

PENDING PETITION MEMO

Date: 4/12/2007

TO : Office of Telecommunications
FROM: CENTRAL OPERATIONS
UTILITY: TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE
SUBJECT: 07-V-0438

Petition of Time Warner Entertainment-Advance/Newhouse Partnership for
Approval of the Renewal of the Franchise with the Town of Perrysburg,
Cattaraugus County.



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April 17, 2008

Hon. Jaclyn A. Brilling, Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Application for Franchise Renewal – CAP Exchange I, LLC, d/b/a Time Warner Cable through its Buffalo Division and the Town of Perrysburg, New York

Dear Secretary Brilling:

We are herewith filing an original and four copies of the following:

1. R-2 Application for Franchise Renewal
2. Municipal Resolution granting renewal dated 06/12/07
3. Fully-executed copy of Franchise Renewal Agreement
4. Copy of latest annual test data compiled for this part of the Division's CATV System.
5. Notice of Public Hearing
6. Legal Notice of Application for Renewal
7. Copy of Rates & Channel Line up

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

Respectfully,

Robin L. Wolfgang
Vice President
Public & Government Affairs

RW/ca
Enclosures

Cc: Mary M. Watkins, Perrysburg Town Clerk

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the matter of application of **CAP EXCHANGE I, LLC**, for renewal of its Certificate of Confirmation and Cable Television Franchise in the **TOWN OF PERRYSBURG**, County of Cattaraugus, New York.

1. The exact legal name of the applicant is **CAP Exchange I, LLC**.
2. The applicant does business under the name **Time Warner Cable through its Buffalo Division**
3. Applicant's telephone number is:

**Time Warner Cable (Division Office)
355 Chicago Street
Buffalo, New York 14204
(716) 558-8559**

4. & 5. The applicant serves the following municipalities from the same headend or from a different headend in the same or adjacent counties; the number of subscribers in each of the communities as of December, 2007 are:

Amherst, Town	37,137	Lewiston, Town	3,449
Angola, Village	521	Lewiston, Village	1,421
Arcade, Town	142	Lockport, City	5,442
Arcade, Village	496	Lockport, Town	4,447
Aurora, Town	2,131	Machias, Town	389
Barker, Village	135	Newfane, Town	1,827
Blasdell, Village	914	Niagara Falls, City	14,638
Boston, Town	1,882	Niagara, Town	2,352
Brant, Town	199	North Collins, Town	111
Cambria, Town	1,121	North Collins, Village	330
Cheektowaga, Town	23,969	North Tonawanda, City	9,299
Clarence, Town	8,132	Orchard Park, Town	7,073
Colden, Town	652	Orchard Park, Village	1,194

Collins, Town	434	Pendleton, Town	1,667
Concord, Town	357	Perrysburg, Town	87
Delevan, Village	294	Perrysburg, Village	79
Depew, Village	4,777	Persia, Town	20
East Aurora, Village	2,249	Porter, Town	1,173
Eden, Town	1,768	Sardinia, Town	214
Elma, Town	3,218	Sloan, Village	1,000
Evans, Town	3,697	Somerset, Town	215
Farnham, Village	111	Springville, Village	1,139
Freedom, Town	92	Tonawanda, City	4,514
Gowanda, Village	806	Tonawanda, Town	20,350
Grand Island, Town	5,764	Wales, Town	543
Hamburg, Town	12,243	West Seneca, Town	13,056
Hamburg, Village	2,708	Wheatfield, Town	5,002
Holland, Town	634	Williamsville, Village	2,099
Kenmore, Village	4,495	Wilson, Town	856
Lackawanna, City	5,054	Wilson, Village	317
Lancaster, Town	6,675	Yorkshire, Town	290
Lancaster, Village	3,092	Youngstown, Village	650

6. The following signals are regularly carried by the Buffalo cable system: **(see attached channel card).**

7. The Applicant does provide channel capacity and video production facilities for local origination. During the past twelve (12) months, the Applicant has provided approximately 1,200 hours of locally originated programming of all types including PEG access.
8. The current monthly rates for service in the Town of Perrysburg system are: **(see attached).**
9. During the past twelve (12) months, the applicant has placed the following miles of new cable television plant (in footage) in operation in the following municipalities:

Amherst, Town	937	Lewiston, Town	1.99
Angola, Village	.16	Lewiston, Village	0
Arcade, Town	.33	Lockport, City	.26
Arcade, Village	.10	Lockport, Town	1.06
Aurora, Town	1.33	Machias, Town	0
Barker, Village	0	Newfane, Town	.07
Blasdeil, Village	0	Niagara Falls, City	.25
Boston, Town	1.34	Niagara, Town	.12
Brant, Town	0	North Collins, Town	0
Cambria, Town	.25	North Collins, Village	.02
Cheektowaga, Town	2.32	North Tonawanda, City	.15
Clarence, Town	2.47	Orchard Park, Town	1.92
Colden, Town	.50	Orchard Park, Village	0
Collins, Town	.16	Pendleton, Town	.39
Concord, Town	0	Perrysburg, Town	0
Delevan, Village	.05	Perrysburg, Village	.01
Depew, Village	.15	Persia, Town	0
East Aurora, Village	.15	Porter, Town	.47
Eden, Town	.59	Sardinia, Town	0
Elma, Town	1.13	Sloan, Village	0
Evans, Town	.67	Somerset, Town	0
Farnham, Village	0	Springville, Village	.43
Freedom, Town	0	Tonawanda, City	.03
Gowanda, Village	0	Tonawanda, Town	.53
Grand Island, Town	.66	Wales, Town	.79
Hamburg, Town	5	West Seneca, Town	1.44
Hamburg, Village	1.61	Wheatfield, Town	3.21
Holland, Town	.05	Williamsville, Village	.18
Kenmore, Village	.09	Wilson, Town	0
Lackawanna, City	.43	Wilson, Village	.05
Lancaster, Town	3.87	Yorkshire, Town	0
Lancaster, Village	.04	Youngstown, Village	.30

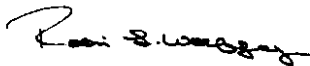
10. The company has previously submitted to the New York State Public Service Commission its technical plan to rebuild the system to 750 MHZ which was completed by end of 2000.
11. (A) The Applicant has previously filed with the New York State Public Service Commission its current Statement of Assessment pursuant to Section 817 of the Executive Law.

(B) The Applicant previously filed with the New York State Public Service Commission its current Annual Financial Report.
12. State and describe below any significant achievements and/or improvements that took place with respect to system operation during the past twelve (12) months.
13. No event or change has occurred during the past twelve (12) months which has had, or could have, a significant impact upon Applicant's ability to provide cable television services.

WHEREFORE, the Applicant, Time Warner Cable, requests that the New York State Public Service Commission grant this application and approve renewal of the Town of Perrysburg Certificate of Confirmation and Franchise Renewal Agreement.

Dated: 04/04/08

By: _____



Robin L. Wolfgang
Vice President, Public & Government Affairs
Time Warner Cable – Buffalo Division

**STATE OF NEW YORK
Town of Perrysburg
County of Cattaraugus**

In the Matter of the Renewal of the Cable Television Franchise Held by
CAP Exchange I, LLC, in the Town of Perrysburg, Cattaraugus County,
New York

RESOLUTION

An application has been duly made to the Board of the City/Town of Perrysburg, County of Cattaraugus, New York, by CAP Exchange I, LLC ("**Time Warner**"), a partnership organized under the laws of the State of New York doing business at 355 Chicago Street, Buffalo, NY 14204, and holder of a cable television franchise in the Town of Perrysburg for the approval of an agreement to renew Time Warner's cable television franchise for an additional ten (10) years commencing June 9, 2007. 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 Town of Perrysburg on June 11, 2007 at 7:30 P.M. and notice of the hearing was published in the Dunkirk Observer ~~on May 27 & June 3 2007~~

NOW, THEREFORE, the Board of the Town of Perrysburg 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

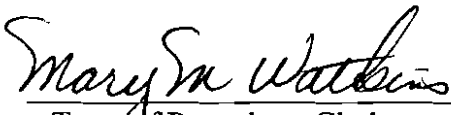
3. Time Warner has the financial, legal and technical ability to provide these services, facilities and equipment as set forth in its proposal attached; and
4. Time Warner can reasonably meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

BE IT FURTHER RESOLVED that the Board of the Town of Perrysburg hereby renews the cable television franchise of Time Warner in the Town of Perrysburg for ten (10) years commencing June 9, 2007 and expiring June 8, 2017.

BE IT FURTHER RESOLVED that the Board of the Town of Perrysburg hereby confirms that this Franchise Renewal Agreement replaces the original franchise last amended on June 9, 1997.

The foregoing having received a yea/nay vote was thereby declared adopted.

Dated: June 12, 2007



Town of Perrysburg Clerk

CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT

Town of Perrysburg

THIS AGREEMENT, executed this 11 th day of June, 2007, by and between the **Town of Perrysburg** (hereafter referred to as "the Municipality") by the _____ acting in accordance with the authority of the duly empowered local governing body, (hereinafter referred to as "the Board") and CAP Exchange I, LLC, the local place of business of which is located at 355 Chicago Street, Buffalo, NY 14204, hereinafter referred to as "Time Warner Cable."

WITNESSETH

WHEREAS, pursuant to the Municipality Law the Board has the exclusive power on behalf of the Municipality 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 Municipality of to any franchisee for or relating to the occupation of the Streets; and

WHEREAS, subject 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 Municipality 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 Municipality 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 Municipality 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) "Board" means the local governing body of the Municipality.
- (b) "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.
- (c) "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.
- (d) "Effective Date" of this agreement shall be the date of the issue of an order of approval of this franchise renewal agreement by the New York Public Service Commission.
- (e) "FCC" means the Federal Communications Commission, its designees and any successor hereto.
- (f) "Franchise" means the grant or authority given hereunder to Time Warner Cable to construct and operate a Cable Television System in the Municipality in accordance with the terms hereof.
- (g) "Gross Revenues" means all revenues (as determined in accordance with GAAP), net of franchise fees, actually received by and paid to Time Warner Cable by subscribers residing within the Municipality for Cable Television Service purchased by subscribers.
- (h) "May" is permissive.
- (i) "Municipality" means the Municipality. Wherever the context shall permit, Board, Council and Municipality shall be used interchangeably and shall have the same meaning under this Franchise.
- (j) "NYSPSC" means New York State Public Service Commission.

- (k) "Person" means an individual, partnership, association, corporation, joint stock company trust, corporation, or organization of any kind.
- (l) "Shall" or "will" are mandatory.
- (m) "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 Municipality.
- (n) "Subscriber" means any person lawfully receiving any Cable Television Service in the Municipality provided by Time Warner Cable over its Cable Television System.
- (o) "Time Warner Cable" means CAP Exchange I, LLC.
- (p) "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

The Municipality 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 Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality 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 Municipality, 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 cable, 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 Municipality 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.

- (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 Municipality 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 Municipality shall insert the following language or language of similar effect into any such franchise, consent or other document and/or promptly pass a resolution, conditioning the use of the Streets or any part thereof by any such Person, as follows:

"Grantee agrees that it will not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of any other franchised cable operator without the prior written consent of such cable operator. Grantee shall indemnify any other franchised cable operator, against any damages or expenses incurred by such cable operator as a result of any removal, damage, penetration, replacement or interruption of its services caused by the Grantee."
- (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. The municipality may not 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.
- (f) 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.
- (g) 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 Municipality to obtain a franchise from the Municipality for the construction, operation or maintenance of a cable system, then, at Time Warner Cable's sole option, it shall have the right immediately to terminate this Franchise. If Time Warner Cable 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.

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 Municipality in a way that reduces the regulatory or economic burdens for such persons, then, at Time Warner Cable's request option, the Municipality shall agree to amend this Franchise to take advantage of such regime change to similarly reduce the regulatory or economic burdens on Time Warner Cable.

It is the intent of this section, at its election, Time Warner Cable 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 Municipality.

SECTION 3 - APPROVAL OF COMPANY BY MUNICIPALITY

- (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 Municipality 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 Municipality hereby represents and warrants that this Franchise has been duly entered into in accordance with all applicable local laws. The Municipality 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 Municipality 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

The term of this Franchise shall be for ten (10) years).

SECTION 5 - ASSIGNMENT OR TRANSFER OF FRANCHISE

In the event Time Warner Cable transfer this franchise to another party, notice thereof shall be provided to the Municipality and the transferee shall agree, upon the transfer, to abide by the terms and conditions of its Franchise.

SECTION 6 - REVOCATION

- (a) The Municipality 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 Municipality 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 Municipality's right to revoke this Franchise shall immediately be extinguished; or
 - (ii) 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 Municipality 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 Municipality 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 Municipality 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 Municipality 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 Municipality evidence of such liability insurance policy or policies, in the form of a certificate of insurance naming the Municipality 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 Municipality pursuant to the issuance by the Municipality 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 Municipality where it shall hereafter be duly required 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 Municipality, 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 Municipality may reasonably require.

SECTION 9 - RELOCATION OF PROPERTY

- (a) Whenever the Municipality shall require the relocation or reinstallation of any property of Time Warner Cable in or on any of the Streets of the Municipality as a result of the relocation or other improvements by the Municipality 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 Municipality. 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 Municipality, 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 ten (10) 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 Municipality. 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 Municipality 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 Municipality to the extent it reasonably deems necessary so as to prevent the branches or growths from coming in contact with the wires, cable and other equipment of Time Warner Cable'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 Municipality 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.
- (c) Throughout the term of this Franchise, the cable system shall have a capacity of at least 750 Mhz.

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 - INSPECTION OF RECORDS

- (a) Municipality, 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) Municipality 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) Municipality will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided Time Warner Cable has advised Municipality of the confidential nature of the information. In the event that the Municipality receives request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Municipality 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

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.

SECTION 17 - SUBSCRIBER SERVICES

- (a) 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 as well as the cable service customer obligations established by the FCC.
- (b) 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.

- (c) Time Warner will provide a standard installation of 150 feet and one (1) outlet of basic and standard cable service, at no charge, to any building owned by the Municipality and used for municipal purposes and to any public primary or secondary school and public library, situated in areas served by its existing cable system.

SECTION 18 - FRANCHISE FEES

- (a) Time Warner Cable shall pay the Municipality a franchise fee in an amount equal to 3% of Time Warner Cable's Gross Revenues received by Time Warner Cable directly from subscribers.
- (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 quarter. Time Warner Cable shall submit to the Municipality, 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.

- (c) In addition to the provisions contained in this Franchise and in existing applicable ordinances, the Municipality 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 approved by the Municipality.
- (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) of the NYPSC rules, any valid reporting requirements contained in the franchise may be satisfied with system-wide statistics, except for reporting requirements related to franchise fees.

SECTION 20 – ADMINISTRATION OF THE FRANCHISE

The officer of the Municipality responsible for the continuing administration of this Franchise shall be the Town Supervisor.

SECTION 21 - 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 Municipality may change where notice is to be given by giving notice to the other.

When notices sent to Time Warner Cable:

Time Warner Cable
Attn: Area Manager Government & Community Affairs
355 Chicago Street
Buffalo, New York 14204
Telephone: (716) 558-8559
Facsimile: (716) 558-8576

When notices sent to the Municipality:

Supervisor Myrton Sprague
Town of Perrysburg
PO Box 250
Perrysburg, NY 14129
Telephone: 716-532-4090

SECTION 22 - 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; strikes; failure of suppliers; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; partial or entire failure of utilities or any other cause or event not reasonably within the control of 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 23 - 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 24 - FURTHER ASSURANCES

The Municipality 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 25 - 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 26 - 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 11 day of June, 2007.

CAP EXCHANGE I, LLC
d/b/a Time Warner Cable
through its Buffalo Division

By: 

Division President

TOWN OF PERRYSBURG

By: 

Officer Name

Title: Town Supervisor

**STATE OF NEW YORK
Town of Perrysburg
County of Cattaraugus**

In the Matter of the Renewal of the Cable Television Franchise Held by
CAP Exchange I, LLC, in the Town of Perrysburg, Cattaraugus County,
New York

RESOLUTION

An application has been duly made to the Board of the City/Town of Perrysburg, County of Cattaraugus, New York, by CAP Exchange I, LLC ("**Time Warner**"), a partnership organized under the laws of the State of New York doing business at 355 Chicago Street, Buffalo, NY 14204, and holder of a cable television franchise in the Town of Perrysburg for the approval of an agreement to renew Time Warner's cable television franchise for an additional ten (10) years commencing June 9, 2007. 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 Town of Perrysburg on June 11, 2007 at 7:30 P.M. and notice of the hearing was published in the Dunkirk Observer ~~on~~ May 27 & June 3 2007

NOW, THEREFORE, the Board of the Town of Perrysburg 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

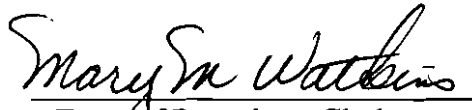
3. Time Warner has the financial, legal and technical ability to provide these services, facilities and equipment as set forth in its proposal attached; and
4. Time Warner can reasonably meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

BE IT FURTHER RESOLVED that the Board of the Town of Perrysburg hereby renews the cable television franchise of Time Warner in the Town of Perrysburg for ten (10) years commencing June 9, 2007 and expiring June 8, 2017.

BE IT FURTHER RESOLVED that the Board of the Town of Perrysburg hereby confirms that this Franchise Renewal Agreement replaces the original franchise last amended on June 9, 1997.

The foregoing having received a yea/nay vote was thereby declared adopted.

Dated: June 12, 2007


Town of Perrysburg Clerk