

Resolve 3-14/15

Passage: 9-0 on 12/15/2014

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 12/25/2014

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**RESOLUTION CONSENTING, SUBJECT TO CONDITIONS,
TO THE TRANSFER OF CONTROL OF TIME WARNER CABLE
NORTHEAST LLC FROM TIME WARNER CABLE INC.
TO COMCAST CORPORATION**

WHEREAS, on or about May 15, 1986, the City of Portland (“City”) and Time Warner Cable Northeast LLC (f/k/a Public Cable Company) (“Franchisee”) entered into a certain Franchise Agreement effective as of May 15, 1986, as amended and extended (“Franchise Agreement”), which granted to Franchisee the nonexclusive, revocable right, privilege, and obligation to construct, operate, and maintain and reconstruct in, on, over, under and across the streets of the City, a cable television system, including all wires, conduits, fixtures and appurtenances, for the purpose of reception, transmission, collection, amplification, origination, distribution or redistribution of video, audio or other signals and for the development of cable and broadband telecommunication services for private and public use in and to the City and its residents; and

WHEREAS, Section 6 of the Franchise Agreement provides, among other things, that the Franchise Agreement cannot be sold, transferred, leased, assigned or disposed of in whole or in part by any means without the prior consent of the City expressed by a City Council (“Council”) resolution; and

WHEREAS, Section 6 of the Franchise Agreement further provides, among other things, that every change, transfer, or acquisition of control of the Franchisee shall make the Franchise Agreement subject to cancellation unless and until the City shall have consented thereto, which consent shall not be unreasonably withheld; and

WHEREAS, Time Warner Cable Inc. (“Time Warner Cable”), the parent company of Franchisee, Comcast Corporation (“Comcast”), and Tango Acquisition Sub, Inc. (“Tango”), have entered into an Agreement and Plan of Merger dated as of February 12, 2014 (“Merger Agreement”), pursuant to which Time Warner Cable will merge with and into Tango, a wholly-owned subsidiary of Comcast, with Time Warner Cable as the surviving company; and

WHEREAS, by the Merger Agreement, Time Warner Cable will become a wholly-owned subsidiary of Comcast, and thus Comcast will acquire control of the Franchisee; and

WHEREAS, by letter to the City Manager dated April 9, 2014, Comcast requested the City’s consent to the transfer of control of the Franchisee that would occur as a result of the consummation of the Merger Agreement (“Transfer”) and enclosed an Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise (“Application”); and

WHEREAS, 47 U.S.C. § 537 and 47 C.F.R. § 76.502 provide that a request for consent to assignment or transfer of a cable franchise will be deemed granted if the franchising authority does not render a final decision within 120 days of the filing of a complete application for consent, unless the requesting party and the franchising authority agree to an extension of time; and

WHEREAS, the City reviewed the Application; and

WHEREAS, by letter to Comcast dated May 7, 2014, the City informed Comcast that the information provided in the Application was not complete and requested additional information from Comcast, and stated that the City did not believe the statutory 120-day review period had begun; and

WHEREAS, by letter to the City Manager dated May 16, 2014, Comcast provided certain additional information in partial response to the City’s letter dated May 7, 2014, disagreed that the Application was incomplete, and asserted that the 120-day period had begun; and

WHEREAS, by letter to the City Manager dated July 29, 2014, Comcast and Time Warner Cable consented to an extension of the deadline set forth in 47 C.F.R. § 76.502(a) to and including September 30, 2014; and

WHEREAS, by letter to the Assistant City Manager dated September 11, 2014, Comcast and Time Warner Cable consented to an extension of the deadline set forth in 47 C.F.R. § 76.502(a) to and including November 10, 2014; and

WHEREAS, by letter to outside counsel for the City dated October 27, 2014, Comcast and Time Warner Cable consented to an extension of the deadline set forth in 47 C.F.R. § 76.502(a) to and including December 15, 2014; and

WHEREAS, by letter to outside counsel for the City dated December 1, 2014, Comcast and Time Warner Cable consented to an extension of the deadline set forth in 47 C.F.R. § 76.502(a) to and including December 31, 2014; and

WHEREAS, the City conducted an audit of Franchisee's franchise fee payments to the City under the Franchise Agreement and the City Municipal Code for the period of 2009-2013; and

WHEREAS, the City and Franchisee have agreed to settle claims arising out of the fee audit, with the terms and conditions of that settlement being set forth in a Settlement Agreement between the City and Franchisee; and

WHEREAS, the City has reviewed the Application, Comcast's aforementioned response for additional information, and other relevant materials and has determined that consent to the Transfer would serve the public convenience, safety and general welfare if supported by certain conditions set forth herein to protect the rights of the City and to serve the public convenience, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Portland, Maine, hereby:

SECTION 1. consents to the Transfer, subject to the following conditions:

- (a) The Transfer shall be consummated by June 1, 2015 on the terms and conditions set forth in this Resolution and, to the extent not inconsistent with this Resolution, the Application. If the

Transfer has not closed by June 1, 2015, this consent shall be voidable, *nunc pro tunc*, at the option of the City.

- (b) Except for the claims specifically released by the City in Section 2 of the Settlement Agreement attached hereto as Exhibit C, after consummation of the Transfer, Comcast shall ensure that Franchisee continues to assume and be responsible for all past, current, and future obligations and liabilities of the Franchisee under the Franchisee Agreement and applicable provisions of the City Municipal Code, including those obligations and liabilities both known and unknown on the date of this Resolution or at the time of consummation of the Transfer.
- (c) After consummation of the Transfer, Comcast shall comply, or cause Franchisee to comply, fully with the terms and conditions of the Franchise Agreement and all applicable provisions of the City Municipal Code.
- (d) After consummation of the Transfer, neither the Franchisee's system nor the rights and privileges granted by the Franchise Agreement shall be assigned or transferred, in whole or in part, to Comcast or to any Comcast subsidiary or affiliate other than the Franchisee without filing a written application to the City and obtaining the Council's prior written consent to such assignment or transfer.
- (e) On or before December 31, 2014, Comcast shall file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A, executed by Comcast and certified and sworn to as the legally binding act of Comcast.
- (f) On or before December 31, 2014, the Franchisee shall file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit B, executed by Franchisee and certified and sworn to as the legally binding act of Franchisee.
- (g) On or before December 31, 2014, the Franchisee shall file with the City the Settlement Agreement attached hereto as Exhibit C, executed by Franchisee.

BE IT FURTHER RESOLVED, that:

SECTION 2. If any of the conditions specified in Section 1 hereof are not satisfied, then the City's consent to the Transfer is denied-as of December 15, 2014.

SECTION 3. If Comcast does not execute and file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A, Franchisee does not execute and file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit B, or Franchisee does not execute and file with the City the Settlement Agreement attached hereto as Exhibit C, on or before December 31, 2014, as specified in Section 1, then the Application shall be denied as of the date of this Resolution with no further action from the Council.

SECTION 4. Any material misrepresentation in the Application shall constitute a material violation of the Franchise Agreement and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 5. Upon the filing of the executed Acceptances set forth in Section 1(e) and (f) and the executed Settlement Agreement set forth in Section 1(g) any violation of this Resolution thereafter by Comcast or the Franchisee, and any breach of the Settlement Agreement by Franchisee, shall constitute a violation of the Franchise Agreement and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 6. This Resolution shall not be construed to grant or imply the Council's consent to any other transfer or transaction that may require the City's consent under the Franchise Agreement or applicable federal, state or City law. The City reserves all of its rights with regard to any such future transactions.

SECTION 7. The Council's consent to the Transfer shall not constitute a waiver or release of any of the City's rights under the Franchise Agreement or applicable federal, state or City law, or, except for the claims specifically released by the City in Section ___ of the Settlement Agreement, of any claims the City may have against the Franchisee or its successors,

regardless of whether such rights or claims arose before or after the date of this Resolution or the date of consummation of the Transfer.

SECTION 8. This Resolution is a final decision on the Application within the meaning of 47 U.S.C. § 537, and for these purposes the Application is deemed acted upon on the date that this Resolution is adopted by the Council.

WHEREUPON, Mayor Michael Brennan declared this resolution adopted, affixed his signature and the date and ordered that it be recorded.

Michael F. Brennan, Mayor

Date: _____

ATTEST:

**APPROVED AS TO FORM AND
LEGALITY THIS _____ DAY OF
_____, 2014**

EXHIBIT B

**ACCEPTANCE OF THE FRANCHISE TRANSFER RESOLUTION BY TIME
WARNER CABLE NORTHEAST LLC**

Time Warner Cable Northeast LLC, a _____ limited liability corporation (“Franchisee”) and the current holder of the cable television franchise by and between the City of Portland, Maine, and Time Warner Cable Northeast LLC, dated as of May 15, 1986, as amended and extended (“Franchise Agreement”), hereby accepts and agrees to abide by the terms and conditions of Resolution No. _____, a Resolution of the City Council of the City of Portland, Maine, Consenting, Subject to Conditions,, to the Transfer of Control of Time Warner Cable Northeast LLC from Time Warner Cable Inc. to Comcast Corporation, adopted _____, 2014.

Franchisee warrants and represents that this Acceptance of the Franchise Transfer Resolution is executed by a person lawfully authorized to act on its behalf and that this Acceptance of the Franchise Transfer Resolution is a legally binding obligation of Franchisee.

TIME WARNER CABLE NORTHEAST LLC
A _____ LIMITED LIABILITY
CORPORATION

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF _____ :

COUNTY OF _____ :

I HEREBY CERTIFY that on this ____ day of _____ 2014, before me, the subscriber, a Notary Public of the State of _____, in and for _____, aforesaid, personally appeared _____ of Time Warner Cable Northeast LLC, and acknowledged the foregoing Acceptance of the Franchise Transfer Resolution, in _____, _____, to be the act and deed of Time Warner Cable Northeast LLC.

As WITNESS my hand and Notary Seal.

Notary Public
State of _____
My Commission Expires _____

[Seal]

EXHIBIT C

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Settlement Agreement") is made as of the date last signed below (the "Effective Date") by and between Time Warner Cable Northeast LLC, its subsidiaries, affiliates, parents, predecessors, successors and assigns ("TWC"), and the City of Portland, Maine (the "City"). TWC and the City are referred to individually herein as a "Party" and collectively herein as the "Parties."

WHEREAS, TWC provides service to customers in the City pursuant to a Franchise Agreement dated May 15, 1986 between the Parties (the "Franchise Agreement"); and

WHEREAS, the City conducted an audit (the "Audit") of the franchise fee payments made by TWC pursuant to the Franchise Agreement for the period from January 2009 through December 2013 (the "Audit Period"); and

WHEREAS, the Audit concluded that TWC underpaid franchise fees for the Audit Period;
and

WHEREAS, TWC disputes the conclusions of the Audit, which were set forth in a report produced by the City (the "Audit Report"); and

WHEREAS, there is a dispute between the Parties regarding the amount of franchise fees owed to the City by TWC pursuant to the Franchise Agreement; with the City claiming that TWC owes the City unpaid franchise fees plus interest for the Audit Period ("City Claims"), and TWC claiming that it has overpaid the City franchise fees for the Audit Period ("TWC Claims") (together, the "Dispute"); and

WHEREAS, the Parties desire to fully settle and resolve the Dispute as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, TWC and the City, each intending to be legally bound hereby, covenant and agree as follows:

1. Settlement Payment by TWC and Increase of Franchise Fee

Within thirty (30) days after the Effective Date of this Agreement, TWC shall submit payment to the City of One Hundred Thousand Dollars (\$100,000.00) in settlement by both parties of the Dispute for the Audit Period. TWC also agrees to commence, effective January 1, 2015, increasing its franchise fee payments to the City by including the franchise fees, Federal Communications Commission ("FCC"), NSF and processing fees related to cable service that TWC collects from its subscribers in the gross revenues base on which franchise fees are calculated and paid.

2. Release of Claims

This Settlement Agreement is entered into in compromise of the Dispute, including the City Claims and the TWC Claims, and all rights with respect to franchise fees paid, overpaid, and owed during the Audit Period. Specifically, the City and TWC desire to compromise, settle and discharge all disputes, claims, demands, actions or causes of action whatsoever of every kind and nature that pertain to, or arise out of, franchise fee payments by TWC to the City during the Audit Period.

a. Release of City Claims

The City hereby releases and forever discharges TWC, its affiliates and subsidiaries and its respective shareholders, directors, officers, employees, parents, servants, heirs, predecessors, successors, assigns, and agents, of and from any and all claims, actions, causes of action, suits, demands, liabilities, obligations and damages, of any kind or nature whatsoever, whether based on contract, tort or other theories of liability, which the City now has or ever had against TWC from the beginning of time through the end of the Audit Period, both in law and in equity, relating in any way to the Dispute.

b. Partial Release for 2014

Each Party hereby releases and forever discharges the other Party, its affiliates and subsidiaries and its respective shareholders, directors, officers, employees, parents, servants, heirs, predecessors, successors, assigns, and agents, of and from any and all claims, actions, causes of action, suits, demands, liabilities, obligations and damages, of any kind or nature whatsoever whether based on contract, tort or other theories of liability which the Party now has or ever had against the other Party for calendar year 2014, both in law and in equity, solely with respect to the specific franchise fee underpayment issues identified in the Audit Report, but not with respect to any other issues relating to franchise fee payments for calendar year 2014.

c. Release of TWC Claims

TWC hereby releases and forever discharges the City, and its respective directors, officers, employees, and agents, of and from any and all claims, actions, causes of action, suits, demands, liabilities, obligations and damages, of any kind or nature, whatsoever, whether based on contract, tort or other theories of liability, which TWC now has or ever had against the City from the beginning of time through the end of the Audit Period, both in law and in equity, relating in any way to the Dispute.

3. Modification

This Settlement Agreement may not be modified, superseded, terminated, or amended, and no provision or breach hereof may be waived or deemed waived by any Party, except by a writing making specific reference thereto signed by the Party to be bound.

4. No Admission

It is understood and agreed that this is a compromise of disputed claims and shall not be construed as an admission of any liability of TWC to the City, or of any liability of the City to TWC, nor, except as provided in the last sentence of paragraph 1 hereof and subject to changes in applicable law, shall it establish a precedent for how either Party may proceed with regard to franchise fees due to the City for timeframes after the Audit Period. This Settlement Agreement is not, and shall not, in any way be construed to be an admission by either Party, or any of their former or current parent companies, successors, assigns, affiliates, subsidiaries, directors, officers, employees and agents, that any one of them has acted wrongfully and/or illegally in any manner, and the settlement set forth herein shall not be construed by any person or in any court, agency or tribunal whatsoever as a present or past admission of liability.

5. Successors and Assigns

This Settlement Agreement and each of its terms shall, upon its execution by the Parties, be binding upon and shall inure to the benefit of the Parties hereto and to the lawful and permitted successors and assigns of each Party, whether those successors and assigns are presently known or unknown.

6. Authority

Each Party to this Settlement Agreement represents and warrants that the person executing this Agreement on its behalf is authorized and has the legal right, power, and authority to do so.

7. Entire Agreement

This Settlement Agreement sets forth the entire agreement between the City and TWC relating to the subject matter of this Settlement Agreement.

8. Governing Law

This Settlement Agreement, and any controversies arising hereunder, shall be interpreted in accordance with the laws of the State of Maine and adjudicated in a state or federal court of competent jurisdiction located in the State of Maine.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the date the last Party signs.

Time Warner Cable Northeast LLC

The City of Portland, Maine

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____