



June 25, 2012

Mr. Kevin Sansalone, Esquire  
Law Director  
City of Fairmont  
200 Jackson Street  
P.O. Box 1428  
Fairmont, West Virginia 26555-1428

**Via Certified Mail  
Return Receipt Requested**

Dear Mr. Sansalone:

Enclosed you will find an executed copy of the franchise agreement between the City of Fairmont West Virginia and Time Warner Cable.

As always, if you have any questions or concerns regarding this or any other cable related matter, please contact me directly at (513) 386-5908 or via e-mail at [pam.mcdonald@twcable.com](mailto:pam.mcdonald@twcable.com). Our local Retail Manager Doug Young may be reached at (304) 623-3932.

We look forward to providing your residents with quality cable television and a variety of products and services in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela McDonald".

Pamela McDonald  
Vice President of Government Relations  
Time Warner Cable

CC: Jay Rogers, City Manager of Fairmont ✓  
Doug Young, Time Warner Cable Retail Manager

Enclosure

**FRANCHISE AGREEMENT  
TO PROVIDE CABLE TELEVISION SERVICES**

**Between**

**The City of Fairmont West Virginia**

**AND**

**Time Warner Cable LLC**

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and between Fairmont (the "Grantor") and Time Warner Cable LLC d/b/a Time Warner Cable.

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

WHEREAS, the Company is providing such service pursuant to a franchise dated September 1, 1996 and has substantially complied with the material terms of the franchise and applicable law; and

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

WHEREAS, the franchise granted herein is non-exclusive

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

IT IS MUTUALLY AGREED AS FOLLOWS:

### SECTION 1. SHORT TITLE

This Franchise Agreement shall become known and may be cited as the Fairmont Time Warner Cable Franchise Agreement.

### SECTION 2. DEFINITIONS.

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 2. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- 2.1 "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. § § 521-611) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106

Stat. 1460 (1992) and the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996), and as may be further amended.

- 2.2 **“Cable Service”** shall have the meaning provided under Section 602(6) of the Cable Act (47 U.S.C. §522(6) as may be amended.
- 2.3 **“Cable System”** or **“System”** shall have the meaning provided under Section 602(7) of the Cable Act (47 U.S.C. §522(7) as may be amended.
- 2.4 **“Channel”** means a portion of the electromagnetic frequency spectrum or any other means of transmission (including, without limitation, optical fibers or any other means now available or that may become available) which is used in a cable television system and is capable of delivering a television channel as television channel is defined by FCC regulation.
- 2.5 **“Effective Date”** is May 10, 2012
- 2.6 **“FCC”** means the Federal Communications Commission, its designee, or any successor thereto.
- 2.7 **“Franchise Area”** means the territorial area of the (name of local franchising authority). Such area shall include all areas annexed by the (name of local franchising authority). For purposes of this Agreement, annexations shall be effective upon sixty (60) days notice from the Grantor to Grantee, including a list of affected addresses. If Grantee is operating a cable system in an annexed area immediately prior to the date of annexation under the terms of another franchise, Grantee may, at its option, continue to operate under the terms of such other franchise until any date up to the expiration of said franchise at which time Grantee will operate its system in the annexed area under the terms of this Franchise.
- 2.8 **“Grantee”** means [insert name of Time Warner Cable entity] or any successor thereto.
- 2.9 **“Gross Revenues”** means all revenue as determined in accordance with generally accepted accounting principles (“GAAP”) received by Grantee from Subscribers and derived from the operation of the cable system to provide cable service. Gross Revenues shall not include monies received by Grantee attributable to its payment of franchise fees which it has passed through or any taxes on services or equipment furnished by Grantee which are imposed by the state, county, local or other governmental unit and collected by Grantee on behalf of said governmental unit, bad debt or monies received by Grantee that Grantee is required to expend for promotional activities.
- 2.10 **“Person”** means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, private or public, whether for profit or not-for-profit.

- 2.11 “Public Property” means any real property owned by any governmental unit.
- 2.12 “Streets” means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held and/or maintained by the Grantor.
- 2.13 “Subscriber” means any Person who lawfully receives Cable Service provided by Grantee by means of or in connection with the Cable System whether or not a fee is paid for such Cable Service.

### SECTION 3. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

#### 3.1 Grant of Franchise.

Upon the Effective Date and subject to the terms and conditions of this Agreement and of applicable law, Grantee is granted a non-exclusive franchise for the occupation and use of the Grantor’s Streets for the installation, operation, maintenance, repair, upgrade, and removal of the Cable System (the “Franchise”). This Agreement specifically gives Grantee the right to provide Cable Service via the Cable System within the Franchise Area.

#### 3.2 Authority for Use of Streets.

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

#### 3.3 Franchise Term.

This Franchise shall commence upon ~~May 10, 2022~~ and shall expire ten (10) years thereafter on May 9, 2022 unless renewed, revoked or terminated sooner as herein provided.

#### 3.4 Extension of System.

- A. Residents in those areas with a density of at least thirty-five (35) homes per cable mile, shall be provided service upon payment of the standard installation charge and applicable monthly fees; except that installations requiring aerial drops in excess of one hundred



If to Grantee: Time Warner Cable  
Attn: Vice President of Government Relations  
11252 Cornell Park Drive  
Cincinnati, Ohio 45242

With a copy to:

Time Warner Cable  
Attn: Law Department/Regulatory  
60 Columbus Circle  
New York, NY 10023

Such addresses may be changed by either party upon notice to the other party given as provided in this Section. In addition, either party may agree to receive certain notices, reports or demands by email at an email address which it provides to other party.

**3.7 Franchise Non-Exclusive.**

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

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

- D. Notwithstanding any other provision in this Franchise: In the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to construct, operate or maintain a cable system in the Franchise Area to obtain a franchise from the Grantor for the construction, operation or maintenance of a cable system, then, Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise. Furthermore, in the event any change to state or federal law occurring during the term of this Franchise materially alters the regime of cable franchising applicable to any persons desiring to construct, operate or maintain a cable system in the Franchise Area in a way that reduces the regulatory or economic burdens for such person, then, at Grantee’s request, Grantor shall agree with Grantee to amend this Franchise to similarly reduce the regulatory or economic burdens on Grantee. It is the intent of this section that, at Grantee’s election, Grantee shall be subject to no more burdensome regulation or provided lesser benefits under this Franchise than any other persons that might construct, operate or maintain a cable system in the Franchise Area.

#### SECTION 4. TECHNICAL STANDARDS.

##### 4.1 Technical Standards.

The Cable System shall be designed, constructed, and operated so as to meet the technical standards promulgated by the FCC relating to Cable Communications Systems contained in part 76 of the FCC’s rules and regulations, as may be amended from time to time.

#### SECTION 5. EAS.

##### 5.1 Emergency Alert System.

Grantee shall comply with the Emergency Alert System regulations of the FCC. The emergency alert system shall meet all Federal and State requirements.



## SECTION 6. CONSTRUCTION PROVISIONS.

### 6.1 Construction Standards.

- A. Grantee shall construct and maintain its cable system using materials of good and durable quality. All work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough, and reliable manner.
- B. All construction practices shall be in accordance with all applicable Federal and state law and generally applicable local codes.
- C. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the applicable National Electrical Safety Code and National Electrical Code.
- D. All of Grantee's plant and equipment (a) shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices; and (b) shall not endanger or interfere with ordinary use of the rights-of-way or unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- E. Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

### 6.2 Construction Codes.

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

### 6.3 Repair of Streets and Property.

- A. Any and all Streets, municipal property, or private property, which are destroyed or damaged by Grantee during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the Cable System shall be promptly replaced or repaired by Grantee, at its expense, and restored to a serviceable condition as good as that prevailing prior to Grantee's disturbance of, or damage to, the property. If Grantee fails to repair, replace, or otherwise correct a Street or property following reasonable written notice by the Grantor, the Grantor may complete any repair, replacement, restoration or other correction and invoice Grantee for the same.

6.4 Use of Existing Poles.

- A. Poles may be erected by Grantee subject to any generally applicable regulation by Grantor with regard to location, height, type, and any other pertinent aspect. It is the responsibility of Grantee to secure agreements for use of poles or conduits owned by third parties.
- B. Where poles already existing for use in serving the Franchise Area are available for use by Grantee, but it does not make arrangements for such use, the Grantor may require Grantee to use such poles if it determines that the public convenience would be enhanced thereby, and if the Grantee can obtain such use on reasonable terms and conditions and at less cost to Grantee than erecting its own poles. No term or condition shall be reasonable if not consistent with pole attachments rates and conditions established by the FCC and/or the State of West Virginia.

6.5 Undergrounding of Cable.

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

6.6 Reservation of Street Rights.

- A. Nothing in this Agreement shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
- B. All such work shall be done, insofar as practicable in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.
- C. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any Street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, Street or any other public improvement, at least thirty (30) days written notice shall be given to Grantee by the Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by the Grantor so that the same shall not interfere with the said public work of the Grantor, as reasonably determined by the Grantor and such removal or replacement shall be at the expense of Grantee, provided, however, if any other right-of-way user is compensated for such work by the Grantor, then Grantee shall be similarly compensated.
- D. **The City shall not be liable for interrupting Franchisee's cable service caused by employees of the city in the proper performance of their duties. Nothing contained in**

- E. this Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, re-grading, or changing the line of any Street or public place or with the construction or reconstruction of any sewer or water system or with any other work.

6.7 Trimming of Trees.

Grantee shall have the authority to trim trees, in accordance with all generally applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Streets, alleys, sidewalks, and public places of the Grantor so as to prevent the branches of such trees from interfering with the Cable System.

6.8 Movement of Facilities.

In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Agreement, in order to lawfully move a large object, vehicle, building or other structure over the Streets of the Franchise Area, upon two (2) weeks written notice by the Grantor to Grantee, Grantee shall move, such of its facilities as may be required to facilitate such movements. The Person requesting the temporary removal shall pay Grantee in advance the costs Grantee incurs in moving its facilities. Any service disruption provisions of this Agreement shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities pursuant to this Section results in temporary service disruptions.

SECTION 7. REPORTING PROVISIONS.

7.1 Audit and Inspection.

The Grantor, its agents and its representatives shall have the authority, during normal business hours, to arrange for and conduct an inspection of the books, records, maps, plans, financial statements and other like materials of Grantee where such inspection is necessary to ascertain Grantee's compliance with the material terms of this Franchise. Grantee will be given thirty (30) business days advance written notice of such an inspection request and a description, to the best of the Grantor's ability, of the materials it wants to inspect.

7.2 Communications with Regulatory Agencies.

Copies of all publicly available petitions, applications, communications and reports submitted by Grantee, to any federal or state regulatory commission or agency relating to the Cable System operated pursuant to this Franchise shall also be made available to the Grantor upon request. Copies of publicly available responses from the regulatory agencies to Grantee shall likewise be made available to the Grantor upon request.

### 7.3 Confidentiality.

Grantor shall maintain as confidential any information provided to it by Grantee under the terms of this Franchise which Grantee has designated as confidential. In the event that Grantor believes at any time that it is required by law to disclose such information to a third party, Grantor will so notify Grantee at a time prior to any such disclosure that affords Grantee a reasonable opportunity to take such action as it deems necessary to prevent such disclosure, including seeking relief in court.

## SECTION 8. CONSUMER PROTECTION PROVISIONS.

### 8.1 Rate Regulation.

Grantee's rate and charges for cable service shall be subject to regulation in accordance with Federal law.

### 8.2 Customer Service.

Grantee shall comply with the cable customer service and consumer protection standards of the FCC.

## SECTION 9. FRANCHISE FEES.

- A. Grantee shall pay to the Grantor a franchise fee in an amount equal to five percent 5% of Grantee's Gross Revenues.
- B. Payments due the Grantor under this provision shall be computed at the end of each calendar year quarter. Payments shall be due and payable for each year quarterly, on April 30, July 31, October 31 and January 31. ~~not later than February 15 of the following year.~~ Each payment shall be accompanied by a brief report of Grantee's Gross Revenues for the preceding year.
- C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to audit and recomputation by the Grantor.
- D. No auditor engaged by the Grantor shall be compensated on a success based formula, e.g., payment based on a percentage of an underpayment, if any.
- E. Grantee shall not conduct an audit more frequently than once every three (3) years and may not audit any period earlier than six (6) years prior to the time the audit is conducted.

- F. The amount of franchise fee and the method of calculation shall be competitively neutral when compared to the amount or method of calculation of the franchise fee in any other cable franchise granted by Grantor.

#### SECTION 10. PEG ACCESS.

Grantee shall designate one channel for non-commercial public, educational and governmental (PEG) use. To the extent required by federal or state law, the channel used for PEG access will be carried as part of the basic service tier. The City may set rules and procedures for use of the designated PEG channel consistent with non-commercial PEG purposes.

#### SECTION 11. COMPLIMENTARY SERVICE

Grantee shall provide upon request and maintain by aerial installation one single standard outlet of Basic Service and Standard Programming Service tiers, without charge, to any public K-12 school, fire station, public library or city Administration building located within the franchise area provided such locations are within 150 feet from the Franchisee's existing aerial distribution lines.

#### SECTION 12.1 GENERAL FINANCIAL AND INSURANCE PROVISIONS.

##### 12.1 Indemnity.

- A. Grantee shall indemnify, defend, and hold harmless the Grantor for all damages and penalties incurred by Grantor as a result of Grantee's conduct or performance under this Agreement or exercise of the Franchise. These damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omission, theft, fire, and all other damages arising out of Grantee's exercise of the Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement; such indemnification shall include, but not be limited to, reasonable attorney's fees and costs. Grantee's obligations hereunder shall not extend to any claim or loss to the extent arising from the Grantor's negligence; misconduct; [the content of programming carried on any channel set aside for public educational or governmental use, or] channels leased pursuant to 47 U.S.C. §532; and, the Grantor's use of Grantee's emergency alert system ("EAS") capability.
- B. In order for the Grantor to assert its rights to be indemnified and held harmless, the Grantor must:
- (1) promptly notify Grantee of any claim or legal proceeding which gives rise to such right;

- (2) afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
- (3) fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

**12.2 Liability Insurance.**

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

**SECTION 11. REVOCATION AND REMOVAL**

**13.1. City's Right to Revoke.**

- A. In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this Agreement and the Franchise and all rights and privileges pertaining thereto, after following the procedures outlined herein, in the event that Grantee substantially violates any material provision of this Agreement and fails to remedy such violation as required.
- B. Whenever the Grantor finds that Grantee has allegedly violated one or more material terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as

to afford the Grantee an opportunity to investigate and/or remedy the alleged violation. Grantee shall have sixty (60) days subsequent to receipt of the notice in which to correct the violation. Grantee may, within thirty (30) days of receipt of notice, notify the Grantor that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and stay the running of the above-described time.

- C. Grantor shall hear Grantee's dispute at a regularly scheduled or specially scheduled Council meeting of which Grantee has been given at least two weeks notice. Grantee shall have the right to subpoena and examine witnesses and cross-examine any other witnesses. The Grantor shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination and provide such findings to Grantee. If a violation is found, Grantee may petition for reconsideration.
- D. If after hearing the dispute, the claim of non-compliance is upheld by the Grantor, then Grantee shall have sixty (60) days from the date of receipt of Grantor's written decision within which to remedy the violation.
- E. The time for Grantee to correct any alleged violation shall be extended by the Grantor if the necessary action to correct the alleged violation is of such a nature or character as to require more than sixty (60) days within which to perform, provided Grantee commences corrective action and thereafter exercises due diligence to correct the violation.
- F. In the event that Grantee fails to remedy the violation within the time frame set herein, Grantor may revoke the franchisee by vote of its governing body after a public hearing of which Grantee has been given at least two weeks notice and at which Grantee shall have the right to be heard; to subpoena and examine witnesses; and cross-examine any other witnesses. Grantor shall state in writing the basis for any decision to revoke the Franchise. Any revocation hereunder is subject to appeal by Grantee in a court of competent jurisdiction.

### 13.2. Removal After Revocation or Termination.

- A. At the termination of the Franchise Term if renewal has been finally denied in accordance with Federal law, or upon revocation of the Franchise, as provided for herein, the Grantor shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the Cable System from Streets and Public Property within the Franchise Area. In so removing the Cable System, Grantee shall refill and compact at its own expense any excavation that shall be made and shall leave all Streets, Public Property and private property in as good a condition as that prevailing prior to Grantee's removal of the Cable System, and without affecting, altering or disturbing in anyway electric, telephone or utility, cables wires or attachments. The Grantor, or its delegate, shall have the right to inspect and approve the condition of such Streets and Public Property after removal. The insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire term of removal.

## **SECTION 14. TRANSFER**

### **14.1 Sale or Transfer of Franchise.**

- A. Grantee shall provide at least sixty days notice to Grantor in the event the Franchise is to be sold, assigned or otherwise transferred.
- B. Within thirty (30) days of the consummation of any Franchise Transfer subject to the provisions of this Section, Grantee shall notify the Grantor of the closing of such Franchise Transfer.

## **SECTION 15. RIGHTS OF INDIVIDUALS PROTECTED.**

### **15.1 Discriminatory Practices Prohibited.**

- A. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of age, race, creed color, national origin or sex. Grantee shall comply at all times with all applicable federal and state laws relating to non-discrimination.
- B. Grantee will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment on the basis of age, race, creed, color, national origin or sex.

## **SECTION 16. MISCELLANEOUS PROVISIONS.**

### **16.1 Compliance with Laws.**

Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Agreement, the provisions of this Agreement shall govern.

### **16.2 Severability.**

If any provision of this Agreement is held to be invalid or unenforceable, that provision will be ineffective but the remainder of this Agreement will not be affected, and it will in all other respects, continue to be effective and enforceable. If the holding of invalidity or unenforceability is subsequently repealed, unenforceable or otherwise changed so that the provision which had been held invalid is no longer in conflict with the law, rules and regulations then in effect, the provision will return to full force and effect.



16.3 Controlling Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia.

16.4 No Third Party Beneficiaries.

This Agreement is not intended to, and does not, create any rights or benefits on behalf of any person other than the parties to this Agreement.

16.5 Captions.

The paragraph captions and headings in this Agreement are for convenience and reference purpose only and shall not affect in any way the meaning of interpretation of this Agreement.

16.6 Calculation of Time.

Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period, or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

16.7 Amendments.

This Agreement may be amended only by the mutual consent of the Grantor and Grantee. Any amendment must be in writing and executed by the Grantor and Grantee.


16.8 Force Majeure.

In no event, and notwithstanding any contrary provision in this Franchise, shall this Franchise be subject to revocation or termination, or Grantor or Grantee be subject to penalty or prejudice or in any way liable for non-compliance with or delay in the performance of any obligations hereunder, where its failure to cure or take reasonable steps to cure is due to reason of Acts of God; acts of public enemies; order of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots; strikes; failure of suppliers; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; partial or entire failure of utilities or any other cause or event not reasonably within the control of the party. Neither Grantor nor Grantee shall be deemed to be in violation or default during the continuance of such inability and such party shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of the obligations


hereunder shall automatically extended for a period of time equal to the period of the existence of any such events or conditions and such reasonable time thereafter as shall have been necessitated by any such events or conditions.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be signed by their duly authorized officials and officers as of May 10, 2012.

City of Fairmont West Virginia

By:   
Title: City Manager

Time Warner Cable LLC

By:   
Title: WEST REGION CFO

Approved as to form:



Time Warner

**ORDINANCE NO. 1554**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF FAIRMONT GRANTING A NON-EXCLUSIVE FRANCHISE TO TIME WARNER CABLE, LLC, d/b/a TIME WARNER CABLE FOR PURPOSES OF CONSTRUCTING, OPERATING AND MAINTAINING A CABLE SYSTEM AND PROVIDING CABLE AND CABLE RELATED SERVICES TO CUSTOMERS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRMONT AND APPROVING THE FORM AND CONTENT OF THE FRANCHISE AGREEMENT BETWEEN THE CITY AND TIME WARNER CABLE AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF; LIMITATIONS**

**WHEREAS**, Time Warner Cable, LLC , hereinafter Time Warner, has negotiated with the City of Fairmont for a ten (10) year non-exclusive franchise for purposes of continuing the operation and maintenance of a cable system and providing cable and cable related services to Time Warner's customers within the corporate limits of the City of Fairmont;

**WHEREAS**, the terms and conditions of said franchise have been reduced to writing and are set out in that certain "Franchise Agreement" by and between the City of Fairmont and Time Warner, copy of which agreement is attached hereto and made a part hereof;

**WHEREAS**, the franchise fee to be paid the City of Fairmont by Time Warner has been previously established by Ordinance No. 1139 adopted May 24, 2000 at the maximum allowable by law, which is 5% of the Gross Revenues received from the operation of the cable system;

**WHEREAS**, Time Warner made application for a franchise and submitted a letter of intent for a franchise agreement with the City of Fairmont on June 17, 2011; and

**WHEREAS**, West Virginia Code §8-31-1 and §8-11-3(9) require that the action of the governing body in granting a franchise shall be by ordinance.

**NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS:**

**Section 1: Grant:** The Council of the City of Fairmont hereby grants Time Warner Cable, LLC, a non-exclusive franchise, as described in that certain Franchise Agreement by and between the City of Fairmont and Time Warner to construct, operate and maintain a cable system and provide cable and cable related services to its customers within the corporate limits of the City of Fairmont;

**Section 2: Approval:** The form and substance of the aforementioned Franchise Agreement be and is hereby in all respects approved, a copy of which Agreement is attached hereto and made a part hereof as if fully set out verbatim herein.

**Section 3: Authority:** The City Manager for the City of Fairmont be and is hereby authorized, empowered and directed to execute and deliver for and in the name and on behalf of the City of Fairmont, the aforementioned Franchise Agreement and any other agreements, documents, instruments, certificates, and other papers associated therewith, and to do all acts and things as may be reasonable, necessary and desirable to consummate the transaction contemplated hereby and otherwise carry out the purpose and intent of this Ordinance, all with such change or changes from the respective form as approved hereunder as the City Manager executing the same may approve, such approval and the propriety and necessity of said changes to be conclusively evidenced by the execution thereof.

**Section 4: Regulatory Approvals:** Nothing herein shall be construed to provide a waiver of any obligation on the part of Time Warner to apply for, obtain and maintain all necessary approvals, licenses, permits, certificates of convenience and necessity, etc., from the appropriate federal, state and local authorities to offer cable and cable related service or to perform any work or construct any facilities directly or indirectly within the corporate limits of the City of Fairmont.

**Section 5. Certificates:** The Franchise herein granted shall not become effective until Time Warner has submitted to the City of Fairmont evidence of all necessary regulatory approvals, certificates, permits, and licenses and all certificates evidencing the insurance coverages and bonds required by the aforementioned Franchise Agreement.

This Ordinance shall become effective thirty (30) days after adoption.

Adopted this 10th day of April, 2012.



MAYOR

ATTEST:

  
CITY CLERK

WE, the undersigned officials of the City of Fairmont, West Virginia, do hereby certify that  
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was introduced and publicly read in its entirety at the Regular Meeting of Council held March 13, 2012 and was published in the Times-West Virginian on March 19, 2012 and March 26, 2012, pursuant to Charter provisions Section 2.13(d); a public hearing was held on April 10, 2012. There being no request that the proposed Ordinance be read in its entirety for a second time, the Clerk read the title only and copies were available to the public as required by Ordinance No. 499. The Ordinance was duly adopted pursuant to the Charter of the City of Fairmont and West Virginia Code; signed by the undersigned officials and filed in the office of the City Clerk.

Adopted by Council of the City of Fairmont, West Virginia, this the 10<sup>th</sup> day of April, 2012.

ATTEST:

Janet L. Keller  
CITY CLERK

William H. Burnett  
MAYOR

A TRUE COPY:

William H. Burnett  
MAYOR, CITY OF FAIRMONT, WEST VIRGINIA

Janet L. Keller  
CLERK, CITY OF FAIRMONT, WEST VIRGINIA

APPROVED AS TO FORM:

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ATTORNEY, CITY OF FAIRMONT, WEST VIRGINIA