

PENDING PETITION MEMO

Date: 5/17/2007

TO : OT  
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OGC

FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE VIDEO SERVICES CORPORATION

SUBJECT: 07-V-0571

Petition of Empire Video Services Corporation for a Certificate of Confirmation for its Franchise with the Town of Ovid, Seneca County.



Harter Secret & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

May 16, 2007

VIA: FEDERAL EXPRESS

Jaclyn A. Brillong,
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Application of Empire Video Services Corporation for a Certificate of Confirmation Approving a Franchise Agreement in the Town of Ovid Pursuant to 16 NYCRR Section 897; and Petition Seeking a Declaratory Ruling, Pursuant to 16 NYCRR Section 8.1(a), that the Local Exchange Territory of Empire Telephone Corporation Constitutes the Franchise Area, or, in the Alternative, an Exemption, Pursuant to 895.5(d), from the Requirements of 16 NYCRR Sections 895.1 and 895.5(a)-(c).

Dear Secretary Brillong:

On behalf of Empire Video Services Corporation, a New York corporation with a principal place of business at 34 Main Street, Prattsburgh, NY 14873 ("EVSC"), Harter Secret & Emery LLP hereby files with the Commission an original and five (5) copies of the above referenced Application and Petition.

If you have any questions concerning this Application or require further information, please do not hesitate to contact me at (585) 231-1247.

Very truly yours,

HARTER SECRET & EMERY LLP
Kimberly Y. Fleming
DIRECT DIAL: 585-231-1247
E-MAIL: KFLEMING@HSELAW.COM

JTP:lgf

Enclosures

- cc: Brian J. Ketchum (EVSC), w/encl.
John T. Pattison, Esq. (HSE), w/encl.
Carol McTague (NYPSC), w/encl.
Town of Ovid, w/encl.
Brian Ossias (NYPSC), w/encl.

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**STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE**

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Application of Empire Video Services Corporation for a Certificate of Confirmation Approving a Franchise Agreement in the Town of Ovid Pursuant to 16 NYCRR Section 897;  
and  
Petition Seeking a Declaratory Ruling, Pursuant to 16 NYCRR Section 8.1(a), that the Local Exchange Telephone Territory of Empire Telephone Corporation within the Town of Ovid Constitutes the Franchise Area, or, in the Alternative, an Exemption, Pursuant to 895.5(d), from the Requirements of 16 NYCRR Sections 895.1 and 895.5(a)-(c).

CASE 07-C-\_\_\_\_\_

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This Application and Petition to the New York Public Service Commission (“Commission”) is filed on behalf of Empire Video Services Corporation (“EVSC” or “Petitioner”) by Harter Secrest & Emery LLP, attorneys for the Petitioner.

**SUMMARY**

On May 18, 2006, EVSC submitted a Petition for a Declaratory Ruling, (“2006 PDR”) pursuant to Title 16 of the New York Codes, Rules, and Regulations Section 8.1(a),<sup>1</sup> seeking a state-wide exemption from the primary service area and cable line extension rules found in Section 895.5(a)–(c). The 2006 PDR was held in abeyance while EVSC (i) engaged in telephone conferences with Staff in an attempt to reach a clear understanding of the Commission’s rules and processes related to cable buildout and line extension rules and exemptions, given EVSC’s technology choice; and (ii) monitored FCC MB Docket No. 05311 to determine whether the

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<sup>1</sup> Unless otherwise stated, all Section references are to Title 16 of the New York Codes, Rules, and Regulations.

FCC would rule on or provide guidance with respect to the interplay of state and local rules acting as barriers to video competition.

On March 5, 2007 the FCC issued its Order in MB Docket No. 05-311 in which it declined to pre-empt state or local franchising regulations or otherwise materially affect EVSC's 2006 PDR. As a result, concurrently with the filing of this Petition, EVSC is (i) withdrawing the 2006 PDR and, instead, (ii) beginning the process of requesting a determination that (x) the local exchange telephone service territory of its parent in each municipality is its "franchise area", rendering moot the need to comply with the buildout and line extension rules or, in the alternative, (y) an exemption from the buildout and line extension requirements for each municipality is appropriate, all (iii) concurrent with the filing of its application for issuance of a Certificate of Confirmation approving a cable television franchise for each municipality.

Accordingly, EVSC submits this Petition, together with its Application for Issuance of a Certificate of Confirmation for the Town of Ovid ("Municipality").

### **APPLICATION FOR A CERTIFICATE OF CONFIRMATION**

Petitioner is seeking issuance of a Certificate of Confirmation approving the Franchise Agreement to provide cable television services in the Municipality. The following agreements and documents comprising the Application are attached hereto and made a part hereof:

1. Franchise Agreement between EVSC and the Municipality, as Exhibit A;
2. Certificate of Publication regarding the Notice of Public Hearing, as Exhibit B;
3. Copy of the Resolutions adopted by the Municipality, as Exhibit C;
4. Certificate of Publication regarding the Notice of Filing of this Application, as Exhibit D;
5. Full Environmental Assessment Form, as Exhibit E;
6. Addendum to the Full Environmental Assessment Form, as Exhibit F; and
7. Limited Power of Attorney, as Exhibit G.

Subject to issuance of the Certificate of Confirmation, EVSC anticipates commencing to provide cable television services in the fall of 2007.

## **PETITION**

In this Petition, Petitioner seeks (1) a declaratory ruling, pursuant to Section 8.1(a), that the local exchange telephone service territory of Empire Telephone Corporation (“Empire”), the parent company of Petitioner, within the Municipality constitutes the “franchise area” for purposes of the Franchise Agreement between Petitioner and the Municipality; or, in the alternative, (2) an exemption, pursuant to Section 895.5 (d), from the Commission's cable television rules regarding buildout, primary service area, and mandatory line extension, found at Sections 895.1 and 895.5(a), and 895.5(b)-(c), respectively, on the grounds that such requirements are (i) economically unfeasible for EVSC, (ii) economically unfeasible for consumers, and (iii) unnecessary as a result of video competition in the Municipality.

### **I. BACKGROUND**

Empire, an independent, incumbent local exchange telephone company (“ILEC”), provides regulated and deregulated telecommunications services in portions of the Finger Lakes Region and Western New York including in the Municipality. As an ILEC, Empire has extant facilities located throughout its certificated ILEC boundaries consisting principally of (i) poles, (ii) fiber optic and twisted copper pair cable and wire in the form of trunks and drop wires and (iii) central office and wire center equipment and facilities, consisting mainly of Nortel DMS-10 hosts, Nortel DMS remotes, and subremotes, for an aggregate of twenty-seven (27) wirecenters.

The location of Empire’s facilities within the Municipality is more fully described in the map set forth in Exhibit H, attached hereto and made a part hereof (“Footprint”). The Footprint

constitutes the area in which EVSC intends to provide cable television service in the Municipality.

EVSC, as Empire's video business unit, will lease capacity on Empire's ILEC network and physical space at each of Empire's wire centers in the Footprint in order to deliver video programming. Once EVSC has installed a video software-laden digital subscriber line access multiplexer ("DSLAM") converter box at each wire center and connected it to Empire's ILEC network, EVSC will deliver cable television programming content to virtually all of Empire's ILEC customers that are located in the Footprint over a very-high-data-rate digital subscriber line ("xDSL"), which has the bandwidth to carry high definition television ("HDTV") and Video on Demand.

The requested declaratory ruling or exemption is necessary because of an historical, and on-going, difference in identifying the geographic areas in which ILECs and traditional cable television providers have been qualified by the Commission to provide phone and cable television service, respectively. It is often the case that, for telephone service, an ILEC, such as Empire, serves a portion of a municipality while another ILEC, such as Verizon or Frontier ("Bordering ILEC") serves the remaining residents. On the other hand, because traditional cable franchises have always been granted on a municipality-by-municipality basis, traditional cable television providers, have agreed to serve the municipality, usually with no competition.<sup>2</sup> This distinction in the historical boundaries of telephone and cable companies limits the ability of telephone-based video providers, such as EVSC, whose facilities have no way to serve an entire

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<sup>2</sup> It is important to note that, while they agree to serve an entire municipality, traditional cable companies often do not do so in practice. Cable companies initially implement services where it is cost effective to provide services, based on the number of homes per mile, but do not extend services beyond that area. For example, upon information and belief, although the incumbent cable television provider has been operating in the Municipality for numerous years, it has served only the most populated areas of the Municipality during that time.

municipality, to compete in the cable industry without undertaking significantly increased costs and risks.

## II. DISCUSSION

### A. Petition for Declaratory Ruling Regarding the Franchise Area.

EVSC requests a declaratory ruling that the “franchise area,” as that term is used in 16 NYCRR Part 890, does not, necessarily, include the entire area of a municipality. Section 895.1 requires a cable television operator to submit a description of “anticipated stages of completion of construction at six-month intervals for the entire *franchise area*.” However, the Telecommunications Act of 1996, the New York Public Service Law and the Rules and Regulations of the Public Service Commission do not define the term “franchise area.”

In the historical context of traditional cable service there was no need to define “franchise area” because traditional cable providers have always asked the municipalities for a franchise throughout the entire area of the municipality. Such interpretation, however, is not consistent with the Rules and Regulations of the Public Service Commission. Section 894.18(a) enables a municipality to award “one or more franchises *within* its jurisdiction.” Moreover, under Section 212 of the Public Service Law, a “franchise” means and includes “*any authorization granted by a municipality...to construct, operate, maintain, or manage a cable television system...*” In sum, there is no express requirement that municipalities grant franchises only for the entire area of the municipality. The words “any authorization” clearly imply that a franchise comprising less than the entirety of a municipality can, indeed, be granted, and that, as in this Municipality, it is the Municipality that may decide the metes and bounds of the franchise to be granted.

The Municipality and EVSC have agreed that the “franchise area” will be limited to the Footprint<sup>3</sup>. Consequently, the construction buildout of EVSC’s cable television system, which

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<sup>3</sup> See Section 4 of the Franchise Agreement filed as Exhibit A, hereto.

must encompass or anticipate encompassing the entire franchise area, will be restricted to the area of the Footprint. Moreover, under Section 895.5(b), the franchise area is comprised of the primary service area and the line extension areas; thus, by deduction, the primary service area and line extension areas will also be limited to the Footprint.<sup>4</sup> Because construction of Empire's ILEC network throughout the entire Footprint has already been completed, EVSC has already satisfied the buildout, primary service area, and line extension requirements found at Sections 895.1 and 895.5(a), and 895.5(b)-(c), respectively.

The foregoing does not risk violating the Commission's rules prohibiting discrimination against certain residents, since (1) EVSC will offer cable television services to all residents within the Footprint; (2) Empire currently offers telephone services only to residents within the Footprint, which is Empire's local telephone service area as dictated by the Commission. Moreover, such service area restriction does not constitute discrimination; and (3) competitor cable and satellite operators offer services in areas outside of the Footprint within the Municipality, so there is no compelling regulatory reason to limit the franchise area to the entire Municipality.

**B. Petition for Exemption Regarding Buildout, Primary Service Area, and Line Extension Rules.**

In the alternative to the Declaratory Ruling requested in Part A above, EVSC requests that the Commission waive EVSC's compliance with 16 NYCRR Sections 895.1 and 895.5(a)-(c) in the Municipality. Pursuant to Section 895.5(d), the Commission may agree to waive any of the requirements outlined in 16 NYCRR Part 890:

The provisions of this section may be waived by the Commission if the Commission determines that compliance within the section would not be possible within the limitations of economic feasibility. 16 NYCRR § 895.5(d).

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<sup>4</sup> See 16 NYCRR § 895.5(a) and (b).



As discussed below, the cost of overcoming the technical and other business challenges to provide cable television services outside of the Footprint in the Municipality makes EVSC's compliance with Section 895.1 and 895.5(a) – (c) economically unfeasible for both EVSC and potential consumers.

- 1. The Commission should waive the buildout, primary service area, and line extension policies because compliance would not be economically feasible for EVSC.**

EVSC will provide cable television video services using xDSL technology to deliver video services over the extant telephone facilities of Empire located within the Footprint. As a result, EVSC is limited to providing cable television services to homes within the Footprint. If EVSC were required by the Commission's rules to extend its service beyond the Footprint it would be required either to operate as a competitive local exchange company ("CLEC") offering video over the Bordering ILEC's facilities, overbuild the Bordering ILEC's facilities, or overbuild the cable competitor with traditional cable technology, each of which would impose unquantifiable risks and a significant financial burden on EVSC. These alternatives are discussed in turn below.

*a) Non-Facilities Based CLEC in the Bordering ILEC Territory.*

The first alternative would be for EVSC to operate as a non-facilities based CLEC, transmitting video services over the telephone network of the Bordering ILEC. To accomplish this, the Bordering ILEC network must be xDSL compatible. To EVSC's knowledge, neither Bordering ILEC employs xDSL technology in the Municipality. Consequently, Empire or EVSC would be required to coordinate with and/or fund the necessary upgrade to xDSL technology for the Bordering ILEC's network.

In addition to updating the Bordering ILEC's network, Empire or EVSC would be required: (a) to purchase Bordering ILEC unbundled network elements ("UNEs"); (b) bear the cost of interconnecting with, and collocating in, the Bordering ILEC service area; (c) implement a CLEC software system capable of incorporating Bordering ILEC tariff charges in order to interface with the Bordering ILEC's network systems; (d) convince the ILEC to give up sufficient bandwidth to allow EVSC to deliver its video signal, a request the Bordering ILEC is not obligated to accept; and (e) hire additional staff capable of running a complicated billing and CLEC provisioning system.<sup>5</sup>

As mentioned above, while operating as a CLEC may be theoretically possible, it is not practical. Telephone companies have limited bandwidth on their facilities. Thus, if a Bordering ILEC is currently offering video services over its telephone lines, it would not have any bandwidth available for use by EVSC. On the other hand, if the Bordering ILEC is not using its bandwidth to offer video, then it will wish to reserve its bandwidth so that it may offer video in the future, especially since offering video, voice and data services is a prerequisite to remaining competitive in today's market.

In addition, as referenced above, while ILECs are required to make their facilities available for CLECs to provide voice services to consumers,<sup>6</sup> they have no comparable requirement to allow CLECs to provide video services to consumers using the CLEC's facilities. Thus, EVSC risks investing significant capital to operate as a CLEC without any certainty of being able to provide video services on a long term basis in the Bordering ILEC's territory.

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<sup>5</sup> It is common knowledge that (i) very few, if any, non-facilities based CLEC's operate successfully using this model, and (ii) given the fact that EVSC does not intend to deliver voice and data communication, it is intuitive that it would be economically unfeasible to adopt this mode.

<sup>6</sup> 47 U.S.C.S. §§ 251(c)(1)-(6).

Finally, neither Empire nor EVSC has any interest in bootstrapping the Bordering ILEC into the xDSL technology which it could then use to compete with Empire and EVSC in the Bordering ILEC territory. This is especially true because neither Empire nor EVSC plans or desires to compete, by providing voice and Internet services as a full-fledged CLEC, in the Bordering ILEC service areas outside of the Footprint in the Municipality.

*b) Facilities-based CLEC in the Bordering ILEC Territory.*

In addition to the matters discussed in subsection (a) above, operating as a facilities-based CLEC presents additional significant financial concerns. Under this alternative, and to begin to reach beyond the Footprint, since its network is engineered to serve the Footprint, Empire would be required to build to a new remote approximately every two miles (10,000 feet) into the Bordering ILEC territory. To accomplish this Empire would incur a cost of approximately \$79,351 to equip its wire center, including building expenses, mainframe modifications, protection blocks, relay racks, xDSL equipment, and patch panels, and a cost of \$17,500 to purchase and develop land and cover the cost of legal fees, for a total expense of \$96,851 or \$48,426 per served mile. The remote would need to be equipped with both fiber, to transport the video, and copper cable, to distribute the signal over the xDSL platform. The cost of fiber optic construction (buried) and copper construction (buried) are estimated to be \$16,922 and \$13,723 per mile, respectively. Other construction costs including pedestals, splicing, splice closures, grounding supplies, and labor are estimated at an additional \$15,000 per mile, for a total outside plant construction cost of \$45,645 per mile. This means that the total cost to buildout Empire's network to deliver video using this selected technology would be \$94,071 per mile. Generously assuming 35 customers per mile and a take-rate of 40% and given that virtually none of these costs were incurred to build the network in the Footprint, the estimated cost that each new subscriber would be required to pay, just to obtain EVSC's service, is  $\$94,071 \div (.40 \times 35) =$

\$6,719 per new subscriber. Ignoring the fact that such costs put the service completely outside the reach of any rational consumer, given other competitive choices, it is EVSC's position that it should not be burdened with the costs of dealing with requests outside its Footprint. EVSC is a small company offering services in rural communities and has limited resources compared with its competitors. Expending the time to respond to such requests is burdensome, obviously counterproductive and without purpose.

*c) Installing Traditional Cable Plant in Bordering ILEC Territory.*

The third alternative for EVSC to extend its lines beyond the Footprint of Empire would be to incorporate another technology, such as coaxial cable, in conjunction with the xDSL technology. However, to accomplish this, EVSC would have to connect coaxial cable, a transmission facility with which it is not familiar, from each customer location to one of the Empire wire centers. This would require miles of cable for subscribers outside the Footprint.<sup>7</sup> Since EVSC is not in the traditional cable business, it cannot begin to estimate the cost of delivery of services outside of the Footprint using a technology it does not have or understand.

The cost of overcoming the technical difficulties presented by the foregoing alternatives would impose an untold financial burden on EVSC. In the final analysis, if EVSC were required to comply with Sections 895.1 and 895.5(a) – (c), it could not offer cable television services. This is contrary to the stated policy of the Commission and Governor Spitzer, each of which has articulated the need to bring broadband competitive services to rural New York State.

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<sup>7</sup> In contrast, a traditional cable company could extend a line by simply splicing a coaxial wire at a pole or neighbor nearest to the desired location.

**2. The Commission should waive the buildout, primary service area, and line extension policies because compliance would not be economically feasible for Consumers.**

As mentioned above, if EVSC were required to comply with the provisions of Sections 895.5(a)-(c), the cost to potential subscribers would be unaffordable because they would bear virtually the entire cost of construction in connection with line extension. Under Section 895.5(b)(2), each potential subscriber would pay a contribution-in-aid of construction equal to the difference between the average cost of construction for the primary service area and the cost of construction of the line extensions, divided by the number of dwelling units requesting service.<sup>8</sup> Because EVSC will use Empire's existing telephone service facilities, EVSC's capital construction cost associated with providing service in its primary service area will be negligible. The result will be that subscribers will bear almost the entire cost of constructing line extensions. The cost of extending cable facilities beyond the local telephone territory of Empire would make the cost of constructing line extensions immense and this high cost would discourage virtually all potential customers from subscribing to EVSC's cable television services.

**3. The Commission should waive the buildout, primary service area, and line extension policies because competitive pressures demand regulatory relief.**

According to the Framework for Regulatory Relief, a prime consideration in allowing regulatory relief will be "a telephone company's initiatives to deploy broadband networks capable of providing advanced services proactively, or in response to that of competition" because, in response to competitive pressures, "it is prudent that a telephone company be capable of providing advanced telecommunications services from a broadband platform to as many

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<sup>8</sup> The formula for contribution-in-aid-of construction is:  $SC = C/LE - CA/P$ , where C equals the cost of constructing new plant; LE= equals the number of dwelling units requesting service; CA equals the average cost of construction per mile in the primary service area; and P equals the lower of 35 or the average number of dwelling units per linear mile of cable in primary service areas. § 895.2(b)(2).

customers as possible.”<sup>9</sup> The Municipality has one incumbent cable provider and two satellite providers of video, Dish Network and DirectTV. Those competitors offer telephone and/or internet services in competition with Empire. In response to pressures posed by the foregoing competitors, Petitioner seeks to be capable of providing cable television services to its customers in the Footprint. However, the regulations requiring the Petitioner to offer services beyond the Footprint, to the entire Municipality, impose financial and technical difficulties that prevent the Petitioner from doing so. The regulatory relief requested in this Petition is necessary to allow the Petitioner to become competitive.

Additionally, as a result of the aforementioned competitors, consumers have numerous choices and do not require regulatory assistance to assure the availability of cable television service. EVSC also believes that the Municipality does not sense a need for buildout and line extension because there are at least three existing competitors in its market. Moreover, the incumbent cable provider has had the advantages of a virtual monopoly for *non-satellite* programming for many years and will not be disadvantaged by the requested exemption.

#### **4. Recommendations Regarding Waiver**

EVSC believes that the Commission should waive the buildout, primary service area, and cable line extension rules such that EVSC would under no circumstances be required to build beyond the Footprint. However, if EVSC were to be required to extend beyond the Footprint, such extension should be governed by the telephone industry line extension policy for Empire. As a result, the area in which EVSC’s video services is offered will expand as the area in which telephone services is offered expands. This would not impose a financial burden EVSC because Empire would already be expanding its facilities for telephone service and video services would be provided to those areas automatically.

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<sup>9</sup> Framework for Regulatory Relief: A White Paper Prepared by the State of New York Department of Public Services Staff, dated April 18, 2007.

Precedent for use of the telephone industry line extension policy with respect to telephone companies entering the cable television industry has been endorsed by and used in other jurisdictions as evidenced by the March 6, 2002 Order of the New Jersey Board of Public Utilities in the request of Hometown Online, Inc. for authority to provide cable service in Vernon Township, attached hereto and made a part hereof as Exhibit I.

### **III. CONCLUSION**

Accordingly, EVSC respectfully requests that the Commission issue an order:

(i) declaring that Empire's Footprint in the Municipality constitutes the "franchise area";

(ii) granting EVSC's request for an exemption from the buildout, primary service area, and line extension requirements of the Commission found in Sections 895.1 and 895.5(a) – (c);

or

(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules, much as determined by the New Jersey Board of Public Utilities, as provided in the matter set forth in Exhibit I; and

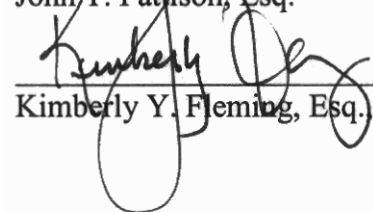
(iv) granting such other and further relief as may be necessary or advisable and proper pursuant to the applicable provisions of the New York Public Service Laws and its related

**Regulations and the Rules of the Commission.**

**Respectfully submitted**

Harter Secrest & Emery LLP  
Attorneys for the Petitioner

  
\_\_\_\_\_  
John T. Patison, Esq.

  
\_\_\_\_\_  
Kimberly Y. Fleming, Esq. of counsel

**Attachments:**

- Exhibit A** Franchise Agreement between EVSC and the Municipality
- Exhibit B** Certificate of Publication regarding the Notice of Public Hearing
- Exhibit C** Resolutions adopted by the Municipality
- Exhibit D** Certificate of Publication regarding the Notice of Filing of this Application
- Exhibit E** Full Environmental Assessment Form
- Exhibit F** Addendum to the Full Environmental Assessment Form
- Exhibit G** Limited Power of Attorney
- Exhibit H** Map of Ovid
- Exhibit I** NJBPU Order In Re: Hometown Online, Inc -Vernon Township

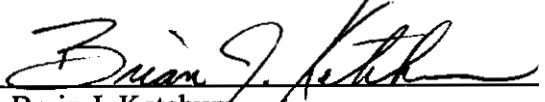


**VERIFICATION**

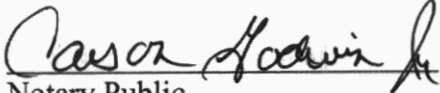
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF STEUBEN)

Brian J. Ketchum, being duly sworn, states that:

1. He is Vice President of Empire Video Services Corporation ("EVSC"), the Petitioner herein.
2. He participated in the preparation of the foregoing Application and Petition of EVSC, and the statements and information contained therein are true and correct to the best of his knowledge and belief.

  
Brian J. Ketchum

Sworn to before me this 9<sup>th</sup>  
Day of May, 2007.

  
Notary Public

CARSON GODWIN, JR.  
Notary Public, State of New York  
Qual. in Steuben Co., No. 01GO4775C 32  
My Commission Expires January 31, 20 11

**Exhibit A**

**Franchise Agreement between EVSC and the Municipality**

**FRANCHISE AGREEMENT**

An Agreement granting to **Empire Video Services Corporation**, a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873 (hereinafter "Franchisee"), permission to construct, operate and maintain a Cable System throughout the TOWN of OVID (hereinafter "Town") and setting forth terms and conditions herein.

WHEREAS, Franchisee's technical ability, financial condition and character were considered in a full public proceeding of the Town Council (hereinafter Council) affording due process and culminating in a public hearing, and

WHEREAS, following a full public proceeding affording due process, the plans of the Franchisee for constructing, maintaining and operating its Cable Television System have been considered by the Council and found adequate and feasible, and

WHEREAS, this Agreement is subject to and complies with all applicable Federal and State Law and Regulations, including without limitation, the rules of the New York State Public Service Commission concerning franchise standards, and

WHEREAS, the Franchisee desires to obtain a non-exclusive franchise with the Town for an initial term of fifteen (15) years, and

NOW THEREFORE, BE IT RESOLVED THAT the Council hereby grants to the Franchisee, its successors and assigns, an Agreement to construct, own, operate and maintain a Cable Television System pursuant to the terms and conditions set forth herein.

**SECTION ONE: DEFINITIONS**

**1.1** For the purpose of this Agreement, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular number; and words used in the singular include the plural number. The word "shall" is always mandatory and not merely directory. Such meaning or definition of terms found in this agreement shall be interpreted consistent with the definitions of The Cable Communications Policy Act of 1984 as amended, the Federal Communications Commission, FCC Rules and Regulations, 47 CFR Subsection 76.1 et seq., Article 11 of the NYS Public Service Law as amended and 9 NYCRR 589 et. seq., as amended and shall in no way be construed to broaden, alter or conflict with the Federal or State definitions.

**1.2** "Cable Service" means: (a) the transmission to subscribers of video programming or other programming service; and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**1.3** "Cable System," "Cable Television System," or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; or (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of Section 621; (c) to the extent such facility is used in the transmission of video programming directly to subscribers; or (d) any facilities of any electric utility used solely for operating its electric utility systems.

**1.4** "Channel" means a designated frequency band in the electromagnetic spectrum which is capable of carrying video, audio, digital, or other electronic signals, or some combination thereof.

**1.5** "FCC" means the Federal Communications Commission.

**1.6** "Franchise Agreement" or "Agreement" means this Franchise Agreement as approved by the Town Council.

**1.7** "Franchisee" means Empire Video Services Corporation, its successors, and assigns.

**1.8** "Franchise Fee" means the consideration paid to the Town by the Franchisee for the right and privilege of the Franchisee to use the streets, roads, alleys, bridges, public ways, and public places now laid out or dedicated pursuant to the terms of this Agreement.

**1.9** "Franchised Area" means the area within the legal boundaries of the Town, including any area annexed thereto.

**1.10** "Gross Subscriber Revenues" means all service fees, installation charges, and all other fees or charges collected by the Franchisee from the provision of Cable Service to subscribers in the Town. Gross Subscriber Revenues shall not include: (1) excise taxes; (2) sales taxes; (3) bad debt; (4) any other taxes or fees, including Franchise Fees, which are imposed on the Franchisee or any subscriber by any governmental unit and collected by the Franchisee for such governmental unit; or (5) revenues received from telephone, internet or other non-video services.

**1.11** "Public Service Commission" means the State of New York Public Service Commission.

**1.12** "Person" means any individual, trustee, partnership, association, corporation or other legal entity.

**1.13** "Section" means any section, sub-section, line, or provision of this Agreement.

**1.14** "Subscriber" means any person(s), firm, corporation, or other legal entity who, or which, elects to receive, for any purpose, a service provided by the Franchisee in connection with the Cable System.

**1.15** "Town" means all the territory within the present and future boundaries of the Town of Ovid.

## **SECTION TWO: GRANT OF AUTHORITY**

**2.1** There is hereby granted by the Town to the Franchisee the non-exclusive right and privilege to construct, erect, operate, and maintain in, on, upon, along, across, above, over and under streets, roads, alleys, bridges, public ways, and public places now laid out or dedicated, and all extension thereof, and additions thereto, poles, wires, cables, underground conduits, manholes, and other cable television conductors and fixtures necessary for the maintenance and operation of a Cable Television System in the Town, in order to provide Cable Service to its Subscribers within the Town. In consideration for such right and privilege, the Franchisee shall pay to the Town a Franchise Fee pursuant to Section 15 herein.

**2.2** The Town agrees that it shall not move, damage, penetrate or interrupt any portion of the Cable Television System of the Franchisee without the prior written consent of the Franchisee. The Town shall indemnify the Franchisee against any damages or expenses incurred by the Franchisee as a result of any such removal, damage, penetration or interruption of the services of the Franchisee caused by the Town.

**2.3** Any grant of a subsequent franchise by the Town shall be on terms and conditions which are not more favorable or less burdensome than those imposed on Franchisee hereunder.

**2.4** The rights and privileges of this Agreement shall continue for an initial term of fifteen (15) years commencing on the approval by the Town, acceptance by the Franchisee, and formal approval by the New York State Public Service Commission. The Franchisee may renew the term of this Agreement pursuant to the procedures established by applicable Federal and State Laws, Rules and Regulations.

## **SECTION THREE: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

**3.1** This Agreement conforms to all applicable laws, rules and regulations of the United States and the State of New York in the construction and operation of the Cable Television System.

**3.2** The terms and conditions of this Agreement are subject to the approval of the Public Service Commission. Any amendments hereto by and/or adoption of any local ordinance which affects the terms and conditions hereunder are subject to the mutual agreement of the parties and the approval of the Public Service Commission and such amendments and ordinances are ineffective until Public Service Commission approval is obtained. This Agreement shall not be amended except by a written instrument duly executed by each of the parties hereto.

**3.3** Acceptance of the terms and conditions of this Agreement shall not be construed as a waiver by the Franchisee of any existing or future right to challenge the legality of any provision of this Agreement. Nothing herein, nor the Franchisee's acceptance hereof, shall be construed to deny Franchisee the right to administrative and/or judicial review of any action or threatened action by the Town under, or arising out of, this Agreement.

**3.4** The Franchisee shall not refuse to hire or employ nor bar nor discharge from employment nor discriminate against any person in compensation or terms, conditions or privileges of employment because of age, race, creed, color, national origin, disability or gender.

#### **SECTION FOUR: TERRITORIAL AREA OF FRANCHISE**

This Agreement is granted to Franchisee to serve all of the territory within the present and future boundaries of the Town. Franchisee will provide cable television service to Subscribers in the primary service area in accordance with Section 895.5 of the Rules and Regulations of the Public Service Commission, unless the Public Service Commission issues an order waiving or amending such requirements based on the local service telephone territory of Empire Telephone Corporation, an affiliate of the Franchisee, within the municipality. A map detailing the extent of the local service territory of Empire Telephone Corporation within the municipality is attached hereto as Exhibit A and made a part hereof. Areas outside the primary service area will be served in accordance with Section 16 of this Agreement.

#### **SECTION FIVE: LIABILITY AND INDEMNIFICATION**

**5.1** Franchisee shall indemnify, defend and hold harmless the Town for all damages and penalties, at all times during the term of this Agreement, as a result of or due to Franchisee's construction or operation of the System.

**5.2** In order for the Town to assert its rights to be indemnified and held harmless, the Town must:

- a) Promptly notify Franchisee of any claim or legal proceeding which gives rise to such right;
- b) Afford Franchisee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and
- c) Fully cooperate in the defense of such claim and make available to Franchisee all such information under its control relating thereto.

**5.3** In the event the Town, in its sole discretion, determines that its interests cannot be represented in good faith by Franchisee. Franchisee shall pay all expenses incurred by the Town in defending itself with regard to all damages and penalties mentioned in paragraph A above. These expenses shall include all out-of-pocket expenses incurred by the Town, such as attorney's fees and costs.

**5.4** Franchisee shall not be required to hold harmless and indemnify the Town for any claims arising out of the negligence of the Town, its officers, boards, commissions, councils, elected officials, agents or employees.

**5.5** By its acceptance of the Agreement, the Franchisee specifically agrees that it will maintain, through the term of this Agreement, and any renewals thereof, liability insurance

protecting the Franchisee and the Town as an additional insured with regard to all damages and/or penalties mentioned in Sub-section 5.1 in the following minimum amounts:

- a) One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person within the limit, however, of Two Million Dollars (\$2,000,000.00) for bodily injury or death resulting from any one (1) accident or occurrence.
- b) Five Hundred Thousand Dollars (\$500,000.00) for property damage resulting from any one (1) accident, and One Million Dollars (\$1,000,000.00) for property damage in the aggregate.

**5.6** Franchisee shall maintain and by its acceptance of this Agreement specifically agrees that it will maintain, throughout the term of this Agreement, Worker's Compensation and Employer's Liability Insurance, in the minimum amount of:

- a) Statutory limit for Worker's Compensation.
- b) One Hundred Thousand Dollars (\$100,000.00) for Employer's Liability.

**5.7** A certificate evidencing the insurance coverage herein provided shall be filed by the Franchisee with the Town Clerk as soon as practicable, but in no event more than thirty (30) days after the date of execution of this Franchise Agreement, and annually thereafter, together with written evidence that all such policies contain a thirty-day notice of cancellation provision requiring notice to the Town of the intention to cancel at least thirty (30) days prior to such cancellation.

## **SECTION SIX: RIGHTS RESERVED BY THE TOWN**

**6.1** The right is hereby reserved by the Town to adopt additional general regulations in the exercise of its police power as it shall find necessary, provided that such regulations shall be reasonable and not in conflict with this Franchise Agreement, nor which shall impose any additional material or unreasonable economic or technical burden on Franchisee. A copy of any applicable additional regulation(s) shall be provided to Franchisee prior to adoption. Should such additional regulation(s) amend this Franchise Agreement, such additional regulation(s) shall not be effective unless approved by the Franchisee and the Public Service Commission.

**6.2** The Town, 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 the Franchisee which are pertinent to Franchisee's compliance with the terms and conditions of this Agreement.

**6.3** The Town and the Franchisee agree that Franchisee's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding Subscribers. The Town will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided the Franchisee has advised the Town of the confidential nature of the information. In the event that the Town receives a request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Town will give Franchisee notice of such request as soon as possible prior to disclosure

in order to allow the Franchisee to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

**6.4** The Town, or its officially designated representatives or agents, upon reasonable written notice, shall have the right to observe and review all construction or installation work performed subject to the provisions of this Agreement, and to make inspections on such installation and construction as it may find necessary to insure compliance with the terms of the Agreement; provided however the Franchisee shall be given reasonable notice and afforded an opportunity to have a representative present during any inspection.

**6.5** None of the Town officers, employees, executives, elected officials, agents nor any other person shall have any right to inspect or review “personally identifiable information” of, or concerning, any Subscriber, as that term is now or hereafter defined pursuant to Section 631 of the Communications Act. In the event of the improper collection or disclosure of personally identifiable information under either the Communications Act or other applicable laws by the Town or any of its employees or agents, and notwithstanding any other provision to the contrary in the Agreement, the Town shall be fully liable for any and all damages, costs, and expenses arising out of such improper collection or disclosure and shall reimburse, indemnify and hold harmless the Franchisee therefrom.

**6.6** Continuing administration of the provisions of this Agreement shall be the responsibility of the Town through its Supervisor or duly appointed designee.

**6.7** If any section, sub-section, sentence, clause, or phrase of this Agreement is held to be unconstitutional or invalid by a court or a regulatory agency of competent jurisdiction, then the remaining portions of the Agreement shall remain in full force and effect.

#### **SECTION SEVEN:** **FILING AND COMMUNICATIONS WITH REGULATORY AGENCIES**

Franchisee shall file requests for all necessary operating authorizations with the Public Service Commission and the Federal Communications Commission, as required, within sixty (60) days from the date this Agreement is approved by the Town Council.

#### **SECTION EIGHT: TERMINATION OF FRANCHISE**

This Agreement shall terminate only at the expiration of the term or renewal term (and denial of any renewal) as set forth in Section 2.4 herein or prior thereto if the Public Service Commission orders its termination pursuant to Section 227 of the Public Service Law.

#### **SECTION NINE: FRANCHISE RENEWAL**

**9.1** Upon the expiration of the term hereof, this Agreement shall be renewed pursuant to the procedures established by the applicable Federal and State Law and applicable Regulations.

**9.2** If the current Franchise Agreement expires by its own terms before the completion of the renewal procedures set forth in Section 9.1, then the parties will cooperate in good faith to extend



this Franchise Agreement until either a new agreement has been granted or the renewal has been denied and the Franchisee has exhausted all appeals.

### **SECTION TEN: RATES**

**10.1** The Franchisee may establish the rates and charges for Cable Television Service, installations, and equipment as it deems appropriate in the area served. These rates and charges shall be subject to the approval of the Town and the Public Service Commission to the extent consistent with applicable State and Federal Law.

**10.2** The initial schedule of rates utilized by the Franchisee is attached hereto for informational purposes only, and shall be referred to as Exhibit B.

**10.3** Changes in subscriber service rates or charges shall be announced by the Franchisee by any reasonable written means at least thirty (30) days prior to the effective date of the change in accordance with the requirements of the Cable Communications Policy Act of 1996.

**10.4** The Franchisee may require Subscribers to pay for each month of service in advance at the beginning of the subscriber's assigned cycle billing period.

**10.5** In the event a subscriber terminates service in advance of any period for which a prepayment has been made, the Franchisee shall refund all of the unused prepayment.

**10.6** Nothing contained in this Agreement shall be deemed to restrict or prohibit the Franchisee from pursuing such legal remedies to collect past due debts owed to it by Subscribers, including the reasonable costs and expenses incurred in pursuing such remedies, such as collection fees, attorneys' fees, and trip charges.

**10.7** The Franchisee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of race, creed, national origin, religion, color, gender, age or disability. Nothing in this Section shall be construed to prohibit the reduction or waiving of charges for the purpose of attracting or retaining Subscribers.

### **SECTION ELEVEN: SYSTEM REQUIREMENTS**

**11.1** The Franchisee shall construct the Cable Television System using materials of good and durable quality and all work involved in construction, installation, maintenance, and repair of the Cable Television System shall be performed in a safe, thorough, and reliable manner. All poles, cables, wires, conduit, or appurtenances shall be constructed and erected in a workmanlike manner pursuant to the then current National Electric Safety Code.

**11.2** The Franchisee shall provide, without charge, one standard aerial installation of the initial service drop, one outlet, and Standard service to municipal buildings and State accredited public or private elementary and secondary schools located within the primary service area and which are within one hundred and fifty feet (150') of the Franchisee's feeder lines. Any costs associated with the reconstruction, relocation or removal of a service drop or any other service lines provided to any such school shall be borne by the Town.

**11.2.1** No more than one (1) drop shall be provided without charge to any one (1) location. Additional cable distribution at these locations shall be at cost plus 15% and the responsibility of the requesting Person. There shall be no commercial use of the drops.

**11.2.2** There shall be no charge incurred by any school or municipal building should such school or municipal building be relocated within the Franchisee's service area and such site is within one hundred fifty feet (150') of the Franchisee's existing Cable Television System. Should a municipal building or school that previously received cable service at no charge move to a new location outside of the Franchisee's service area, then and only then shall the Town or school be responsible for the cost of installing service at the new location.

**11.3** Franchisee shall designate channel capacity for public, educational and governmental access in accordance with the standards for Public, Educational and Governmental (PEG) Access as set forth in 9 NYC RR Section 895.4 of the Regulations of the Public Service Commission. The Franchisee shall provide access channel(s) designated for non-commercial, educational and governmental use by the public on a first come, first served, non-discriminatory basis. Such access channels may be shared by other municipalities.

## **SECTION TWELVE: PHYSICAL FACILITIES**

The Cable Television System shall meet the FCC and the Public Service Commission minimum standards. Additionally, the System shall have at least 120 channels of content and operate in conjunction with remote control capable, addressable converters. Franchisee will carry television broadcast stations, a variety of cable programming networks, audio content, premium pay-TV services, and pay-per-view. The Franchisee shall have the right to transmit advertising of any form through the system and shall have the right to solicit for said advertising.

## **SECTION THIRTEEN: CONSTRUCTION STANDARDS**

**13.1** The Franchisee shall provide written notification to the Town of all major construction, reconstruction or relocation of any part of the Cable Television System within the Town, including placement of any poles.

**13.2** Any poles erected by the Franchisee are to be slightly in appearance and so placed as to not obstruct travel upon the public streets of the Town. The Town shall not be held liable for any disturbances of Franchisee's installations resulting from the altering, repairing, or installation of streets, roads, alleys, sewers, water lines, fire alarm systems, burglar alarm systems, sidewalks, driveways, bridges, or any other municipal installations, unless caused by the negligence of the Town, its officers, agents or employees.

**13.2.1** The Franchisee shall, at its own expense, move or relocate any of its installations, at the request of the Town, whenever or wherever the installation is found to materially interfere with the Town's streets, roads, street grade, sewer or water installations, or other public conveniences, or any proposed changes thereof or extensions thereto, unless the Town's request is initiated as part of a project funded in whole or in part by grants from county, state or federal governments or agencies, in which case Franchisee shall be entitled to such reimbursement as afforded other users of the rights-of-way.

**13.2.2** All of the Franchisee's facilities shall be installed and maintained in compliance with the requirements of the National Electrical Safety Code (NESC), the National Electric Code (NEC), OSHA, and all other construction codes imposed under Federal and State Law.

**13.2.3** It is the intention of the parties that this Section 13.2 covers fully the Franchisee's obligations related to compliance with safety standards.

**13.3** The Franchisee will repair all damage to Town property caused by the installation and operation of the Cable Television System and replace and/or restore said property to as good condition as existed prior to such damage occurring. Repairs and/or restoration shall be completed within a reasonable time, not to exceed thirty (30) days from the date such damage occurred or notice was received by the Franchisee from the Town. Such thirty (30) day period shall be extended due to weather conditions which may interfere with said restoration and/or repair. The Town may extend such time within which the Franchisee may complete such restoration and/or repair upon written request by the Franchisee to the Town.

**13.4** The Franchisee shall, upon request of any private party holding a valid permit from the appropriate Town authority, temporarily raise or lower the System to permit moving of any building or other large structure, providing that the party making the request pays the expense of such raising or lowering of the System and renders such payment at least 48 hours in advance of the requested action.

**13.5** In the event that the Franchisee determines the necessity of making emergency repairs to insure uninterrupted service to all or part of the System, it shall not be required to obtain any permit or prior approval from the Town, for such repairs.

**13.6** The Franchisee shall have the authority to trim trees overhanging upon the streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the Cable System.

**13.7** In view of the fact the Franchisee has already constructed its Cable Television System, Franchisee shall post with the Town a security deposit in the amount of \$1 in compliance with the rules of the New York State Public Service Commission.

#### **SECTION FOURTEEN: OPERATION AND SYSTEM MAINTENANCE**

**14.1** The Franchisee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest reasonably possible time. Such interruptions, insofar as possible, shall be preceded by notice to affected Subscribers, and shall occur, insofar as possible, during periods of minimum system use.

**14.2** The Franchisee shall give credit for every service outage in excess of four (4) continuous hours to any subscriber who applies for it either by written or oral notice. Such credit shall be calculated in accordance with 9 NYC RR Section 890.65 of the Regulations of the Public Service Commission.

**14.3** The Franchisee shall comply with all Federal and State Laws and Regulations, as well as with all industry codes of good practice, that regulate the Franchisee's consumer protection,

customer service standards or the technological standards to be met by the Cable Television System.

**14.4** Investigative action shall be initiated on the same day a trouble or complaint call is received at the Franchisee's office, if possible, but in no case later than the following business day. The Franchisee shall provide full-time service week days between the hours of 9:00 a.m. and 5:00 p.m. and standby emergency service on Saturdays, Sundays and legal holidays.

**14.5** The Franchisee shall annually inform all Subscribers, of its procedures for the reporting and resolving of subscriber complaints in keeping with State regulations.

**14.6** The Franchisee shall keep local telephones available twenty-four (24) hours a day, seven (7) days a week, for repair calls and complaints. During some of this time, the telephone may be manned by an automatic answering device.

#### **SECTION FIFTEEN: FRANCHISE FEE**

**15.1** As a Franchise Fee herewith, the Franchisee shall pay, annually on or before March 31st of each year hereof, three percent (3%) of Gross Subscriber Revenues received by the Franchisee in the preceding calendar year. Any and all such fees may be passed through to Subscribers by the Franchisee as permitted by law.

**15.2** Each payment shall be accompanied by a schedule of revenues and shall be signed by an officer of the Franchisee.

**15.3** The Franchisee shall have the right to apply Franchise Fees paid as a credit against special franchise assessments pursuant to Sec 626 of the New York State Real Property Tax Law.

#### **SECTION SIXTEEN: LINE EXTENSIONS**

With respect to those parts of the Town which are not presently served as part of the primary service area, service shall be extended in accordance with Part 895.5 of the New York State Public Service Commission Rules and Regulations regarding line extensions or with an order waiving or modifying such requirement.

#### **SECTION SEVENTEEN: NEW SUBDIVISIONS**

In all new subdivisions constructed within the Town, the Franchisee shall, whenever possible, construct the System in common trenches with utilities, including any construction necessary to serve said Subscribers. If common trenching is not feasible at the time of development of the subdivision, the Franchisee shall construct and energize the Cable System in keeping with the above line extension policy.

**SECTION EIGHTEEN: ABANDONMENT**

Franchisee shall continue to provide Service to all Subscribers who meet their obligations to the Franchisee with respect to such service. Franchisee shall not, without the written consent of the Town abandon its Cable Television System or any portion thereof in such a way as would limit its ability to continue to provide cable service to all Subscribers.

**SECTION NINETEEN: ASSIGNMENT**

Franchisee may, in its sole discretion, transfer or assign this Agreement to its parent company, subsidiaries, or any other affiliate without the prior approval of the Town.

**SECTION TWENTY: EFFECTIVE DATE**

This Agreement shall be binding on the parties immediately following approval by the Town Council, execution by the appropriate authorities of the Town and the Franchisee, and approval by the New York State Public Service Commission.

Signed this 14 day of March, '07.

**TOWN OF OVID**

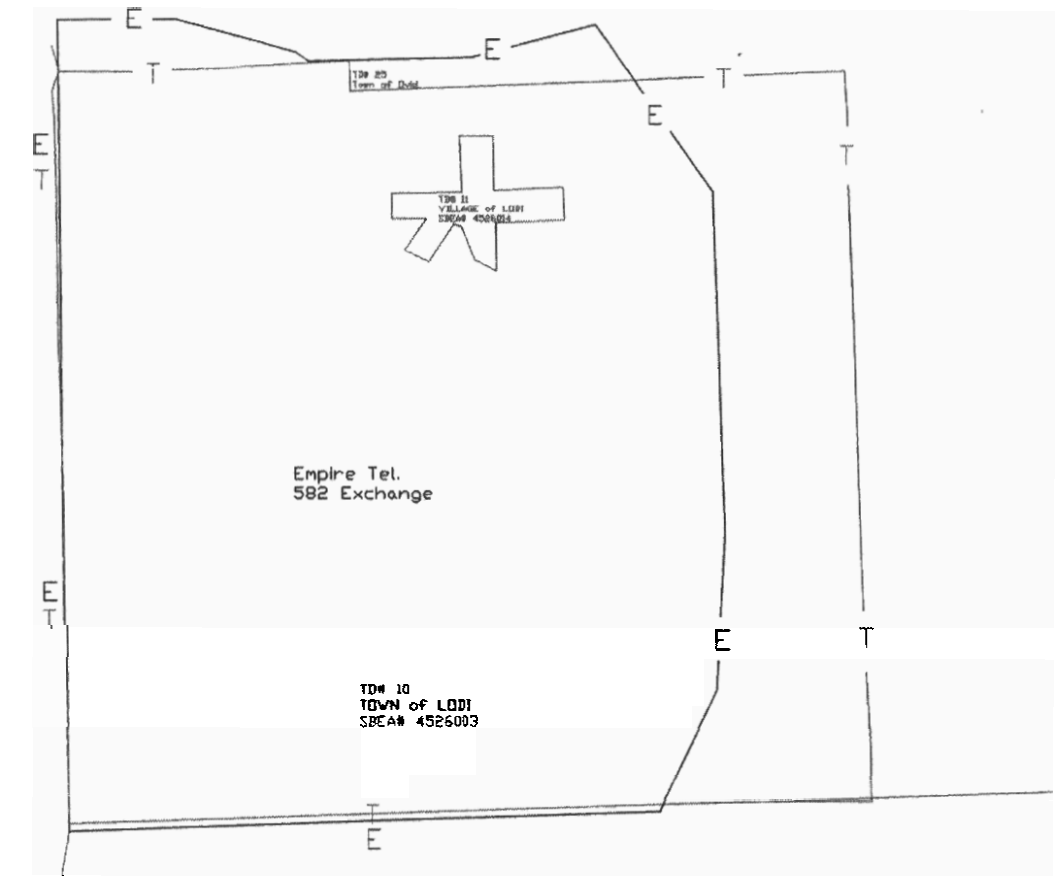
By: David L. Dunsen  
Its: **Supervisor**

**Empire Video Services Corporation**

By: B. R. Wagner  
**Brian R. Wagner, Executive Vice  
President**

**Exhibit A**

**Map**



**Exhibit B**

Rates

(TBD)



**Exhibit B**

**Certificate of Publication regarding the Notice of Public Hearing**

STATE OF NEW YORK  
COUNTY OF TOMPKINS

*Katie Andryshak*... of Trumansburg, in the Town of Ulysses, being duly sworn says that she/he is the business clerk of the *Ovid Gazette*, a weekly newspaper published in Ovid and that the printed notice hereunto attached has been regularly published in said newspaper once a week for *2* weeks, successively, commencing on the *29* day of *November* 20*06* and ending on the *6* day of *December* 20*06*... the date of the last publication thereof.

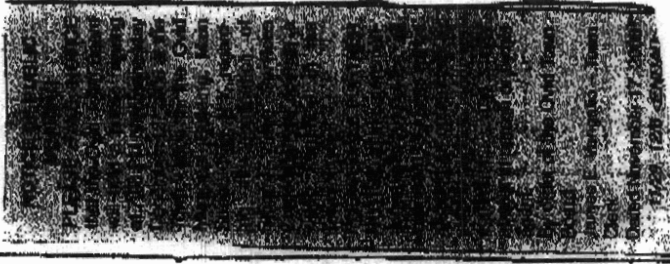
*Cynthia J. Brong*

CYNTHIA J BRONG  
Notary Public, State of New York  
No. 4910347  
Qualified in Tompkins County 09  
Term Expires November 2

Subscribed and sworn to before me this

*8* day of *December* 20*06*

*Cynthia J. Brong*  
(Notary Public)



*Linda*

**Exhibit C**

**Resolutions adopted by the Municipality**

# Town of Ovid

## Resolution 2006-18

### Granting of a Cable Franchise to Empire Video Services Corporation

WHEREAS, pursuant to the Communications Act of 1934, as amended (the "Communications Act"), the Board has the authority to grant cable television franchises for and in the Town of Ovid; and

WHEREAS, the Board has considered the technical ability, financial condition, and character of Empire Video Services Corporation ("EVSC") before a public hearing on this date; said public hearing and negotiations included considerations of the Company's plans for re-constructing and operating, maintaining and repairing the herein described and referred to video system; and

WHEREAS, notice of said public hearing was provided to all parties so entitled to notice, being published in the official newspapers of the Town of Ovid on November 29 and 30, 2006; and

WHEREAS, the Board has determined that the proposed cable franchise for EVSC fulfills the needs of the Town of Ovid with respect to cable television service and complies with the standards and requirements of the New York Public Service Commission.

NOW, THEREFORE, BE IT:

RESOLVED, that the Board hereby grants EVSC a cable franchise in the Town of Ovid; and it is

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Ovid and EVSC substantially in the form presented at the Town Meeting on December 13, 2006, subject to modifications approved by the Supervisor or required by the New York Public Service Commission; and it is

FURTHER RESOLVED, that the Supervisor is authorized to modify the Franchise Agreement, as may be required in his reasonable judgment, and to execute the Franchise Agreement on behalf of the Town of Ovid his execution thereof constituting proof of the effectiveness of such Franchise Agreement.

Motion Made By: [Signature] Seconded By: [Signature]

Ayes 4 Nays 0 Abstentions \_\_\_\_\_

Signed [Signature] Date: 12/13/06  
James E. Vangalio -- Town Clerk

**Exhibit D**

**Certificate of Publication regarding the Notice of Filing of this Application**

STATE OF NEW YORK  
COUNTY OF TOMPKINS

..Katie.. Andryshak..... of Trumansburg, in the Town of Ulyss  
being duly sworn says that she/he is the business clerk of the *Ovid Gazette*  
weekly newspaper published in Ovid and that the printed notice herein  
attached has been regularly published in said newspaper once a week for ...1...  
weeks, successively, commencing on the ...11... day of ...April... 20 07...  
and ending on the ...11..... day of ...April..... 20 07.... the date of the  
last publication thereof.

**NOTICE OF FILING**  
Notice is hereby given that  
Empire Video Services  
Corporation has entered  
into a Franchise  
Agreement to operate a  
cable television system in  
the Town of Ovid, New  
York. The Franchise  
Agreement is on file with  
the State of New York  
Public Service  
Commission. Any inter-  
ested parties to this matter  
may file comments with  
the Commission within 10

days of this publication  
4/11 <ENDAD>

*K Andryshak*  
.....

Subscribed and sworn to before me this

*10* day of *April*..... 20 *07*.....

*Cyn J Brong*  
.....  
(Notary Public)

CYNTHIA J BRONG  
Notary Public, State of New York  
No. 4910347  
Qualified in Tompkins County  
Term Expires November 2, *09*

**PART 1--PROJECT INFORMATION**  
**Prepared by Project Sponsor**

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Cable Television Franchising

Location of Action (include Street Address, Municipality and County)

The action is located in the Town of Ovid, along the roads within the ILEC boundary of ETC, as described in the attached map.

Name of Applicant/Sponsor Empire Video Services Corporation

Address 34 Main Street

City / PO Prattsburgh State NY Zip Code 14873

Business Telephone (607) 522-3712

Name of Owner (if different) N/A

Address \_\_\_\_\_

City / PO \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_

Description of Action:

This project entails offering for hire video programming (i.e. cable television service) over the existing telephone facilities owned by Empire Telephone Corporation ("ETC"), the parent company of the Applicant. The provision of video programming will be accomplished by installing video software-laden subscriber access multiplexer ("DSLAM") converter boxes at each existing wire center within ETC's telephone infrastructure. As video programming will be offered to existing subscribers of telephone services, fiber optic cable needed to provide video programming to those customers is already installed. No other exclusively cable-related equipment will be installed. No physical alterations to the environment are involved in this action.

The proposed action does not meet the definitions of either a Type I or Type II actions, as described in Sections 617.4 and 617.5 of 6 NYCRR, and, therefore, it is an unlisted action.

**Exhibit E**

**Full Environmental Assessment Form**



**617.20**  
**Appendix A**  
**State Environmental Quality Review**  
**FULL ENVIRONMENTAL ASSESSMENT FORM**

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

---

**THIS AREA FOR LEAD AGENCY USE ONLY**

**DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions**

**Identify the Portions of EAF completed for this project:**       Part 1                       Part 2                       Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which **will not** have a significant impact on the environment, therefore a **negative declaration will be prepared.**
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.\***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared.**

\*A Conditioned Negative Declaration is only valid for Unlisted Actions

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Name of Action

---

Name of Lead Agency

---

Print or Type Name of Responsible Officer in Lead Agency

---

Title of Responsible Officer

---

Signature of Responsible Officer in Lead Agency

---

Signature of Preparer (If different from responsible officer)

**Please Complete Each Question--Indicate N.A. if not applicable**

**A. SITE DESCRIPTION**

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use:  Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)  
 Forest  Agriculture  Other \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. Total acreage of project area: under 1 acres.

| APPROXIMATE ACREAGE  | PRESENTLY      | AFTER COMPLETION   |
|--|----------------|--------------------|
| Meadow or Brushland (Non-agricultural)                     | <u>0</u> acres | <u>0</u> acres     |
| Forested   | <u>0</u> acres | <u>0</u> acres     |
| Agricultural (Includes orchards, cropland, pasture, etc.)  | <u>0</u> acres | <u>0</u> acres     |
| Wetland (Freshwater or tidal as per Articles 24,25 of ECL) | <u>0</u> acres | <u>0</u> acres     |
| Water Surface Area   | <u>0</u> acres | <u>0</u> acres     |
| Unvegetated (Rock, earth or fill)                          | <u>0</u> acres | <u>0</u> acres     |
| Roads, buildings and other paved surfaces                  | <u>0</u> acres | <u>&lt;1</u> acres |
| Other (Indicate type) _____                                | _____ acres    | _____ acres        |

3. What is predominant soil type(s) on project site? None

- a. Soil drainage:  Well drained \_\_\_\_\_% of site  Moderately well drained \_\_\_\_\_% of site.  
 Poorly drained \_\_\_\_\_% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? \_\_\_\_\_ acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site?  Yes  No

a. What is depth to bedrock \_\_\_\_\_ (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% 0%  10- 15% \_\_\_\_\_%  15% or greater \_\_\_\_\_%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places?  Yes  No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks?  Yes  No

8. What is the depth of the water table? N/A (in feet)

9. Is site located over a primary, principal, or sole source aquifer?  Yes  No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area?  Yes  No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered?  Yes  No

According to:

N/A

Identify each species:

N/A

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes  No

Describe:

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes  No

If yes, explain:

14. Does the present site include scenic views known to be important to the community?  Yes  No

15. Streams within or contiguous to project area:

N/A

a. Name of Stream and name of River to which it is tributary

N/A

16. Lakes, ponds, wetland areas within or contiguous to project area:

N/A

b. Size (in acres):

N/A

17. Is the site served by existing public utilities?  Yes  No
- a. If YES, does sufficient capacity exist to allow connection?  Yes  No
- b. If YES, will improvements be necessary to allow connection?  Yes  No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 6177?  Yes  No
20. Has the site ever been used for the disposal of solid or hazardous wastes?  Yes  No

**B. Project Description**

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: \_\_\_\_\_ acres.
- b. Project acreage to be developed: \_\_\_\_\_ acres initially; \_\_\_\_\_ acres ultimately.
- c. Project acreage to remain undeveloped: \_\_\_\_\_ acres.
- d. Length of project, in miles: 0.66 (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. \_\_\_\_\_ %
- f. Number of off-street parking spaces existing \_\_\_\_\_; proposed \_\_\_\_\_
- g. Maximum vehicular trips generated per hour: \_\_\_\_\_ (upon completion of project)?
- h. If residential: Number and type of housing units:
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | _____      | _____      | _____           | _____       |
| Ultimately | _____      | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; \_\_\_\_\_ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? \_\_\_\_\_ ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 0 tons/cubic yards.
3. Will disturbed areas be reclaimed  Yes  No  N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- 
- b. Will topsoil be stockpiled for reclamation?  Yes  No
- c. Will upper subsoil be stockpiled for reclamation?  Yes  No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 0 acres

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes  No

6. If single phase project: Anticipated period of construction: 1 months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated \_\_\_\_\_ (number)

b. Anticipated date of commencement phase 1: \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition)

c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_ year.

d. Is phase 1 functionally dependent on subsequent phases?  Yes  No

8. Will blasting occur during construction?  Yes  No

9. Number of jobs generated: during construction 0 ; after project is complete 0

10. Number of jobs eliminated by this project 0 .

11. Will project require relocation of any projects or facilities?  Yes  No

If yes, explain:

12. Is surface liquid waste disposal involved?  Yes  No

a. If yes, indicate type of waste (sewage, industrial, etc) and amount \_\_\_\_\_

b. Name of water body into which effluent will be discharged \_\_\_\_\_

13. Is subsurface liquid waste disposal involved?  Yes  No Type \_\_\_\_\_

14. Will surface area of an existing water body increase or decrease by proposal?  Yes  No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain?  Yes  No

16. Will the project generate solid waste?  Yes  No

a. If yes, what is the amount per month? \_\_\_\_\_ tons

b. If yes; will an existing solid waste facility be used?  Yes  No

c. If yes, give name \_\_\_\_\_ ; location \_\_\_\_\_

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill?  Yes  No

e. If yes, explain:

17. Will the project involve the disposal of solid waste?  Yes  No

a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month

b. If yes, what is the anticipated site life? \_\_\_\_\_ years.

18. Will project use herbicides or pesticides?  Yes  No

19. Will project routinely produce odors (more than one hour per day)?  Yes  No

20. Will project produce operating noise exceeding the local ambient noise levels?  Yes  No

21. Will project result in an increase in energy use?  Yes  No

If yes, indicate type(s)

The provision of video programming will result in virtually no increase in energy use.

22. If water supply is from wells, indicate pumping capacity \_\_\_\_\_ 0 \_\_\_\_\_ gallons/minute.

23. Total anticipated water usage per day \_\_\_\_\_ 0 \_\_\_\_\_ gallons/day.

24. Does project involve Local, State or Federal funding?  Yes  No

If yes, explain:

**25. Approvals Required:**

|                                    |   | Type                             | Submittal Date |
|------------------------------------|---|----------------------------------|----------------|
| City, Town, Village Board          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <u>Franchise Agreement</u>       | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| City, Town, Village Planning Board | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| City, Town Zoning Board            | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| City, County Health Department     | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| Other Local Agencies               | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| Other Regional Agencies            | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| State Agencies                     | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <u>Public Service Commission</u> | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |
| Federal Agencies                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | _____                            | _____          |
|                                    |   | _____                            | _____          |
|                                    |   | _____                            | _____          |

**C. Zoning and Planning Information**

1. Does proposed action involve a planning or zoning decision?  Yes  No

If Yes, indicate decision required:

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance    | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan        | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan    | <input type="checkbox"/> Other       |

2. What is the zoning classification(s) of the site?

N/A (No new construction or use is involved.)

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

N/A

4. What is the proposed zoning of the site?

N/A

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans?  Yes  No

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

[Empty text box for question 7]

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile?  Yes  No

9. If the proposed action is the subdivision of land, how many lots are proposed? \_\_\_\_\_

a. What is the minimum lot size proposed? \_\_\_\_\_



10. Will proposed action require any authorization(s) for the formation of sewer or water districts?  Yes  No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

Yes  No

a. If yes, is existing capacity sufficient to handle projected demand?  Yes  No

12. Will the proposed action result in the generation of traffic significantly above present levels?  Yes  No

a. If yes, is the existing road network adequate to handle the additional traffic.  Yes  No


**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name John T. Pattison Date 5/16/07

Signature  \_\_\_\_\_

Title Agent for Empire Video Services Corporation

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

**Exhibit F**

**Addendum to the Full Environmental Assessment Form**

**ADDENDUM TO THE FULL ENVIRONMENTAL ASSESSMENT FORM  
OF EMPIRE VIDEO SERVICES CORPORATION  
RELATING TO A CABLE TELEVISION FRANCHISE IN THE  
TOWN OF OVID, NEW YORK**

Empire Video Services Corporation, a New York corporation ("EVSC"), hereby files this Addendum, amending the Full Environmental Assessment Form included in EVSC's Application for a Certificate of Confirmation approving the Franchise Agreement to provide cable television services in the Town of Ovid ("Town").

The Franchise Agreement will enable EVSC to deliver video programming over the existing telephone facilities of Empire Telephone Corporation, the parent company of EVSC ("Facilities"). The Facilities are currently installed throughout the Town and are used to provide voice and data services to subscribers. It is EVSC's position that the delivery of video programming over the Facilities does not entail construction, extension, modification, or repair and, thus, is not included within any "action" described in the State Environmental Quality Review Act ("SEQRA"). Moreover, any future construction, extension, modification, or repair of the Facilities would fall within the Commission's authority to require EVSC and Empire Telephone Corporation to seek review under SEQRA and other laws. Nevertheless, at Staff's request, EVSC is providing this Addendum concerning work on the Facilities which could be undertaken in the Town subsequent to the Commission's approval of the Franchise Agreement.

***Setting***

The Town is located in Seneca County. As of the 2000 Census, the Town had a population of 2,757 within a total area of approximately 38.8 square miles.

The Town contains portions of agricultural districts, but is not substantially contiguous to a National Natural Landmark and does not contain any national or state registered historic sites. The Town does not contain any critical environmental areas. EVSC's policy is to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

A portion of the Town may be located above aquifers. The Town is not within a coastal area, but has two (2) designated wetland areas and a designated 100-year flood plains. EVSC's extensions and drop wires are and will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. As previously stated video programming will be delivered over the existing distribution routes and supporting structures of Empire Telephone Corporation. Thus, EVSC's construction activities would not impact otherwise undeveloped areas, Cable service is already provided within the franchise area by the incumbent, Time Warner Cable.

Following is a list of resources that further describe environmental issues and natural and historic sites in the Town:

1. List of Critical Environmental areas in Seneca County, showing that none are listed for the Town, attached hereto as Exhibit 1 and made a part hereof;
2. Unconsolidated Aquifers in Upstate New York – Finger Lakes Map, Record Number 87-4122, showing the location of the aquifers in the area, attached hereto as Exhibit 2 and made a part hereof;
3. Schedule of Freshwater Wetlands in the Town, attached hereto as Exhibit 3 and made a part hereof;
4. The flood plain maps, issued by the Federal Emergency Management Agency, for the Town, attached hereto as Exhibit 4 and made a part hereof; and
5. List of Nationally Registered Historic Sites, attached hereto as Exhibit 5 and made a part hereof.

### ***Description of Potential Construction Activities***

If extension of the Facilities were to be under taken following award of the franchise, any construction in the Town's rights-of-way with respect to cable television services would only involve facilities that will also be used for Empire Telephone Corporation's services.

When a household requests cable television services, drop wires will be run to the home only if that home did not already subscribe to Empire Telephone Corporation's services. Because a large number of customers already subscribe to Empire Telephone Corporation's service, the number of households that would require new facilities is nominal.<sup>1</sup> In terms of the potential environmental impact of drop placement activities, the fiber and copper drops do not differ in any significant respect from industry standard facilities that are commonly used by Empire Telephone Corporation.

---

<sup>1</sup> In general, EVSC's outside plant may include both aerial and underground facilities. Some of the work related to the extension of the Facilities and the placement of drops may therefore be underground.

**Exhibit 1**

List of Critical Environmental areas in Seneca County



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## Critical Environmental Areas in Seneca County

**More information from this division:**

***Division of Environmental Permits***  
***SEQR***

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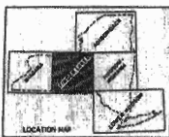
There are no critical environmental areas presently listed for Seneca County.

[Return to Critical Environmental Areas under SEQR](#)

[Back to top of page](#)

**Exhibit 2**

**Unconsolidated Aquifers in Upstate New York**



# LAKE ONTARIO

CONTOUR

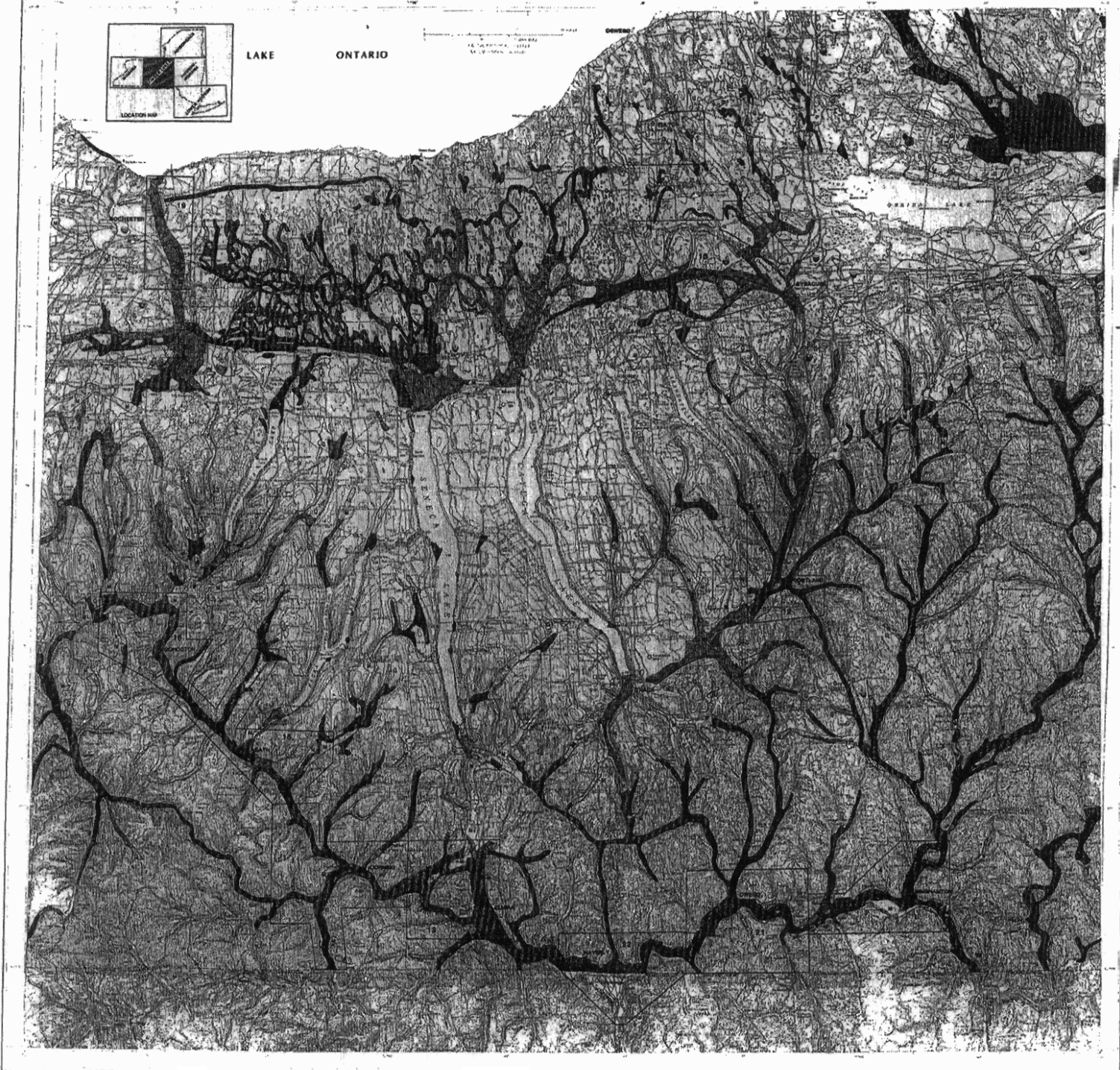


Figure 1. Bathymetric map of the Finger Lakes region, New York. Contour interval 100 feet. Elevation above sea level.

**INTRODUCTION**

This report was prepared in response to a request from the New York State Department of Environmental Conservation, which has been assigned the task of determining the availability of water resources in the Finger Lakes region of New York. The study was conducted by the New York State Department of Environmental Conservation, which has been assigned the task of determining the availability of water resources in the Finger Lakes region of New York.

The purpose of this report is to provide a preliminary map of the unconsolidated aquifers in the Finger Lakes region of New York. The map shows the distribution of unconsolidated aquifers in the Finger Lakes region of New York. The map shows the distribution of unconsolidated aquifers in the Finger Lakes region of New York.

The map shows the distribution of unconsolidated aquifers in the Finger Lakes region of New York. The map shows the distribution of unconsolidated aquifers in the Finger Lakes region of New York.

**WELL YIELDS**

The yields of the wells in the Finger Lakes region of New York are shown in this section. The yields of the wells in the Finger Lakes region of New York are shown in this section. The yields of the wells in the Finger Lakes region of New York are shown in this section.

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**MAP REFERENCES**

The following maps were used in the preparation of this report:

- 1. United States Geological Survey, *Geological Map of the Finger Lakes Region, New York*, 1:50,000 scale, 1910.
- 2. New York State Department of Environmental Conservation, *Map of the Finger Lakes Region, New York*, 1:50,000 scale, 1960.
- 3. New York State Department of Environmental Conservation, *Map of the Finger Lakes Region, New York*, 1:50,000 scale, 1960.

**REFERENCES CITED**

The following references were used in the preparation of this report:

- 1. Johnson, H. W., and others, 1917, *Geology of the Finger Lakes Region, New York*, New York State Department of Environmental Conservation, Bulletin 10, 100 pp.
- 2. Johnson, H. W., and others, 1920, *Geology of the Finger Lakes Region, New York*, New York State Department of Environmental Conservation, Bulletin 15, 150 pp.
- 3. Johnson, H. W., and others, 1925, *Geology of the Finger Lakes Region, New York*, New York State Department of Environmental Conservation, Bulletin 20, 200 pp.

**EXPLANATION**

The following symbols were used in the preparation of this report:

- 1. Unconsolidated aquifer
- 2. Consolidated aquifer
- 3. Surface water
- 4. Contour lines
- 5. Major roads
- 6. Town boundaries
- 7. Lake boundaries
- 8. Well locations
- 9. Well yields
- 10. Well depths
- 11. Well types
- 12. Well depths
- 13. Well types
- 14. Well depths
- 15. Well types

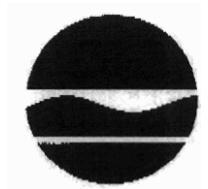




**Exhibit 3**

**Schedule of Freshwater Wetlands in the Town**

**New York State Department of Environmental Conservation**  
**Division of Fish, Wildlife and Marine Resources, Region 8**  
**Bureau of Habitat**  
6274 East Avon-Lima Road, Avon, New York 14414-9519  
Phone: (585) 226-5442 • FAX: (585) 226-9789  
Website: www.dec.state.ny.us



April 5, 2007

Kimberly Y. Fleming, Esq.  
Harter, Secrest & Emory LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604

Dear Ms. Fleming,

In response to your request of 3/29/07 I have looked for New York State Freshwater Wetlands in the Villages and Towns which you listed.

Please note that if a wetland overlaps a Town boundary it will show up in the count for both towns (e.g.: MF-1 is in both Hector and Montour). The wetland acres (found on the enclosed lists) will be the size of the entire wetland, not just the acreage located in the given town.

Also note that a figure for UPL (upland inclusions) shows at the bottom of some lists. This is not another wetland for your number count.

I do not list the wetlands for the Town of Newfield because Newfield is in DEC Region 7 and we do not have that information.

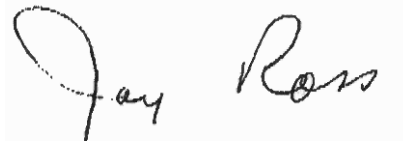
**Village or Town**                      **Number of New York State Freshwater Wetlands**

|                    |                                 |
|--------------------|---------------------------------|
| Village of Burdett | none                            |
| Village of Lodi    | none                            |
| Village of Odessa  | 2 (MF-4 and MF-3, both class 3) |

|                   |    |
|-------------------|----|
| Town of Pultney   | 9  |
| Town of Catherine | 8  |
| Town of Alabama   | 25 |
| Town of Alexander | 29 |
| Town of Batavia   | 46 |
| Town of Cayuta    | 1  |
| Town of Hector    | 10 |
| Town of Italy     | 6  |
| Town of Jerusalem | 10 |
| Town of Lodi      | 2  |

|                     |    |
|---------------------|----|
| Town of Montour     | 1  |
| Town of Ovid        | 2  |
| Town of Pembroke    | 31 |
| Town of Prattsburgh | 10 |
| Town of Urbana      | 4  |
| Town of Veteran     | 2  |
| Town of Wheeler     | 15 |
| Town of Hector      | 10 |

Sincerely,  
Jay Ross

A handwritten signature in black ink that reads "Jay Ross". The signature is written in a cursive style with a large initial "J" and "R".

Fish and Wildlife Technician

**WET ID**

OV-2

OV-1

**CLASS**

2

2

**WETL**

64.9

45.5

*2*

**Exhibit 4**

Flood Plain Maps



**Exhibit 5**

National Register

**Index by State and City**

National Register Information System

03/27/2007 15:21:50

No filter

Include filter in navigation

| Row | STATE ▾ | COUNTY ▾ | RESOURCE NAME ▾                          | ADDRESS ▾       | CITY ▾ | LISTED ▾   | MULTIPLE ▾ |
|-----|---------|----------|--|-----------------|--------|------------|------------|
| 1   | NY      | Seneca   | Seneca County Courthouse Complex at Ovid | NY 414          | Ovid   | 1976-12-12 |            |
| 2   | NY      | Seneca   | Wilson, Aaron, House                     | 2037 Wilson Rd. | Ovid   | 2001-05-30 |            |

Page 1





**Exhibit G**

**Limited Power of Attorney**

## LIMITED POWER OF ATTORNEY

Empire Video Services Corporation, a New York corporation with a principal place of business at 34 Main Street, Prattsburgh, NY 14873 (the "Corporation") hereby designates Harter Secrest & Emery LLP, 1600 Bausch & Lomb Place, Rochester, New York 14604 as its attorney-in-fact ("Agent") upon the following terms and conditions:

1. **Authority to Act.** The Agent is authorized to act on behalf of the Corporation in accordance with this Power of Attorney.
2. **Powers of Agent.** The Agent may, at its discretion, act and exercise power, authority and control on behalf of the Corporation, with regard to the environmental quality review required to be completed by the Corporation pursuant to 16 NYCRR §§ 897.5 - 897.7 in connection with its application for cable franchises in the following municipalities:

|                    |                     |
|--------------------|---------------------|
| Town of Alabama    | Town of Montour     |
| Town of Alexander  | Town of Newfield    |
| City of Batavia    | Town of Ovid        |
| Town of Cayuta     | Town of Pembroke    |
| Town of Hector     | Town of Prattsburgh |
| Town of Italy      | Town of Urbana      |
| Town of Jerusalem  | Town of Veteran     |
| Town of Lodi       | Town of Wheeler     |
| Village of Burdett | Town of Catharine   |
| Village of Lodi    | Village of Odessa   |
| Town of Pulteney   |                     |

3. **Durability.** This Power of Attorney is effective as of the date hereof and expires on the date that the New York Public Service Commission approves an environmental quality review for each municipality listed above, or at an earlier date if revoked by the Corporation in writing.
4. **Reliance by Third Parties.** The New York Public Service Commission and other third parties may rely upon the representations of the Agent as to all matters regarding powers granted hereby.
5. **Original Counterparts.** Photocopies of this signed Power of Attorney shall be treated as original counterparts.

[signature page follows]

IN WITNESS WHEREOF, this Power of Attorney is duly executed on the 1st day of February, 2007.

Empire Video Service Corporation

by B. R. Wagner  
Brian R. Wagner, Executive Vice President

Signed in the presence of:  
Witness

\_\_\_\_\_  
Witness

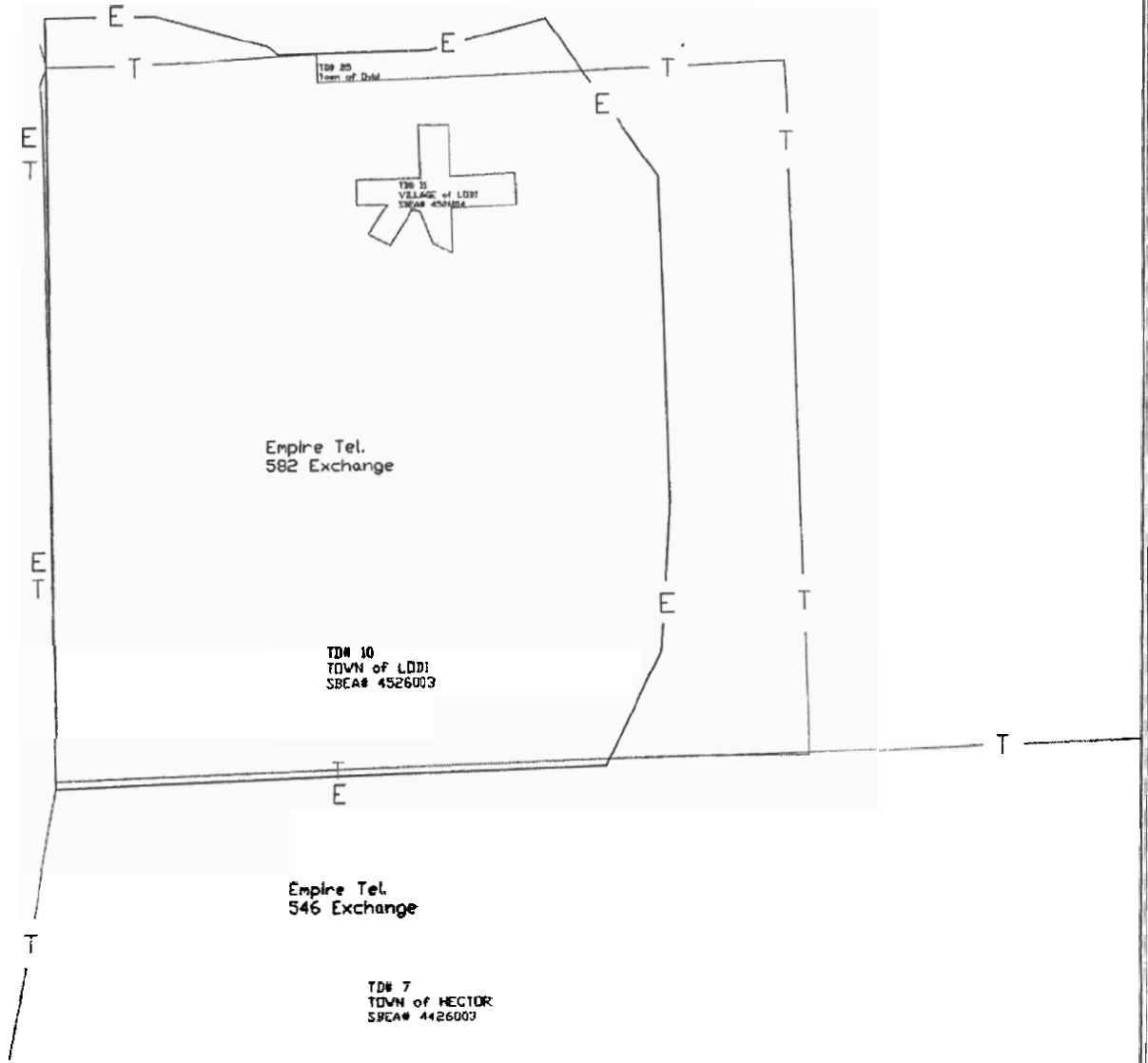
Subscribed and sworn to before me on 2/1/2007.

Carson Godwin, Jr.  
Notary Public, County of STEBEN, State of New York  
My commission expires 1/31/2011.

**CARSON GODWIN, JR.**  
Reg. No. 01G04775682  
Notary Public, State of New York  
Qualified in Steuben County  
My Commission Expires January 31, 2011

[signature page to the Limited Power of Attorney]

**Exhibit H**  
**Map of Ovid**



EMPIRE TELEPHONE CORP  
 307-582-XXXX EXCHANGE AREA  
 TOWN OF LODI  
 SENECA COUNTY, NEW YORK



— E — Exchange Boundary  
 - - - T - - - Town Boundary

No Scale  
 2/3/2006

**Exhibit I**

**NJBPU Order In Re: Hometown Online, Inc -Vernon Township**



Agenda Date: 3/6/02  
Agenda Item: 3E

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
*Newark, NJ 07102*

IN THE MATTER OF THE PETITION OF ) CABLE TELEVISION  
HOMETOWN ONLINE, INC. FOR A )  
CERTIFICATE OF APPROVAL TO PROVIDE ) CERTIFICATE OF APPROVAL  
VIDEO SERVICES IN THE TOWNSHIP OF )  
VERNON, SUSSEX COUNTY, NEW JERSEY ) DOCKET NO. CE01110787

Rothfelder Stern, Westfield, New Jersey, by Martin C. Rothfelder, Esq., for the Petitioner.

Township Clerk, Township of Vernon, New Jersey, by Patricia Lycosky, for the Township.

**BY THE BOARD:**

On November 19, 2001, Hometown Online, Inc. ("Petitioner") filed a petition for a Certificate of Approval for the construction and operation of a cable television system in the Township of Vernon ("Township"). The Petitioner is a subsidiary of WVT Communications (formerly Warwick Valley Telephone), an incumbent local exchange carrier authorized to provide telephone services in New Jersey to the Township and the Township of West Milford.

The petition indicates that the Petitioner filed an application for municipal consent with the Township on July 21, 2001, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-11. The Township held a public hearing on the application, pursuant to N.J.S.A. 48:5A-23(b). The Township adopted an ordinance granting municipal consent to the Petitioner on October 29, 2001. On November 6, 2001, the Petitioner formally accepted the terms and conditions of the ordinance, in accordance with N.J.S.A. 48:5A-24.

On January 28, 2002, the Township amended its ordinance to conform it to N.J.S.A. 48:5A-1 et seq. On January 30, 2002, the Petitioner accepted the ordinance. On January 31, 2002, the Petitioner amended its petition for the Township.

Service Electric Cable TV of New Jersey, Inc. ("Service Electric") is also authorized to provide cable service to the Township, pursuant to Docket No. 802C-6641. Both the Petitioner and Service Electric have been granted municipal consent to serve the entirety of the Township.

The Board has reviewed the application for municipal consent, the petition and amended petition for a Certificate of Approval and the municipal consent ordinance and amended municipal consent ordinance. Based upon this review and the recommendation of the Office of Cable Television, the Board HEREBY FINDS the following:

1. The Petitioner possesses the requisite legal, character, financial and technical qualifications for the awarding of a Certificate of Approval. Further, the Township reviewed these qualifications in conjunction with the municipal consent process. See N.J.S.A. 48:5A-22 to -29 and N.J.A.C. 14:18-11.
2. The design and technical specifications of the system will ensure that the Petitioner provides safe, adequate and proper service.
3. The franchise period as stated in the ordinance is ten years. The Board finds this period to be of reasonable duration.
4. The Township may review the performance of the Petitioner with regard to the ordinance at its discretion. If the Township determines that the Petitioner has failed to substantially comply with the material terms and conditions of the ordinance, the Township shall provide written notice to the Petitioner of such alleged instances of non-compliance and shall grant the Petitioner an opportunity to cure such deficiency. The Township may petition the Board for appropriate administrative action, including revocation of the franchise or reduction of the franchise term, only after the opportunity to cure has passed and the deficiency has not been cured.
5. The Petitioner's rates shall be regulated and tariffs shall be filed for all services, in accordance with the rules and regulations of the Federal Communications Commission, the Board and the Office of Cable Television. The Petitioner shall maintain informational tariffs for unregulated service rates and promptly file any revisions thereto.
6. Pursuant to N.J.S.A. 48:5A-26(b), the ordinance specifies a complaint officer. In this case, it is the Office of Cable Television. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5.
7. The Petitioner shall maintain a local business office or agent for the purpose of receiving, investigating and resolving complaints. The current local office meeting the requirements of this provision is located at 529 Route 515 in the Township.
8. The franchise fee to be paid to the Township is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Township. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of the Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.



9. The Petitioner shall provide service to all areas within the Township where WVT Communications currently provides telephone service or any other area where it may extend services in the future. Within this area, the Petitioner shall provide service to all residential and commercial structures within 4,100 feet of WVT Communications' central office or remote office facilities, within the WVT Communications' rights-of-way and within one span of existing communications services. Any additional extension of the system which is necessary in the future shall be made in accordance with rules and regulations set forth by the Board and included in WVT Communications' tariff for telecommunications service on file with the Board.
10. The Petitioner shall complete construction within the primary service area as defined in Provision No. 9 above, as follows: a) 50% within the first year following the issuance of this Certificate; b) 25% within the second year following the issuance of this Certificate; c) 20% within the third year following the issuance of this Certificate; and d) the remainder within ten years of the issuance of this Certificate.
11. The Petitioner shall provide one or more local origination channel(s) in accordance with its application and the ordinance. The Petitioner shall allow use of the channel(s) for public, educational and governmental ("PEG") access at the request of the Township or the Board of Education. The Petitioner shall make available the necessary equipment so that one-half inch VHS tapes may be aired in order to provide such PEG access programming. The Petitioner retains discretion in whether to air tapes submitted by the general public.
12. The Petitioner shall cablecast: a) Township Council meetings; b) Township Planning Board meetings; c) Township Zoning Board of Adjustment meetings; d) Township Board of Education meetings; and/or e) any other meeting of other governmental bodies upon five days' prior notice to the Petitioner. The Petitioner shall provide an employee or agent to tape such meetings, or in the alternative, provide necessary equipment, training and advisory personnel to allow the Township to tape such meetings.
13. The Petitioner shall provide a return feed for a local programming studio at the Township High School.
14. The Petitioner shall provide service, free of charge, for non-commercial purposes, to: a) each Township school; b) the Township Municipal building; c) police headquarters; d) DPW facility; e) animal control facility; f) recreation department; g) senior citizen center; h) all fire departments; and i) each volunteer ambulance or rescue squad facility, within the primary service area of the Township, including future extensions of the service area. The Petitioner shall provide a cost estimate to the Township for providing underground conduit to the proposed Town Center.

15. Upon written request, the Petitioner shall appear at a public meeting of the Township Council at least once per year. At the meeting, the Petitioner shall provide a report on the past year's service record. The meeting shall be open to the public and they shall be provided an opportunity to comment on or question the performance of the Petitioner. In addition, upon 14 days notice, at least once per year, the Petitioner shall meet with the Township's Cable Oversight Committee to discuss any and all issues related to provision of service by the Petitioner.
16. If the Petitioner enters into an agreement with any municipality in Sussex County or any other service area of the Petitioner, within six months of the final adoption of the Township's ordinance, for similar duration, that offers more favorable terms than that granted to the Township, the Petitioner shall offer the same terms to the Township.

Based upon these findings, the Board HEREBY CONCLUDES, pursuant to N.J.S.A. 48:5A-17(a) and 28(c), that the Petitioner has sufficient financial and technical capacity and meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment and is capable of providing the proposed service in a safe, adequate and proper manner.

Therefore, the Petitioner is HEREBY ISSUED this Certificate of Approval as evidence of the Petitioner's authority to construct and operate a cable television system within the entirety of the Township. However, WVT Communications does not provide telephone service to the entirety of the Township and therefore, the Petitioner is limited as to where it can currently provide service. However, the Petitioner has been granted authority by the Township to extend its service throughout the Township in case WVT Communications decides to extend its service territory. The Board's grant of authority is subject to the following condition:

The Petitioner shall provide the Office of Cable Television with construction status reports every 60 days, beginning 30 days from the date of issuance of this Certificate. Reporting shall continue until the construction is completed and the Office of Cable Television notifies the Petitioner that no further reports are necessary. The reports shall include, but not be limited to, the following: 1) an account of the total miles of fiber projected, both aerial and underground; 2) the total miles of fiber yet to be built, both aerial and underground; 3) miles of aerial fiber constructed; 4) miles of underground fiber constructed; 5) total fiber miles constructed; 6) miles of fiber placed in service; 7) locations of central, host, and/or remote office locations which are currently video capable; 8) number of video capable (node independent) access lines by office location; 9) number and location of NGDLC nodes placed into service; and 10) number of NIDs/protectors changed out (number of activated video service customers).

This Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein.

The Petitioner shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. Section 76.1 et seq. Any modifications to the provisions thereof, shall be incorporated into this Certificate. Additionally and more specifically, the Petitioner shall adhere to the technical standards of 47 C.F.R. Part 76, Subpart K.

Failure to comply with all applicable laws, rules, regulations and orders of the Board or Office of Cable Television and/or the terms, conditions and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

This Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and enforceable unless specific waiver is granted by the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

This Certificate shall expire ten years from the date of this Order.

DATED: March 6, 2002

BOARD OF PUBLIC UTILITIES  
BY:

(signed)

JEANNE M. FOX  
PRESIDENT

(signed)

FREDERICK F. BUTLER  
COMMISSIONER

(signed)

CAROL J. MURPHY  
COMMISSIONER

(signed)

CONNIE O. HUGHES  
COMMISSIONER

ATTEST:

(signed)

HENRY M. OGDEN  
ACTING BOARD SECRETARY