 2012



Notary Public

SUE ELLEN DOCKERY
Notary Public, State of New York
No. 01DO6134442
Qualified in Kings County
Certificate Filed in New York County
Commission Expires October 3, 2013

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EXHIBIT LIST

- Exhibit A:** Franchise Agreement between Harron Cablevision of New York and the City of Utica, executed Oct. 1, 1998
- Exhibit B:** Agreement between Harron Cablevision of New York and the Utica City School District, executed Nov. 4, 1998
- Exhibit C:** Draft Franchise Agreement between the City of Utica and Time Warner Cable, Inc. (Dec. 13, 2011)

Exhibit A

CABLE SYSTEM FRANCHISE

A RENEWAL FRANCHISE OF THE CITY OF UTICA, NEW YORK,
GRANTING TO HARRON CABLEVISION OF NEW YORK, IT'S SUCCESSORS AND
ASSIGNS, THE FRANCHISE RIGHT, PRIVILEGE, AND NONEXCLUSIVE AUTHORITY TO
CONSTRUCT, ERECT, OPERATE AND MAINTAIN IN, ALONG, UPON, ACROSS, ABOVE, OVER
AND UNDER THE STREETS, ALLEYS, PUBLIC WAYS AND PUBLIC PLACES NOW LAID OUT
OR DEDICATED, AND ALL EXTENSIONS THEREOF, AND ADDITIONS THERETO, IN THE CITY
OF UTICA, NEW YORK, POLES, WIRES, CABLES, UNDERGROUND CONDUITS, MANHOLES,
CONDUCTORS, AND FIXTURES NECESSARY FOR THE MAINTENANCE AND OPERATION
IN THE CITY OF UTICA, NEW YORK, A CABLE SYSTEM AND SETTING THE TERM AND
CONDITIONS OF THIS CONTINUING FRANCHISE.

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CABLE SYSTEM FRANCHISE ORDINANCE AND AGREEMENT

Pursuant to the law of the New York State Public Service Commission, and the approval of the Mayor of the City, and with the approval of the Common Council of the City of Utica, New York (hereinafter referred to as CITY).

O. RECITALS

WHEREAS, Harron Cablevision of New York, Inc. a New York corporation with principal place of business at 70 East Lancaster Ave., Frazer, PA 19355 (OPERATOR) is presently franchised to provide broadband cable communications services pursuant to Ordinance No. 274 of 1988; and

WHEREAS, CITY wishes to renew said franchise; and

WHEREAS, OPERATOR desires to renew said franchise;

WHEREAS, the OPERATOR'S technical ability, financial condition, and character were considered and approved by the municipality in a full public proceeding affording due process;

WHEREAS, the OPERATOR'S plans for constructing and operating the cable television system were considered and found adequate and feasible in a full public proceeding affording due process; and

WHEREAS, the franchise complies with the Commission's franchise standards;

Now, therefore, this Franchise Ordinance and Agreement is adopted and agreed upon.

1.0 DEFINITIONS

For the purposes of this Franchise Agreement, 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, words in the plural number include the singular number, and words in the singular number include the plural number. Provisions of this Franchise Agreement shall be construed in accordance with the laws of the State of New York. The word "shall" is always mandatory and not merely directory.

1.1 **"CITY"**: The CITY of Utica, a municipal corporation of the State of New York, in its present incorporation of the State of New York, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

1.2 **"Common Council"**: The present governing legislative body of the CITY or any future board constituting the legislative body of the CITY.

1.3 **"OPERATOR"**: Harron Cablevision of New York, Inc. and the lawful successor or assignee thereof.

1.4 **"Street"**: The surface of, and the space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such within the CITY.

1.5 **"Cable Television System"**: Coaxial cables, Fiber Optics and Telecommunications services, or other conductors and equipment for providing television, radio and other legal service by cable or through its facilities as herein contemplated.

** 1.6 **"Subscribers"**: Any person or entity lawfully receiving for any purpose the cable service of the OPERATOR herein.

1.7 "Gross Revenues": Any and all revenues received by OPERATOR from the subscribers for cable service within the corporate limits of the CITY, including but not limited to installation income, regular subscriber charges, and per program or per channel charges; advertising income allocated (per subscriber) to service within the corporate limits of the CITY; and revenues generated from carriage of QVC (or comparable shopping) Network allocated (per subscriber) to service within the corporate limits of the CITY.

2.0 GRANT OF FRANCHISE

CITY does hereby grant to OPERATOR the nonexclusive right to build, maintain, operate, and use the said communications system herein defined, in, upon, along, above, across, over and under the streets and other property within the CITY and within easements dedicated to compatible use such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, and attachments, as may be necessary and appurtenant to the Telecommunications system; and, in addition, so to use, operate and provide similar properties rented or leased from other persons, firms, or corporations, for such purpose, and subsequent additions thereto, for the purpose of providing services to users for a fee, on condition that OPERATOR:

- 2.1 Make cable service available on a timely basis to all areas of the CITY, as described in Section 6.0;
- 2.2 Complies with the requirements of the New York State Executive Law, Article 28; the New York State Public Service Commission (the "Commission"), and all applicable laws and administrative rules and regulations of the local, state, and federal government.
- 2.3 Renders efficient service, adhering to the provisions of Section 4.0.
- 2.4 Provides programming required by Section 5.0.
- 2.5 Meets all obligations to CITY listed in Section 8.0.
- 2.6 Abides by the procedures for this Agreement, set forth in Section 9.0
- 2.7 Cooperates with the CITY, providing records and reports as set forth in Section 8.12.

3.0 DURATION

This Agreement shall expire ten (10) years from the effective date of this Agreement; subject to renewal as provided in Section 9.05.

4.0 SERVICE

4.1 OPERATOR shall make necessary repairs promptly so as to keep service outages as brief as possible, shall time discretionary outages to be least inconvenient to users, and shall make prorated rebates on request for users for loss of service in excess of twenty-four (24) continuous hours excluding any delay caused by user, as required by rules of the Commission.

4.2 OPERATOR shall respond quickly and constructively to all complaints, whether from users or non-users, shall keep records of same together with resolutions thereof, and shall make such records available for inspection by CITY for up to one year following the latest complaint in each record. OPERATOR shall give to each new user a copy of complaint and dispute resolution practices.

4.3 OPERATOR shall in all events comply with Section 596.8 of the Rules of the Commission.

4.4 OPERATOR shall not require contracts longer than thirty (30) days for noncommercial residential cable television service, but may offer such contracts as a service option.

5.0 PROGRAMMING

5.1 BASIC: Basic service means any service tier which includes the retransmission of Television broadcast signals required to be carried under federal law.

5.2 PAY: OPERATOR shall offer a selection of pay television services.

5.3 ACCESS: OPERATOR shall offer access in accordance with Exhibit B.

6.0 CONSTRUCTION

6.1 OPERATOR will exercise all reasonable diligence in expeditiously applying for and doing all that is necessary and proper to obtain all permits, licenses, certifications, etc., necessary for the expansion of the system.

6.2 Whenever OPERATOR damages or destroys public or private property in the conduct of its business, it shall restore the property to a serviceable condition as good as before, as soon

as it is practical and reasonable.

6.3 OPERATOR shall in areas where public utilities are not located within the boundaries of public streets follow the same course and way as the now existing easements of power and telephone. This franchise does not relieve the OPERATOR of any obligation involved in obtaining pole space from any department of the CITY, the utility companies, or from others maintaining poles in Streets.

6.4 Any privilege claimed under this franchise by OPERATOR in any Street shall be subordinate to any prior lawful occupancy of the Streets, or the public property.

6.5 OPERATOR is subject to all requirements of CITY ordinances, resolutions, local laws, rules, regulations and specifications of the CITY, hereinbefore enacted or established, and all such requirements hereafter enacted not inconsistent with this franchise, including but not limited to those concerning Street work, Street excavations, use, removal and relocation of property within a Street, or other Street work.

6.6 OPERATOR agrees to do the minimum trimming of trees necessary conforming to the same standards as public utilities.

6.7 OPERATOR shall not block any public way without CITY consent, shall keep CITY informed in advance of time and places of construction.

6.8 OPERATOR agrees to construct, operate, and maintain the cable system in compliance with:

- (a) all applicable provisions of the codes and standards promulgated by EIA, FAA, FCC, NEC, NCTA, NTSC, the Commission (set forth in Exhibit A and incorporated herein), and OSHA;
- (b) CITY's building codes; and
- (c) good engineering practice, as recognized in practice, by the cable communications industry;
- (d) the CITY shall notify OPERATOR within 3 working days of any changes in the Utica City Code affecting Harron's operations within the CITY;
- (e) the City Clerk, after receiving any notification from OPERATOR, after receiving any notification from OPERATOR, shall, within 5 days, provide the Utica Common Council with a written copy of such notification.

6.9 OPERATOR agrees to maintain a system with a minimum of 77 channel capacity throughout The City of Utica, and shall make reasonable efforts in good faith to maximize the number of energized channels available to subscribers.

7.0 NON-DISCRIMINATION IN RATES

7.1 OPERATOR shall not, as to rates, charges, service or service facilities, make or grant any undue preference or advantage to any party, nor subject any party to undue prejudice or disadvantage; provided however that OPERATOR may establish reasonable classifications of customers.

7.2 Nothing in this ordinance prohibits the reduction or waiving of charges in connection with promotional campaigns for the purpose of attracting subscribers to its system.

8.0 OPERATOR'S OBLIGATIONS TO CITY

8.0 OPERATOR shall defend, indemnify and hold harmless CITY for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to person (s) or damage to property occasioned by reason of any conduct undertaken pursuant to this Agreement.

8.1 OPERATOR shall continuously carry liability insurance satisfactory in terms to CITY, covering both CITY and OPERATOR, insuring OPERATOR'S obligation under the indemnification clause above in not less than the following amounts;

PERSONAL DAMAGES PER PERSON \$1,000,000.00

PERSONAL DAMAGES PER OCCURANCE \$1,000,000.00

PROPERTY DAMAGE, PER OCCURANCE \$ 500,000.00

PROPERTY DAMAGE, AGGREGATE: \$ 500,000.00

AUTOMOBILE COVERAGE: \$1,000,000.00

OPERATOR shall continuously carry sufficient insurance to protect the parties from any claim under the Workmen's Compensation Laws. All insurance required by this Section shall remain in force throughout the duration of this Agreement. Policies of this insurance, or certified copies thereof, shall be delivered to CITY, and kept on file and up to date in the offices of CITY. Upon any renewal of this franchise, the CITY may require OPERATOR to provide additional insurance coverage in such reasonable amounts as may appear reasonably necessary.

8.3 The OPERATOR shall maintain in full force and effect for the terms of this Agreement at its expense, a corporate surety bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00).

8.4 Upon receipt of a written request from CITY, OPERATOR shall either defend or pay all costs in defense in any action or proceeding which results from any alleged act or omission on the part of OPERATOR or its subcontractors, employees, or agents.

8.5 OPERATOR shall have no recourse whatsoever against CITY for any loss, cost, expense or damage arising out of any provision or requirement of this franchise or its enforcement, except for any actionable tort or violation of law of the CITY, its agents or employees.

8.6 OPERATOR shall on a semi-annual basis, pay CITY a franchise fee equal to five percent (5%) of OPERATOR'S Gross Revenues for cable service within the CITY, less any amount required to be paid to the Commission. OPERATOR shall remit said franchise fees on or before April 15 and September 15 of each calendar year, for the preceding July 1 - December 31 and January 1 - June 30 periods, respectively. OPERATOR shall simultaneously submit a certified statement showing its Gross Revenues in appropriate detail. In making payment of said franchise fee, operator may deduct therefrom any occupation tax, special franchise tax, or like assessments assessed on and paid by OPERATOR.

8.7 OPERATOR shall reimburse CITY for restoration or other corrective action taken by CITY after notice to OPERATOR.

8.8 OPERATOR shall design, construct, maintain, and operate the system such that all users shall have the full expectation of privacy as provided in 47 U.S.C. -551.

8.9 OPERATOR shall make measurements of leakage, as required by Section 76.609 of FCC

Rules and Part 596 of Commission Rules.

8.10 OPERATOR shall provide multiple drops to schools without charge.

8.11 OPERATOR shall, upon reasonable request of CITY, attend meetings of Common Council at which it shall report on system operations quarterly or for good cause shown.

8.12 OPERATOR shall permit the Fiscal Officer of the CITY and the CITY Engineer quarterly or for good cause shown, to examine all property of the OPERATOR relating to the Cable Television System and situated within or without the CITY, and to examine and transcribe any and all relevant maps and records kept or maintained by OPERATOR or under its control which pertain to its operations, affairs, transactions or property. If any of such maps or records are not kept in the CITY, or upon reasonable request are not made available in the CITY, and if the Treasurer or like fiscal officer and the CITY Engineer shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the OPERATOR.

OPERATOR shall prepare and furnish to the CITY Engineer at the times and in the form prescribed by the CITY Engineer, such reports, with respect to its operations, affairs, transactions or other property, as may be reasonably necessary or appropriate to the performance of any of the duties of the CITY or any of its officers and employees in connection with this Franchise Agreement. Confidentiality of all such reports shall be maintained by the City. The OPERATOR shall, at all times, make and keep full and complete plans, maps, and records showing the exact location of all Cable Television System equipment installed or in use by OPERATOR in Streets, alleys, and public places of the CITY.

9.0 PROCEDURES

9.01 Notices

All notices to be sent pursuant to this Section shall be in writing, and shall be mailed by Certified Mail with Return Receipt Request to verify delivery. Notice to CITY shall be given to:

Mayor, City of Utica
City Hall
One Kennedy Plaza
Utica, New York 13502

City Clerk, City of Utica
City Hall
One Kennedy Plaza
Utica, New York 13502

Notice to OPERATOR shall be given to: Harron Cablevision of New York, Inc.,
Attn: Senior Vice-President
70 East Lancaster Ave, Frazer, PA 19355

Either party may advise the other in writing of any change in address or designated agency for receipt of Notice.

9.02 Noncompliance Notice

Notice of noncompliance may be issued to OPERATOR by CITY when it appears to CITY that OPERATOR has failed to comply with any provision of this Agreement. Notice may also state that, after a specific date, which shall afford OPERATOR a reasonable opportunity for cure, CITY will take corrective action at OPERATOR'S expense, in which case CITY may take the necessary sum from OPERATOR'S bond, and OPERATOR shall immediately replenish the bond to the stipulated level.

9.03 Formal Warning Notice

If it appears to CITY that any ground (s) for revocation of the Agreement may exist, CITY may issue a Formal Warning Notice to Operator. This Warning shall specify the apparent ground (s) for revocation, shall state a place and time for a full due process revocation hearing before an impartial judicial officer, which shall be at least fifteen weekdays (excluding holidays) subsequent to the mailing, and shall ask OPERATOR to show cause why this Agreement should not be revoked.

9.04 Revocation

CITY may revoke this Agreement on one or more of the following grounds:

- a) Materially false or misleading statements or omissions in OPERATION'S proposal or reports to CITY;
- b) Transfer of this Franchise outside the procedure in Section 9.06 below;
- c) Receivership or bankruptcy of OPERATOR or its parent;
- d) Failure after formal warning notice and full due process hearing before an impartial judicial officer to correct a nonexcusable failure to substantially comply with the material terms of this Agreement;
- e) Failure to maintain bond or insurance as required by this Agreement.

9.05 Renewal

- a) During the six (6) month period which begins with the thirty-sixth (36th) month before the franchise expiration, the CITY may, on its own initiative, and shall at the request of the OPERATOR, commence proceedings for the purpose of
 - (i) Identifying the future cable related community needs and interest which may not be established on the basis of facilities, equipment, or services which another party has indicated it is willing to provide;
 - (ii) Reviewing the performance of the OPERATOR under the franchise during the then current franchise term; and
 - (iii) Specifying the material to be submitted with a proposal for renewal.

Such proceeding shall be completed within twelve (12) months of its commencement.

- (b) At any time after the 36th month before franchise expiration, but not prior to completion of any ongoing proceeding under Section 9.05 (a), the OPERATOR seeking renewal of the franchise may, on its own initiative or at the request of the CITY, submit a proposal for renewal.

- (i) Upon submittal by the OPERATOR of a proposal to the CITY for the renewal of the franchise, the CITY shall provide prompt public notice of such proposal and, during the four (4) month period which begins upon submittal of the renewal proposal, renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of OPERATOR or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with Section 9.05 (b) to consider whether
 - (a) The OPERATOR has substantially complied with the material terms of the existing franchise and with applicable law;
 - (b) The quality of the OPERATOR'S service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the system, has been reasonable in light of community needs;
 - (c) The OPERATOR has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the OPERATOR'S proposal; and
 - (d) The OPERATOR'S proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

The CITY may not declare OPERATOR'S proposal unreasonable and deny renewal, nor may community needs be established, on the basis of facilities, equipment, or services which another party has indicated it is willing to provide. The implementation of future initiatives to meet or exceed future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, shall provide operator with a reasonable expectation of renewal of this franchise; and fully satisfy the facilities

and equipment requirements for a renewal term of ten (10) years. Before renewal period commences, the OPERATOR and the CITY shall meet to renegotiate the franchise as to fee and other criteria set forth in Section 9.05 (b), (i) (a), (b) and (c).

(ii) In any proceeding under Section 9.05 (b) (i), the OPERATOR shall be afforded adequate notice and the OPERATOR and the CITY or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under Section 9.05 (a), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(iii) A proceeding under this subsection shall be completed within twelve (12) months of its commencement, within which time the CITY shall issue a written decision granting or denying the proposal of renewal based upon the record of such proceeding, and transmit a copy of such decision to the OPERATOR. Such decision shall state the reasons therefore.

(c) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs "a" through "d" of Section 9.05 (b) (i), pursuant to the record of the proceeding thereunder. CITY may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under Section 9.05 (b) (i) (a) or on events considered under Section 9.05 (b) (i) (b) unless CITY has provided OPERATOR notice and the opportunity to cure, or in any case in which CITY has waived its right to object, or has effectively acquiesced.

(d) OPERATOR expressly reserves its rights of appeal pursuant to 47 U.S.C. 546 (e). In addition to such rights, this Franchise shall remain in effect at all times during which a renewal proceeding or appeal remains pending.

(e) Notwithstanding the provisions of Sections 9.05 (a)-(d), OPERATOR may submit a proposal for the renewal of Franchise at any time, and CITY may, after affording the public adequate notice

and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this Section have commenced). The provisions of Sections 9.05 "a" through "d" shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with Sections 9.05 "a" through "d".

9.06 Sale or Transfer of Franchise

This Franchise may not be sold or otherwise assigned or transferred without the written consent of CITY, which may not unreasonably withhold its consent. Advance NOTICE of intent to transfer must be given to CITY at least ninety (90) days before CITY is to be asked to give consent, and OPERATOR shall provide acceptable evidence that the proposed new operator is qualified together with such other information as is properly requested by CITY. Upon transfer, the new operator shall be bound fully by all provisions of the Agreement, excepting only that which may be mutually agreed upon in writing between CITY and the new operator; and CITY's having not exercised any provision hereof prior to the transfer shall be no bar to its exercise thereafter. The approval of the franchise may be conditioned by the city on the transferee's acceptance of any third party agreement entered into by Harron and any public entity that benefits the people of the City of Utica.

9.07 Good Faith Communications

The parties agree to act in good faith to maintain good communication between them. Barring emergency, CITY will give to OPERATOR reasonable advance notice to the cable system being on the agenda of the Common Council. OPERATOR will have the right of notice of meetings on cable and the right of representation thereat, and OPERATOR will inform and consult with CITY when any questions of compliance with this Agreement may be raised by change (s) in its operation.

9.08 City's Rights Reserved

Nothing in this Agreement shall be construed to limit any right (s) or authority of CITY to sue for damage caused by any material and uncorrected breach, or to carry out its other lawful functions. Any rights or power in, or duty impressed upon any officer, employee, department or Board of the CITY, is subject to transfer by CITY to any other officer, employee, department or Board of the CITY.

9.09 Termination of Franchise

Upon request by CITY at the time of termination of this Agreement or any extension thereof, whether by expiration, revocation or otherwise, OPERATOR shall remove all poles, cable and apparatus from the roads and public places in, over, under or along which they were installed by OPERATOR, or to be installed by OPERATOR, and shall restore the areas to a condition as good as before, within six (6) months after termination.

During the period of removal or transition, OPERATOR shall maintain in force the bond, indemnification, and liability insurance defined in Section 8.0.

9.10 Arbitration

Any dispute hereunder between CITY and OPERATOR may be resolved by arbitration conducted as follows;

- A. OPERATOR and the CITY each shall, within fifteen (15) days of the decision to proceed to arbitration, appoint one (1) arbitrator experienced in the cable television business, which arbitrators shall mutually select a third arbitrator of similar qualifications.
- B. Within thirty (30) days after appointment of all arbitrators and upon fifteen (15) days written notice to the parties to the arbitration, the arbitrators shall commence a hearing on the dispute.
- C. The hearing shall be recorded and may be transcribed at the request of either CITY or OPERATOR.
- D. At the close of the hearings and within thirty (30) days, the arbitrators shall prepare Written findings and serve such decision upon CITY and OPERATOR.
- E. The decision of a majority of the arbitrators shall be binding upon the parties to the arbitration.
- F. Either party may seek judicial relief to the arbitrators' decision under the following circumstances:
 - 1) Either party fails to select an arbitrator;
 - 2) The arbitrators fail to select a third arbitrator;

- 3) One (1) or more arbitrator is unqualified;
- 4) Designated time limits have been exceeded;
- 5) The arbitrators have not proceeded expeditiously; or
- 6) Based upon the record, the arbitrators' decision is arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, or based upon a mistake of law.

G) All costs of arbitration shall be borne equally by the parties to the arbitration unless otherwise ordered by the arbitrators.

10.0 MISCELLANEOUS

10.01 Succession- This agreement shall be binding on and inure to the benefit of the parties hereto, and to their respective heirs, assigns, successors, and representatives.

10.02 Amendment by Mutual Agreement- This Agreement may be modified by a mutual agreement of the parties, put into writing, duly executed and signed by both parties, and attached hereto and made part of this Agreement. This agreement may also be modified as provided by Federal Law.

10.03 Severability- If any Section, sentence, clause, phrase, paragraph or part of this Agreement is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and all other provisions of this Agreement shall remain valid and in full force.

10.04 Force Majeure- Prevention or delay of any performance under this Agreement due to circumstances beyond the control of OPERATOR or CITY, unforeseen circumstances, or Acts of God, shall not be deemed non-compliance with or violation of the Agreement.

10.05 Most Favorable Terms-In the event that CITY approves or permits a cable communications system to operate in the franchise territory on terms more

favorable than those contained in the Agreement, such more favorable terms shall be applicable in this Agreement. In the event that OPERATOR agrees to operate under terms more favorable to the franchising authority in any contiguous community served from the Utica headend, CITY may on notice apply such more favorable terms to this Agreement.

10.06 Theft of Services- "City" and "OPERATOR" shall be mutually supportive of procedures to prevent and deter theft of cable services, within the confines of the "CITY".

This Franchise shall be effective October 1, 1998 after adoption by CITY and execution by the duly designated agent for OPERATOR, and subsequent approval by the New York State Public Service Commission.

11.0 REPEALER

Ordinance No. 537 of 8/21/63, as amended by Ordinance No. 55 of 4/5/78 and No.274 of 9/21/88
and all prior ordinances relating to cable television services are hereby repealed, as of the
effectiveness of this Franchise.

PASSED AND ADOPTED

FOR THE CITY OF UTICA

NOVEMBER 4, 1998.

By YES vote of 840 of the

Common Council of the City

of Utica.

By: Edward A. Harris

(Mayor, City of Utica)

AGREED AND ACCEPTED

FOR THE OPERATOR:

NOVEMBER 20, 1998

By: Andrew J. Walton

Harron Cablevision of New York, Inc.

EXHIBIT A

595.1(b) The system is fully built. The system map is attached.

595.1(c) OPERATOR shall use materials of good and durable quality and all work involved in construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner.

*595.1 (e) OPERATOR'S rates and charges shall be subject to the approval of CITY and the Commission to the extent consistent with applicable state and federal law. The rates for any cable television service for which approval is required shall be deemed part of the franchise whether or not specifically set forth therein.

595.1(f) OPERATOR shall provide notice to each subscriber, at intervals of not more than one year, of the procedure for reporting and resolving subscriber complaints. (Such notice may be written or by such other means as the Commission may from time to time approve upon application by the franchise.)

595.1 (h) OPERATOR shall not abandon service or a provision thereof without the written consent of CITY.

595.1 (k) OPERATOR 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 because of age, race, creed, color, national origin or sex.

595.1(l) CITY reserves the right to adopt, in addition to the provisions contained in the franchise and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in the franchise.

595.1 (m) CITY reserves the right to inspect all pertinent books, records, maps, plans, financial statements, and other like materials of the franchise, upon reasonable notice and during normal business hours.

595.1 (n) The office or officer of the CITY that is responsible for the continuing administration of the franchise is the City Clerk.

595.1 (p) The terms of the franchise are subject to the approval of the Commission on Cable Television.

595.5 Requirements for construction of cable television plant and provision of cable television services.

(a) Definitions.

(1) Primary service area shall include each of the following within the franchised area:

(i) those areas where cable television plant has been built without contribution-in-aid-of-construction by subscribers;

(ii) those areas where the cable television company is obligated by the terms of its franchise to provide cable television service without a contribution-in-aid-of-construction by subscribers.

(iii) any area adjoining an area described in subparagraph (i) or (ii) of this paragraph and which contains dwelling units at a minimum rate of 35 dwelling units per linear mile of aerial cable;

(iv) any area adjoining an area described in subparagraphs (i) and (ii) of this paragraph and which contains at least the same number of dwelling units per linear mile of aerial cable as is the average number of dwelling units per linear mile of cable in areas described in subparagraphs (i) and (ii) of this paragraph. The average is to be determined by dividing the sum of the dwelling units in areas described in subparagraphs (i) and (ii) of this paragraph by the number of linear miles of cable in the same areas.

2. Line extension area shall be any area within the franchised area which is not the primary service area.

(1) Within five years after receipt of all necessary operating authorizations, cable television service will be offered throughout the authorized area to all subscribers requesting service in any primary service area.

(2) Cable television service will not be denied to potential subscribers located in line extension areas who are willing to contribute to cost of construction in accordance with the following formula:

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

C equals the cost of construction of new plant; CA equals the average cost of construction per mile in the primary service area; P equals the lower of 35 or the average number of dwelling units per linear mile of cable in areas described in subparagraphs (a) (1) (i) and (ii) of this section; LE equals the number of dwelling units requesting service in the line extension area; and SC equals subscriber contribution-in-aid-of-construction in the line extension area.

(i) Whenever a potential subscriber located in a line extension area requests service, OPERATOR shall, within 30 days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area, and shall inform each of the potential subscribers of the contribution-in-aid-of-construction that may be charged. OPERATOR may require prepayment of the contribution-in-aid-of-construction. OPERATOR shall apply for pole attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction. Cable television services must be made available to those who made a contribution-in-aid-of-construction within 90 days from the receipt of pole attachment by OPERATOR.

(ii) The contribution-in-aid-of-construction shall be in addition to the installation rate set forth in the franchise.

(iii) During a five-year period commencing at the completion of a particular line extension, pro rata refund shall be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. * OPERATOR shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at the same address and who has not informed OPERATOR of the subscriber's address.

3. Cable television service will be provided to any subscriber who demands service and who is located within 150 feet of aerial feeder cable, and the charge for the installation for any subscriber so situated will not be in excess of the installation charge specified in the franchise.

4. Nothing in paragraph (1) of this subdivision shall be construed to preclude:

(i) the provision of cable television services by OPERATOR in a line extension area without assessing a contribution-in-aid-of-construction; or

(ii) the inclusion in a cable television franchise of a provision establishing a primary service area which includes at least all of those areas which are in the primary service area as defined in subdivision (a) of this section.

5. Nothing in paragraph (2) of this subdivision shall be construed to preclude:

(i) the discounting or the waiver of the maximum contribution-in-aid-of-construction charge OPERATOR can charge a subscriber pursuant to paragraph (2) of this subdivision; or

(ii) the inclusion of a provision in a cable television franchise establishing a formula to be used to determine the contribution-of-aid-of-construction charge, which formula is different than the formula set forth in paragraph (2) of this subdivision, provided that the formula included in the franchise does not require payment by the subscriber in a line extension area of a higher contribution-in-aid-of-construction charge than would result from the use of the formula set forth in paragraph (2) of this subdivision.

EXHIBIT BPUBLIC ACCESS

A. The CITY shall notify OPERATOR in writing of the name of the individual or individuals, organization or other entity it has agreed in consultation with contiguous communities served by OPERATOR to have coordinate the administration of the community access channel in cooperation with the OPERATOR.

1. The community access channel coordinator shall develop rules for the community's use of the community channel. These rules, shall, at a minimum, guarantee non-discriminatory access to the community channel for residents, establish procedures for the use of equipment and the scheduling of programming and for recording and resolving complaints about aspects of channel operations, and require that a record of channel users and programs telecast be maintained.

2. Nothing in this Agreement shall be construed so as to prohibit OPERATOR from establishing a community channel on its own in the absence of the notification described in paragraph A of this section.

B. At least one full-time channel on the cable television system shall be reserved for community use.

1. Use of this channel shall be limited to residents of the City and other contiguous communities served by OPERATOR, and their educational and governmental institutions.

2. No charges shall be made for channel time utilized for such purpose.

3. It is expressly understood that underutilization of the channel shall entitle OPERATOR to regain control of the channel for its own purposes, so long as OPERATOR makes reasonable time available on a channel for public access purposes.

a. Underutilization is defined as failure to program the channel at least four hours per day, five days per week between the hours of 6:00 a.m. and 12:00 midnight for any twelve-consecutive week period.

b. Use of text generating equipment for notice of community events and similar information shall be deemed sufficient for the purpose of demonstrating use of the channel as required under the terms of this section.

4. OPERATOR shall provide the community channel with the following support:

a. Periodic training sessions for prospective users of the channel and its equipment, coordination of the channel, and representation on community channel matters with community users and organizers.

b. Such video production equipment as may be reasonably required and mutually agreed upon between OPERATOR and the designated community access coordinator and in no event to exceed the following;

- one industrial quality color camera
- one ¾ inch video cassette recorder with associated equipment
- a ¾ inch editing system sufficient to produce industrial quality finished programs
- insertion capability
- one studio with appropriate lighting

- all equipment necessary to display programs on the channel
- character or text generating equipment of at least a 64 page capacity to be used by the channel to display notice of community events or similar information on the channel when the channel is not displaying regular programming, to be located at the system office of OPERATOR and operated by OPERATOR.

5. A second channel shall be provided for such purposes, within six months of a formal municipal request, if the first such channel has been in use eight hours per day for a three month period.

C. Except as set out in Section B.3 above, the channel reserved for community use may not be utilized for any other purpose when in use by access users without the consent of the CITY and the contiguous communities served by OPERATOR or their designated individual or organization acting as coordinator.

D. OPERATOR shall provide annual written notice to each subscriber as to the availability of the community channel and production equipment and the name, address and telephone number of the person or organization responsible for coordinating the operation of the channel.

E. The channel reserved for community use shall not be used for the transmission of "commercial use" programming as defined by Section 612 of the Communications Act of 1934.

EXHIBIT B- PROVISIONAL 1/

A. Definitions

1. The term "public access channel" means a channel designated for noncommercial use by the public on a first-come, first-serve, nondiscriminatory basis.
2. The term "educational access channel" means a channel designated for use by school districts and not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents.
3. The term "government access channel" means a channel designated for use by municipal, county and state government, or agencies thereof.
4. The term "public, educational, or governmental (PEG) access facilities" means (i) channel capacity designated for public, educational or governmental use; and (ii) facilities and equipment for the use of such channel capacity.
5. The term "local use" means noncommercial use by residents of the State of New York including school districts and not-for-profit educational institutions and municipal, county and state governments, or agencies thereof.
6. The term "access cablecast day" means a day or part thereof during which public, educational or governmental access facilities are available for PEG use.

B. Designation of Channels -- OPERATOR shall designate channel capacity for PEG access as follows:

1. OPERATOR shall designate (i) as least one full-time activated channel for public access use; (ii) as least one full-time activated channel for educational and governmental use; and (iii) one additional full-time activated channel for educational/governmental use whenever the first channel so designated shall have been used for such educational and governmental programming on the average of at least twelve (12) hours per day during any ninety (90) day period; provided, however, that the calculation of such average shall not include any day when the availability of PEG access facilities precludes achieving such programming level. In the event that two channels for educational and governmental use are required by this subdivision, one channel shall be designated the educational access channel and one channel shall be designated the governmental access channel; provided, however, that either channel may be used for either purpose if necessary to satisfy the demand for channel time.

^{1/} This Exhibit B is adopted pursuant to recently adopted regulations of the Commission, effective September 9, 1988. If said regulations are not approved by final Order no longer subject to administration or judicial review, then the alternate Exhibit B shall constitute the Exhibit B to this Agreement.

EXHIBIT B-PROVISIONAL 1/

C. Administration and Use – The use of the channel capacity for PEG access shall be administered as follows:

1. The public access channel shall be operated and administered by the entity jointly by the CITY and by the local legislative bodies of each franchising municipality in the system. (If agreement cannot be reached on a single entity, the commission shall arbitrate the issue.); or, until such designation is made, by the OPERATOR; provided, however, that the CITY may designate such entity at any time throughout the term of the of a franchise by a resolution duly adopted by council.

2. The educational and governmental access channel shall be operated and administered by a committee or a commission appointed by local government and shall include appropriate representation of local school districts within the service area of the cable system and may include for purposes of coordination an employee or representative of the cable television franchisee. 2/

3. The entity responsible for administering and operating the public access channel shall provide notice to the general public of the opportunities to use such channel which notice shall include (i) a character generated message transmitted at least hourly on such channel between the hours of 6:00 p.m. and 10:00 p.m. each day and (ii) written notice to subscribers at least annually. Notices shall include the name, address and telephone number of the entity to be contacted for use of the channel. All access programming shall be identified as such.

4. Channel time shall be scheduled on the public access channel by the entity responsible for the administration thereof on a first-come, first-serve, nondiscriminatory basis.

2/ Where an educational or governmental channel is shared by more than one school district or local government or combination thereof, administration of such channel (s) on a cooperative basis is encouraged.

EXHIBIT B-PROVISIONAL 1/

5. Local use of educational and governmental access channels shall have preferred status in the event of competing requests for channel time. Priority may be afforded to local governments within the service area of the system.
6. Channel time for PEG access programming shall be without charge to the user.
7. The designation of PEG access facilities shall include the provision by the OPERATOR of the technical ability to play back pre-recorded programming and to transmit programming information consistent with the designated uses of PEG access channels.
8. The OPERATOR shall not exercise any editorial control over any public, educational or governmental use of channel capacity designated for PEG purposes.
9. CITY shall not exercise any editorial control over any use by the public of a public access channel.
10. The entity responsible for the administration of a public access channel shall maintain a record of the use of such channel which shall include the names and addresses of all persons using or requesting the use of any such channel and which record shall be available for public inspection for a minimum of two years.
11. Channels designated for PEG use shall be included in the lowest level of service offered by the OPERATOR; where a system does not include sufficient unused channel capacity to accommodate a second educational/governmental access channel resulting from the operation of subdivision (b) hereof, the cable television franchise may elect one time to defer the obligation to provide such additional channel until additional channel capacity becomes available.
12. OPERATOR shall be permitted to use time on one or more PEG access channels whenever there are no blank channels available on the same level of service which includes the PEG channel (s) and whenever such PEG channel (s) is not scheduled for use at least seventy-two (72) hours in advance of such time or times desired by the cable television franchisee; provided that any use of such PEG channel (s) by the OPERATOR shall at all times be subordinate to designated PEG use and shall terminate or be pre-empted by PEG programming scheduled at least seventy-two (72) hours in advance. All non-access programming on PEG channels shall be identified as such by an appropriate announcement made prior to and following each non-access use. Notwithstanding the foregoing, at such time as any PEG channel on a cable television system with a channel capacity in excess of forty (40) channels has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of access cablecast days, whichever is less, during any ninety (90) day period, use of such channel by the cable television franchisee shall be suspended for such time as minimum PEG use of such channel is maintained.
13. PEG channel (s) shall not be used for the transmission of "commercial use" programming as defined by Section 612 of the Communications Act of 1934).

Exhibit B

AGREEMENT

This attached AGREEMENT entered into this 4 day of Nov., 1998, by and between:

Harron Cablevision of New York
1000 Firehouse Road
Utica, New York 13502

Hereinafter referred to as
"HARRON"

-And-

Utica City School District
1115 Mohawk Street (Conkling School)
Utica, New York 13501

Hereinafter referred to as
"SCHOOL DISTRICT"

TERM OF AGREEMENT: This Agreement shall continue in full force and effect during the full term of the Cable Television franchise agreement with the City of Utica (term October 1, 1998 through September 30, 2008). This Agreement shall expire simultaneously with the expiration of franchise agreement.

NOW, THEREFORE, It is agreed as follows:

Utica City School District

Harron Cablevision of New York, Inc., hereinafter referred to as Harron, shall continue to provide free basic cable television connections to all Utica schools, Central Office, Bus Garage, Central Kitchen and all future approved educational access sites which are utilized by the Utica City School District in any and all educational programs.

Harron shall support the wiring of all instructional classrooms in all the City schools. The school district will work with Harron to develop a priority list for the work to be done.

The Utica City School District Educational Access Channel means any channel where educational programs and information on school programs and events are the only designated use. The educational access channel (s) shall only be used for non-commercial purposes.

Harron shall provide a channel for the Utica City School District, 24 hours per day, seven days per week. This channel will be viewable only within the City of Utica. The content will be school closings, posting bulletins, lunch programs, job postings, school programs (plays, concerts, sports events, etc.), weekly board meetings, and other events as they develop. The school agrees to get proper legal releases for all programming. The school district agrees all programming will be free of commercial content. The designated access channel is set strictly for educational use with no charge for usage by Harron Cablevision of New York. The Educational Channel shall be available for educational use on a non-discriminatory basis.

Dedication of the Utica City School District Educational Access Channel-The Franchisee shall comply during the term of this Agreement with the applicable requirements of Federal or State law.

The School District and Harron will work cooperatively to make the "Cable in the Classroom" project a success. This will involve the School District and Harron working on grants to bring all necessary televisions and VCR's in predefined classrooms.

Harron will create a position of Educational Program Director on Harron's payroll. This position will assist in training the students and teachers with the use of the studio and production techniques. It will also assist with content development and acquisition of equipment—see Job Description, page 4.

TERMS

CONVERTER means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and any channel selector which permits a subscriber to view all signals delivered at designated converter dial locations at the set or by remote control.

DROP shall mean a connection from feeder cable to the subscriber user television set, radio or other terminal.

Harron shall provide reasonable equipment maintenance for the Utica City School District Educational Access Channel, and local origination equipment will be maintained and/or replaced by Harron in a manner consistent with good operating practice. Maintenance of that equipment will be done on site, or at any Harron facility, or at a manufacturer's repair facility in a reasonable timely manner.

TV STUDIO AT PROCTOR HIGH SCHOOL

Harron shall work with the school district to establish a television studio at Proctor High School. Harron will assist with planning, design and engineering to develop this studio. Harron will provide funding to augment the existing equipment to bring the studio to proper operational status.

The School District agrees to provide floor space in the Proctor High School building located on Hilton Avenue where the TV production studio shall be located.

INSTRUCTION: The School District shall be solely responsible to plan the curriculum for students who will be trained in TV Studio production or study in the studio. The School District shall be responsible for providing the teaching staff, exclusive of the Director of Television Services, which staff is necessary for instruction for the School District students. The School District shall be responsible for programming, which will be produced for the Utica City School District educational channel broadcast over the Harron cable television network. The parties hereto will, at all times, use the joint effort to produce quality programming and Harron may provide consulting services from time to time in programming, production and curriculum development.

STUDIO RESPONSIBILITY: The School District shall be exclusively responsible for the control of the studio as set by the School District Board of Education, the School District Superintendent or his designee.

COMMUNITY PROGRAMMING: The School District shall make the studio available on a request basis for community oriented programming. The decision as to whether to permit the studio to be used for said programming shall be made by the Superintendent of the School District, or his designee. The request procedures shall be as established by the School District.

UTICA EDUCATIONAL ACCESS CHANNEL REQUIREMENTS:

The following requirements shall also apply to access use:

No charges shall be paid for the use of production, equipment, facilities and personnel.

Harron shall provide adequate training for access users free of charge. At a minimum, Harron shall provide monthly access production and editing training classes.

The City of Utica Board of Education and/or its designee shall administer the Utica City School District Educational Access Channel. The Utica City School District Board of Education shall appoint an Advisory Board for the Utica City School District Educational Access Channel. The Advisory Board shall review and monitor all access policies and procedures but will remain advisory in nature. Harron shall consult with the Advisory Board on the purchase of equipment, the studio hours available for access users, and access rules. Harron shall provide reports at least annually or upon special request to the Advisory Board on the purchase and maintenance of equipment, the schedules of access staff, and the use of studio time.

EXCLUSIVITY: Harron shall not permit any school district or educational institutions located outside the City of Utica to broadcast over the Utica City School District Educational Access Channel unless designated to do so by the Utica City School District.

INTERNET NETWORK

Harron shall provide high speed Internet access to the elementary and secondary schools in the City School District when Harron establishes this business. Harron is planning to develop this service within the next 24 months. Harron shall work with the School District in training the teachers in High-Speed Internet services.

INTERNET SERVICES FOR SCHOOLS:

- (a) The Franchisee shall provide one (1) connection to the Internet to each School building in the City, without charge(s) to the City School District. Said Internet Connection shall be installed no later than sixty (60) days after Internet service is made available.
- (b) Upon request of the Utica City School District, the Franchisee shall provide additional modems to the Internet to school buildings. Such additional connections shall be provided to the School District
At cost.

HARRON HAS AGREED TO PROVIDE:

- 1) Cable drops in all prescribed instructional areas plus a negotiated number of converter boxes.
- 2) Expand program offerings to include Channels of Educational Importance.
- 3) Continued employment of a Harron Educational Program Director for the Utica City School District Educational Access Channel.
- 4) Upgrade of TV studio equipment.
- 5) Cooperatively support the acquisition of classroom equipment (TV's, VCR's) to ensure better Utilization of "Cable in the Classroom" programming and participate in grant applications to Phase in equipment acquisition.
- 6) For the creation and maintenance of long distance education classroom or appropriate capabilities at each Phase 1 school location. Phase 1 will be Proctor Sr. High, J.F. Kennedy, Donovan Middle School and/or mutually agreed upon secondary or elementary sites. Future phases will depend upon the success of Phase 1.
- 7) In the event that Harron upgrades its cable system in the City of Utica, the School District shall have the right to receive such upgrades, changes of service or benefits as well as seek modification to this agreement in order that no party gains or is burdened by an unfair advantage as a result of the voluntary actions of Harron with parity, fairness and equity to all parties concerned.
- 8) In the event that Harron enters into agreements with surrounding schools districts that are serviced by the Head End facility that services the City of Utica, Harron shall offer similar benefits, if any, so long as the Utica School District agrees to the same or similar concessions that of other School Districts.

JOB DESCRIPTION FOR HARRON EDUCATIONAL PROGRAM DIRECTOR

INTENT: This document details the scope of the Harron Educational Program Director's accountability both to the company and the Utica City School District Educational Access Channel. The responsibilities outlined represent the results expected both by Harron and the Utica City School District.

* **OVERVIEW:** The Harron Program Educational Director's primary function is as a Facilitator of local programming on the Utica City School District Educational Access Channel. The Educational Program Director shall accomplish this task through the effective utilization of the available resources (i.e. capital equipment, community experts, and company-developed materials).

TRAINING: The goal of training is the production of programming for cablecast on the Utica Educational channel (s) and/or classroom use. Harron's Production Manual will be utilized as the reference text (other training materials may be developed as a supplement to this manual). Harron will make copies of this manual available to loan to students enrolled in training.

The Harron Educational Program Director shall offer training sessions as needed cooperatively with the Teacher Center on a yearly basis. This series of workshops will be developed by the Educational Program Director to meet the needs of the Utica City School community. "Students" will be community members as defined in the Utica City School District Educational Access Channel Policies. The Director shall also train teachers, parents or school-aged youngsters as recommended and/or recruited by the Studio Coordinator, the Director of Library Media Services, or the Educational Program Director. Additional training may be offered as necessary.

The Harron Educational Program Director shall offer "In Service" training to each school's faculty as requested by the Director of Library Media Services to promote the use of video production in classroom assignments.

Special projects may be created and developed in conjunction with the Director of Library Media Services to facilitate program production (e.g., after-school multimedia clubs).

HARRON EDUCATIONAL PROGRAM DIRECTOR Examples of Duties:

- 1) Develops a series of training workshops and related written materials in conjunction with the Director of Library and Media Services, Teacher Center Director and the Utica City School District Educational Access Channel's Advisory Board.
- *→ 2) Conducts various levels of training in all areas of video/television production.
- 3) Maintains and provides records of those trained-including level of expertise attained.
- 4) Performs other tasks related to the job responsibilities

ACCESS MANAGEMENT: For educational channel and related activities, Harron Educational Program Director responds to the Utica City School District Director of Library Media Services.

ASSIGNABILITY: Notwithstanding the foregoing, in the event that Harron sells, assigns or transfers the Cable Television franchise agreement with the City of Utica to a third party, it shall be a condition precedent to such sale, assignment or transfer that the buyer/assignee/transferee agree to assume the rights and obligations of Harron under this agreement.

ARBITRATION: Any dispute hereunder between the "SCHOOL DISTRICT" and "HARRON" may be resolved by arbitration conducted as follows:

- A. HARRON and the SCHOOL DISTRICT each, shall within fifteen (15) days of the decision to proceed to arbitration, appoint one (1) arbitrator experienced in the cable television business, which arbitrators shall mutually select a third arbitrator of similar qualifications.
- B. Within thirty (30) days after appointment of all arbitrators and upon fifteen (15) days written notice to the parties to the arbitration, the arbitrators shall commence a hearing on the dispute.
- C. The hearing shall be recorded and may be transcribed at the request of either the SCHOOL DISTRICT or HARRON.
- D. At the close of the hearings and within thirty (30) days, the arbitrators shall prepare written findings and serve such decision upon the SCHOOL DISTRICT and HARRON.
- E. The decision of a majority of the arbitrators shall be binding upon the parties to the arbitration.
- F. Either party may seek judicial relief to the arbitrators' decision under the following circumstances:
 - 1) Either party fails to select an arbitrator;
 - 2) The arbitrators fail to select a third arbitrator;
 - 3) One (1) or more arbitrator is unqualified;
 - 4) Designated time limits have been exceeded;
 - 5) The arbitrators have not proceeded expeditiously; or
 - 6) Based upon the record, the arbitrators' decision is arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, or based upon a mistake of law.
- G. In the event that the SCHOOL DISTRICT brings legal action against HARRON to enforce the terms of this Agreement and the SCHOOL DISTRICT ultimately prevails, HARRON shall pay the SCHOOL DISTRICT'S attorneys fees in connection with such litigation. Other arbitration costs shall be borne equally by the parties to the arbitration unless otherwise ordered by the arbitrators.

MODIFICATION: This Agreement may only be modified in writing executed by Harron and the Utica City School District.

AGREED AND ACCEPTED

Andrew Walton, VP of Operations
Harron Cablevision of New York

November 2, 1998
Date

Don G. Long
Utica City School District

Nov. 4, 1998
Date

Exhibit C

**CABLE TELEVISION
FRANCHISE RENEWAL AGREEMENT**

City of Utica

THIS AGREEMENT, executed this _____ day of _____, 2011, by and between the **CITY OF UTICA** (hereafter referred to as the Municipality) by the Mayor acting in accordance with the authority of the duly empowered local governing body, (hereinafter referred to as the Board) and **TIME WARNER NY CABLE LLC**, a New York General Partnership, organized and existing under the laws of the State of New York, the local place of business of which is located at 6005 Fair Lakes Road, P.O. Box 4733, East Syracuse, New York 13221, hereinafter referred to as "Time Warner Cable."

WITNESSETH

WHEREAS, Pursuant to the City of Utica Law the Board has the exclusive power on behalf of the City of Utica to grant franchises providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the City of Utica to any franchisee for or relating to the occupation of the Streets; and

WHEREAS, Pursuant to the Communications Act of 1934, as amended, (the "Communications Act") the Board has the authority to grant cable television franchises and renewals thereof on behalf of the City of Utica and whereas the Board and Time Warner Cable pursuant to said Federal Law and pursuant to applicable State laws and the regulations promulgated thereunder, have complied with the franchise procedures required of Municipalities and cable operators in the grant of cable television franchises or their renewal; and

WHEREAS, The City of Utica has conducted negotiations with Time Warner Cable and has conducted one or more public hearings on Time Warner Cable's franchise renewal proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of Time Warner Cable's technical ability, financial condition and character; said public hearing also included consideration and approval of Time Warner Cable's plans for constructing and operating the cable television system; and

WHEREAS, Following such public hearings and such further opportunity for review, negotiations and other actions as the Board deemed necessary and that is required by law, the Board decided to renew Time Warner Cable's franchise as provided hereinafter; and

WHEREAS, The Board, in granting this franchise renewal, embodied in the agreement the results of its review and any negotiations with Time Warner Cable and has determined that said franchise agreement and Time Warner Cable respectively, fulfills and will fulfill the needs of the City of Utica with respect to cable television service and complies with the standards and requirements of the New York State Public Service Commission ("NYSPSC");

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby

made a part of this franchise agreement, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

SECTION 1 - DEFINED TERMS

Unless the context clearly indicates that a different meaning is intended:

- (a) “Basic Service” means any service tier which includes the retransmission of local broadcast signals.
- (b) “Board” means the Board of Trustees of the City of Utica.
- (c) “Cable Television Service” means
 - (1) The one way transmission to Subscribers of Video Programming, or other programming service, and
 - (2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, or other programming service.
- (d) “Cable Television System” means a facility, consisting of a set of closed transmission including (without limitation) fiber optic wires or lines, and associated signal generation, reception and control equipment that provides Cable Television Service to multiple subscribers within a community.
- (e) “Time Warner Cable” means Time Warner Cable Entertainment-Advance/Newhouse Partnership.
- (f) “Effective Date” of this agreement shall be the date of approval by the municipality.
- (g) “Franchise” means the grant or authority given hereunder to Time Warner Cable to construct and operate a Cable Television System in the City of Utica in accordance with the terms hereof.
- (h) “FCC” means the Federal Communications Commission, its designees and any successor hereto.
- (i) “Gross Revenues” means all revenue derived from the operation of the cable system to provide cable service. Gross Revenues shall be computed in accordance with Generally Accepted Accounting Principles (“GAAP”). Gross Revenues shall not include (1) bad debt; (2) excise taxes; (3) sales taxes; or any other taxes or fees, which are imposed on subscriber by any governmental unit and collected by the Grantee for such governmental unit.
- (j) “May” is permissive.
- (k) “Municipality” means the City of Utica. Wherever the context shall permit, Board,

Council and City of Utica shall be used interchangeably and shall have the same meaning under this Franchise.

- (l) “NYSPSC” means New York State Public Service Commission.
- (m) “Person” means an individual, partnership, association, corporation, joint stock company trust, corporation, or organization of any kind.
- (n) “Service Tier” means a category of Cable Television Service provided by Time Warner Cable over the Cable Television System for which a separate rate is charged for such category by Time Warner Cable.
- (o) “Shall” or “will” are mandatory.
- (p) “Streets” means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks and public grounds and waters within or belonging to the City of Utica.
- (q) “Subscriber” means any person lawfully receiving any Cable Television Service in the City of Utica provided over the Cable Television System.
- (r) “Video Programming” means any and all programming services provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2 - CONSENT TO FRANCHISE AND CONDITION PRECEDENT

- (a) The City of Utica hereby grants to Time Warner Cable the non-exclusive right to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service within the City of Utica as it now exists and may hereafter be changed, and in so doing to use the Streets of the City of Utica by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across any and all said Streets such facilities (e.g., poles, wires, cables, conductors, ducts, conduits, vaults, pedestals, manholes, amplifiers, appliances, attachments and other property) as is deemed necessary or useful by Time Warner Cable, for the operation of its cable system. Additionally, the City of Utica, insofar as it may have the authority to so grant, hereby authorizes Time Warner Cable to use any and all easements dedicated to compatible uses, such as electric, gas, telephone or other utility transmissions, for the purposes of erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across such easements such facilities of the Cable Television System as is deemed necessary or useful by Time Warner Cable, for the operation of its cable system. Upon request by Time Warner Cable and at Time Warner Cable’s sole expense, the City of Utica hereby agrees to assist Time Warner Cable in gaining access to and using such easements.

- (b) Nothing in this Franchise shall limit the right of Time Warner Cable to transmit any kind of signal, frequency, or provide any type of service now in existence or which may come into existence and which is capable of being lawfully transmitted and distributed by those facilities owned and operated by Time Warner Cable. The provision by Time Warner Cable of any service other than cable service shall be subject to all applicable laws and regulations and to any right the City of Utica may have to require fair and reasonable compensation for Time Warner Cable's use of the rights-of-way to provide such service, provided that such requirement is non-discriminatory and competitively neutral.
- (c) Without waiver or restriction of the rights available to the parties hereto under applicable law, this Franchise and the attachments hereto constitute the entire agreement between the parties and supersede any and all prior cable television agreements and other agreements or instruments by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to Cable Television Service.
- (d) In the event the City of Utica grants to any other Person (being referred to as "Grantee" 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 City of Utica shall insert the following language 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:

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

As used immediately above in the above quoted paragraph, the term "Time Warner Cable" shall mean Time Warner NY Cable LLC, as defined in this Franchise, and its successors, assigns and transferees.

- (e) This Franchise is non-exclusive. Any grant of a subsequent franchise shall be on terms and conditions which are not more favorable or less burdensome than those imposed on Franchisee hereunder. No municipality may award or renew a franchise for cable television service which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchise operating in the same franchise area.

As used in this Section, the phrase, "occupancy or use of Streets," or any similar phrase, shall not be limited to the physical occupancy or use thereof but shall include any use above or below the Streets by any technology including but not limited to

infrared transmissions.

SECTION 3 - APPROVAL OF COMPANY BY CITY OF UTICA

- (a) This Franchise is subject to and complies with all applicable Federal and State laws and regulations, including, without limitation, the rules of the NYSPSC concerning franchise standards. The City of Utica hereby acknowledges and agrees that this Franchise has been entered into by it in accordance with and pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Sec. 521 et seq. (hereinafter referred to as the "Communications Act"). The City of Utica hereby represents and warrants that this Franchise has been duly entered into in accordance with all applicable local laws. The City of Utica hereby acknowledges that it, by duly authorized members thereof, has met with Time Warner Cable for the purposes of evaluating Time Warner Cable and negotiating and consummating this Franchise.
- (b) In a full and public proceeding, affording due process, the City of Utica has considered and approved Time Warner Cable's technical ability and character and has considered and found adequate Time Warner Cable's plans for constructing and operating the cable system.

SECTION 4 - FRANCHISE TERM

- (a) The term of this Franchise shall be ten (10) years.
- (b) Notwithstanding any other provision in this Franchise: In the event of any change to local, state or federal law occurring during the term of this Franchise eliminates the requirement for any persons desiring to construct, operate or maintain a cable system in the City to obtain a franchise from the City for the construction, operation or maintenance of a cable system, then, at the Grantee's sole option, Grantee shall have the right immediately to terminate this Franchise. If Grantee chooses to terminate this Franchise pursuant to the 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.
- (c) Furthermore, in the event any change to local, 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 City in a way that reduces the regulatory or economic burdens for such persons, then, at Grantee's sole option, Grantee shall have the right immediately to amend this Franchise to take advantage of such regime change to similarly reduce the regulatory or economic burdens on Grantee.
- (d) It is the intent of this section, at the Grantee's election, Grantee shall be subject to no more burdensome regulation under this Franchise than any other persons that might construct, operate or maintain a cable system in the City. The City agrees to amend this Franchise if the City grants a franchise to provide cable service to another operator which

overall provides greater benefits or imposes lesser burdens than this franchise overall. All amendments to this agreement must have New York State Public Service Commission (PSC) approval to the extent required by applicable law.

SECTION 5 - ASSIGNMENT OR TRANSFER OF FRANCHISE

- (a) Time Warner Cable shall not transfer this Franchise to any person, firm, company, corporation or any other entity without the prior written consent of the City of Utica, which consent shall not be unreasonably withheld or denied.
- (b) In the event that the City of Utica refuses to grant such consent, it shall set forth specific reasons for its decision in writing by municipal resolution.
- (c) Notwithstanding the above, this Section 5 shall not be applicable and no prior approval shall be required if Time Warner Cable shall transfer this Franchise to any of its principal partners, to any parent, subsidiary or affiliate of any of the principal partners of Time Warner Cable, or to any other firms or entities controlling, controlled, by or under the same common control as Time Warner Cable.

SECTION 6 – REVOCATION

- (a) The City of Utica may revoke this Franchise and all rights afforded Time Warner Cable hereunder in any of the following events or for any of the following reasons:
 - (i) Time Warner Cable fails after sixty (60) days written notice from the City of Utica to substantially comply or to take reasonable steps to comply with a material provision of this Franchise. Notwithstanding the above, should Time Warner Cable comply or take said reasonable steps to comply within said sixty days notice, the City of Utica's right to revoke this Franchise shall immediately be extinguished; or
 - (ii) Time Warner Cable is adjudged a bankrupt; or
 - (iii) Time Warner Cable knowingly and willfully attempts or does practice a material fraud or deceit in its securing of this Franchise.
- (b) Notwithstanding the above, no revocation shall be effective unless and until the City of Utica shall have adopted an ordinance setting forth the cause and reason for the revocation and the effective date thereof, which ordinance shall not be adopted until the expiration of one hundred twenty (120) days from the date of delivery of written notice to Time Warner Cable specifying the reasons for revocation and an opportunity for Time Warner Cable to be fully and fairly heard on the proposed adoption of such proposed ordinance. If the revocation as proposed therein depends on a finding of fact, such finding of fact shall be made by the City of Utica only after an administrative hearing providing Time Warner Cable with a full and fair opportunity to be heard, including, without limitation, the right to introduce evidence, the right to the production of evidence and the right to question witnesses. A transcript shall be made of such hearing. Time

Warner Cable shall have the right to appeal any such administrative decision to a state or federal district court as Time Warner Cable may choose and the revocation shall not become effective until any such appeal has become final or the time for taking such appeal shall have expired.

SECTION 7 - INDEMNIFICATION & INSURANCE

- (a) Time Warner Cable shall indemnify and hold harmless the City of Utica from all liability, damage and costs or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of Time Warner Cable its employees or agents undertaken pursuant to this Franchise. The City shall promptly notify Time Warner Cable of any claim for which it seeks indemnification; afford Time Warner Cable the opportunity to fully control the defense of such claim and any compromise, settlement, resolution or other disposition of such claim, including by making available to Time Warner Cable all relevant information under its control.
- (b) Time Warner Cable shall as of the Effective Date of this Franchise obtain liability insurance in the minimum amount set forth within and shall furnish to the City of Utica evidence of such liability insurance policy or policies, in the form of a certificate of insurance naming the City of Utica as an additional named insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Franchise; said policy and replacements shall be in the combined amount of Two Million Dollars (\$2,000,000.00) for bodily injury and property damage issued by a company authorized to do business in New York State. In addition, Time Warner Cable shall carry Worker's Compensation insurance for its employees in such amounts as is required by the laws of the State of New York. The insurance coverage herein referred to above may be included in one or more policies covering other risks of Time Warner Cable or any of its affiliates, subsidiaries or assigns.

SECTION 8 - USE OF EXISTING POLES AND LOCATION OF UNDERGROUND FACILITIES

- (a) Time Warner Cable hereby agrees that when and wherever it deems it economical and reasonably feasible, it shall enter into agreements with telephone or electric or other utilities (collectively "utilities") for the use of said utilities' poles or conduit space whereby said utilities shall provide use of and access to said poles or conduit space by Time Warner Cable for Time Warner Cable's lines and other equipment. Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole(s) or conduit space of utilities is not economically reasonable or otherwise feasible, Time Warner Cable may erect or authorize or permit others to erect any poles or conduit space or any other facilities within the Streets of the City of Utica pursuant to the issuance by the City of Utica of any necessary authorizations which shall not be unreasonably withheld or delayed.
- (b) Subject to the provisions of sub-paragraph (c) below, in such areas of the City of Utica where it or any sub-division thereof shall hereafter duly require that all utility lines be installed underground, Time Warner Cable shall install its lines underground in

accordance with such requirement.

- (c) Notwithstanding the foregoing, if Time Warner Cable shall in any instance be unable to install or locate its wires underground, then the City of Utica, on being apprised of the facts thereof, shall permit such wires to be installed above the ground even though other facilities in the area may be placed, or required to be placed, underground. However, any such permission shall be on such conditions as the City of Utica may reasonably require.

SECTION 9 - RELOCATION OF PROPERTY

- (a) Whenever the City of Utica shall require the relocation or reinstallation of any property of Time Warner Cable in or on any of the Streets of the City of Utica as a result of the relocation or other improvements by the City of Utica of any such Streets, it shall be the obligation of Time Warner Cable on written notice of such requirement to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the City of Utica. In the event any other person, including a public utility, is compensated for similar relocation or reinstallation then in such case Time Warner Cable shall be similarly compensated.
- (b) Time Warner Cable shall, on request of a person holding a building or moving permit issued by the City of Utica, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses of any such temporary removal, and/or the raising or lowering of wires or other property shall be paid in advance to Time Warner Cable by the person requesting the same. Time Warner Cable shall be given in such cases not less than five (5) working days prior written notice in order to arrange for the changes required.

SECTION 10 - USE & INSTALLATION

- (a) Time Warner Cable or any person authorized by Time Warner Cable to erect, construct or maintain any of the property of Time Warner Cable used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of Time Warner Cable in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to members of the public. All Cable Television System equipment shall conform to those standards of the National Electrical Code and the National Board of Fire Underwriters which exist at the time said equipment is installed and replaced.
- (b) Time Warner Cable agrees to install all Cable Television System equipment in a manner to reasonably minimize interference to be expected with the usual use of the Streets and in no event shall any such Cable Television System equipment be located so as to substantially and regularly interfere with the usual public travel on any Street of the City of Utica. Time Warner Cable shall construct and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe,

thorough and reliable manner. Time Warner Cable shall promptly repair or replace any municipal property damaged or destroyed by Time Warner Cable so as to restore it to serviceable condition.

- (c) Whenever Time Warner Cable or any person on its behalf shall cause any injury or damage to public property or Street, by or because of the installation, maintenance or operation of the Cable Television System equipment, such injury or damage shall be remedied as soon as reasonably possible after the earlier of notice to Time Warner Cable from the City of Utica or after Time Warner Cable becomes aware of the same, in such fashion so as to restore the property or Street to substantially the same serviceable condition. Time Warner Cable is hereby granted the authority to trim trees upon and overhanging the Streets of, and abutting private property, (i.e., in the public way) in the City of Utica to the existence it reasonably deems necessary so as to prevent the branches or growths from coming in contact with the wires, cable and other equipment of Franchisee's Cable Television System.

SECTION 11 - CONTINUOUS SERVICE

Time Warner Cable shall continue to provide cable service to all subscribers who meet their obligations to Time Warner Cable with respect to such service. Time Warner Cable shall not, without the written consent of the City of Utica and the Public Service Commission, abandon its cable television system or any portion thereof.

SECTION 12 - FRANCHISE AREA AND LINE EXTENSION

Time Warner Cable shall comply with the requirements for construction of cable television plant and provision of cable television services as set forth in Section 895.5 of the Rules of the NYSPSC.

SECTION 13 - OPERATION AND MAINTENANCE

- (a) Time Warner Cable shall contract and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe, thorough and reliable manner.
- (b) Time Warner Cable shall maintain and operate its cable television system at all times in compliance with the duly promulgated and lawful provisions of Section 896 of the Rules and Regulations of the NYSPSC and the technical requirements set forth by the FCC. Time Warner Cable shall maintain staffing levels and support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold time. Time Warner Cable shall have, at all times, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. Time Warner Cable shall respond to individual requests for repair service no later than the next business day. System outages, and problems associated with channel scrambling and switching equipment, shall be acted upon promptly after notification. Time Warner Cable shall maintain a means to receive repair service requests and notice

of system outages at times when its business office is closed. The City of Utica shall have the right and authority to request an inspection or test performed, all at the City of Utica's expense. Time Warner Cable shall fully cooperate in the performance of such testing.

- (c) Throughout the term of this Franchise, Franchisee's Cable Television System shall have a minimum channel capacity of seventy-eight (78) channels.

SECTION 14 – RATES

Time Warner Cable shall not illegally discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers. The rates and charges imposed by the franchisee for cable television service shall be subject to regulation in accordance with federal law.

SECTION 15 - SERVICE TO PUBLIC FACILITIES, ACCOUNTABILITY PROVISIONS AND INSPECTION OF RECORDS

- (a) City of Utica, upon reasonable notice and during normal business hours, shall have the right to inspect all books, records, maps, plans, financial statements and other like materials of Time Warner Cable which are pertinent to Time Warner Cable's compliance with the terms and conditions of this Franchise.
- (b) City of Utica and Time Warner Cable agree that Time Warner Cable's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding subscribers.
- (c) City of Utica will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided Time Warner Cable has advised City of Utica of the confidential nature of the information. In the event that the City of Utica receives request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the City of Utica will give Time Warner Cable notice of such request as soon as possible prior to disclosure in order to allow Time Warner Cable to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

SECTION 16 - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS

- (a) Time Warner Cable shall comply with the standards for public, educational and governmental (PEG) access as set forth in Section 895.4 of the Rules of the NYSPSC. PEG channels shall be shared with other communities served by the system.
- (b) Time Warner Cable shall install transmission facilities and the equipment set forth on the list attached as Exhibit A to permit the insertion of programming signals from Utica City Hall on the channels designated for Government access programming.

SECTION 17 - ADDITIONAL SUBSCRIBER SERVICES

- (a) Payment for equipment provided by Time Warner Cable to subscribers and the installation, repairs, and removal thereof shall be paid in accordance with Time Warner Cable's standard and customary practices and applicable rules and regulations of the FCC.
- (b) Notice of Time Warner Cable's procedures for reporting and resolving billing disputes and Time Warner Cable's policy and the subscribers rights in regard to "personally identifiable information." as that term is defined in Section 631 of the Communications Act, will be given to each subscriber at the time of such person's initial subscription to the Cable Television System services and thereafter to all subscribers as required by Federal or State law.
- (c) Time Warner Cable shall offer to, and shall notify in writing, the subscribers of the availability of locking program control devices which enable the subscriber to limit reception of obscene or indecent programming in the subscriber's residence.
- (d) In accordance with the applicable requirements of Federal and State laws, Time Warner Cable shall provide written notice of any increases in rates or charges for any Cable Television Service.
- (e) The Administrator, as the case may be, for the City of Utica for this Franchise shall be the Mayor of the City of Utica. The Administrator is responsible for the continuing administration of the Franchise on behalf of the City of Utica. All correspondence and communications between Time Warner Cable and the City of Utica pursuant to this Franchise shall be addressed by Time Warner Cable to the Administrator.
- (f) It is agreed that all Cable Television Service offered to any subscribers under this Franchise shall be conditioned upon Time Warner Cable having legal access to any such subscriber's dwelling units or other units wherein such service is provided.
- (g) Time Warner Cable shall comply with the Customer Service Consumer Protection Standards set forth in Parts 890 and 896 of the Rules and Regulations of the NYSPSC.
- (h) At least once each year, Time Warner Cable shall provide notice to each subscriber of its procedures for reporting and resolving subscriber complaints.
- (i) Time Warner will provide one (1) outlet of basic and standard cable service, at no charge, to any building owned by the City of Utica, or to any building used as a public primary or secondary school or public library, provided any such building is located within 200 feet of existing cable and can be served by a standard service installation.

SECTION 18 - FRANCHISE FEES

- (a) Time Warner Cable shall pay the City of Utica an amount equal to **5%** of Time Warner Cable's Gross Revenues.
- (b) There shall be applied as a credit against the Franchise Fee the aggregate of: (i) any taxes, fees or assessments of general applicability imposed on Time Warner Cable or any subscribers, or both, which are discriminatory against Time Warner Cable or any subscribers, (ii) any non-capital expenses incurred by Time Warner Cable in support of the PEG access requirements of this Franchise and (iii) any fees or assessments payable to the NYSPSC which when combined with all other fees and credits would exceed 5% of gross revenues. Time Warner Cable shall have the right to apply franchise fees paid as a credit against special franchise assessments pursuant to Section 626 of the New York State Real Property Tax Law.
- (c) Payment of the franchise fee shall be due quarterly within sixty (60) days of the end of the company's quarter. Time Warner Cable shall submit to the City of Utica, along with the payment of said fees, a report showing reasonable detail the basis for the computation thereof.

SECTION 19 - SEVERABILITY, GOVERNING LAW, POLICE POWERS REQUESTS FOR AUTHORIZATION AND NON-DISCRIMINATION

- (a) Should any provision of this Franchise be held invalid by a court or regulatory agency of competent jurisdiction, the remaining provisions of this franchise shall remain in full force and effect.
- (b) To the extent not inconsistent with or contrary to applicable federal law, the terms of this Franchise shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Franchise or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable Federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable Federal laws. Any modification of the agreement pursuant to this Section would constitute an amendment of the franchise subject to Section 222 of the PSC law and Subpart 892-1.
- (c) In addition to the provisions contained in this Franchise and in existing applicable ordinances, the City of Utica may adopt such additional regulations as it shall find necessary in the exercise of its police power, provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this Franchise.
- (d) Time Warner Cable shall file requests for any necessary operating authorization with the NYSPSC and the FCC within sixty (60) days from the date the Franchise is awarded by the City of Utica.
- (e) Time Warner Cable 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 because of age, race, creed, color, national origin or sex.

- (f) Access to cable service will not be denied to any group or potential residential subscribers because of the income of the residents of the local area in which such group resides.
- (g) The terms of the franchise are subject to the approval of the Public Service Commission (PSC).
- (h) Per Section 895.1(t), any valid reporting requirements contained in the franchise may be satisfied with system-wide statistics, except for reporting requirements related to franchise fees and customer complaints.

SECTION 20 – NOTICE

All notices required herein shall be in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail, or overnight, or hand delivered to the parties and locations as specified below. Both Time Warner Cable and City of Utica may change where notice is to be given by giving notice to the other.

When notices sent to Time Warner Cable:

Time Warner Cable
Attention: Manager of Government Reporting
6005 Fair Lakes Road
P.O. Box 4733
East Syracuse, New York 13221
Telephone: (315) 634-6200
Facsimile: (315) 463-8020

When notices sent to the City of Utica:

City of Utica
Attention: Mayor
City Hall
1 Kennedy Plaza
Utica, New York 13502
Telephone: (315) 792-0100
Facsimile: (315) 734-9250

SECTION 21 - FORCE MAJEURE

In no event, and notwithstanding any contrary provision in this Franchise, shall this Franchise be subject to revocation or termination, or Time Warner Cable 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 strike, 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,

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 Time Warner Cable. Time Warner Cable shall not be deemed to be in violation or default during the continuance of such inability and Time Warner Cable shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of Time Warner Cable's 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 thereafter as shall have been necessitated by any such events or conditions.

SECTION 22 - RIGHTS OF ENFORCEMENT

Nothing contained in this Franchise is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Franchise.

SECTION 23 - FURTHER ASSURANCES

The City of Utica shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as Time Warner Cable may reasonably request in order to effect and confirm this Franchise and the rights and obligations contemplated herein.

SECTION 24 - INTEGRATION

This Franchise supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Franchise may be amended (except as otherwise expressly provided for herein) only by agreement in writing signed by duly authorized persons on behalf of both parties. To the extent required by State law, amendments hereto shall be confirmed or approved by the NYSPSC.

This Franchise may be executed in one or more counterparts, all of which taken together shall be deemed one (1) original.

The headings of the various Sections of this Franchise are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Franchise.

The rights and remedies of the parties pursuant to this Franchise are cumulative and shall be in addition to and not in derogation of any rights or remedies which the parties may have with respect to the subject matter of this Franchise.

SECTION 25 - NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or to the public in any manner which would indicate any such relationship with the other.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this ____day of _____, _____.

TIME WARNER NY CABLE LLC

CITY OF UTICA

By: _____
John H. Keib

By: _____
David R. Roefaro

Title: President, Residential Services

Title: Mayor_____

EXHIBIT A

- 1 Scala Content Manager Copper Starter Kit includes
1 Designer, 1 Content Manager, 1 Player license, 1 Template Composer Module
supports up to 3 Players
- 1 Content Manager/Designer Workstation w/ Monitor:
Imperatives Workstation
Optimized for Broadcast Multimedia
Intel Core 2 Duo 3GHz
2GB RAM
1TB HD
DVD RW
Network Adapter
22" Viewsonic LCD widescreen monitor
3 year on-site warranty
System Integration
- 1 Imperatives Workstation – Rackmount
Optimized for Broadcast Multimedia
Intel Core 2 Duo 3GHz
2GB RAM
1TB HD
DVD RW
Network Adapter
3 year on-site warranty
System Integration
- 1 CS-450 Eclipse - Scan Converter w Genlock/Overlay with cables and remote
- 1 Digital Juice PTK
5,000 backgrounds, clips, and audio files
- 1 TitleMotion Pro software
200 + truetype fonts, background generator, 300 premade templates
- 1 Sorenson Squeeze
convert DVD files into MPEG files for playback on Scala
- 1 Middle Atlantic Rack system to house components with casters, shelves, LCD mounting
kit, power strip, keyboard shelf
- 1 19" Viewsonic LCD Monitor connected to Player unit for monitoring

- 1 APC 2U Rackmount 1500 VA UPS
- 1 Tripp Lite RS-1215 Rackmount power strip
- 1 Leightronix Mini T Net
- 4 Panasonic DVD Players
- 4 Leightronix PRPA-DVD Control Units
- 1 Toshiba DR430 DVD Player / Recorder
- 3 Installation/Setup/Training - 3 days on site includes expenses

STATE OF NEW YORK
City of Utica
County of Oneida

In the Matter of the Renewal of the Cable Television Franchise Held by
TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE
PARTNERSHIP in the City of Utica, Oneida County, New York

RESOLUTION

An application has been duly made to the Board of the City of Utica, County of Oneida, New York, by **TIME WARNER NY CABLE LLC ("Time Warner")**, a partnership organized under the laws of the State of New York doing business at 6005 Fair Lakes Road, East Syracuse, NY 13057, and holder of a cable television franchise in the City of Utica for the approval of an agreement to renew Time Warner's cable television franchise for an additional ten (10) years commencing _____, _____. The Franchise Renewal Agreement would bring the franchise into conformity with certain provisions of the Federal Cable Communications Policy Act of 1984, as amended, and certain court rulings.

A public hearing was held in the City of Utica, New York on _____, ____ at _____ P.M. and notice of the hearing was published in the _____ on _____, _____.

NOW, THEREFORE, the Board of the City of Utica finds that:

1. Time Warner has substantially complied with the material terms and conditions of its existing franchise and with applicable law; and
2. The quality of the Time Warner service, including signal quality, response to customer complaints and billing practices has been in light of community needs; and
3. Time Warner has the financial, legal and technical ability to provide these

services, facilities and equipment as set forth in its proposal attached; and

4. Time Warner can reasonably meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

BE IT FURTHER RESOLVED that the Board of the City of Utica hereby renews the cable television franchise of Time Warner in the City of Utica for ten (10) years commencing _____, ____ and expiring _____, ____.

BE IT FURTHER RESOLVED that the Board of the City of Utica hereby confirms that this Franchise Renewal Agreement replaces the original franchise last amended on _____, ____.

The foregoing having received a _____ vote was thereby declared adopted.

Dated: _____, ____.

City of Utica Clerk

NOTICE OF PUBLIC HEARING

Time Warner Cable Franchise Renewal for City of Utica

PLEASE TAKE NOTICE that the _____ will hold a Public Hearing on _____, _____ at _____ p.m. at the ____ (City of Utica's office) _____, _____, New York regarding renewal of the cable television franchise agreement by and between the City of Utica and Time Warner Cable.

A copy of the agreement is available for public inspection during normal business hours at the Clerk's office, _____, _____, New York. At such public hearing, all persons will be given an opportunity to be heard. Written and oral statements will be taken at that time. Time limitations may be imposed for each oral statement, if necessary.

Dated: _____, _____

By Order of the City Board
City of Utica

City of Utica Clerk

**This notice must be published, within in the City's
recognized newspaper, once a week for two (2) consecutive weeks
prior to the public hearing.**

**Please note that pursuant to PSC requirements, the original of the
notice of public hearing and accompanying affidavit for the legal
notice must be submitted to:**

**Time Warner Cable, c/o Thomas P. Doheny
6005 Fair Lakes Road, PO Box 4791, Syracuse, NY 13221.**