

PENDING PETITION MEMO

Date: 6/18/2007

TO : Office of General Counsel
Office of Telecommunications

FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE TELEPHONE CORPORATION

SUBJECT: 07-C-0721

Petition of Empire Telephone Corporation for a Declaratory Ruling
within the Town of Pembroke.



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

June 15, 2007

RECEIVED
PUBLIC SERVICE
COMMISSION
EXEC-FILES-ALBANY
2007 JUN 18 AM 9:48

VIA: FEDERAL EXPRESS

Jaclyn A. Brilling,
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 Pembroke 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 Brilling:

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 Secrest & 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 SECREST & EMERY LLP


Kimberly Y. Fleming
DIRECT DIAL: 585-231-1247
E-MAIL: KFLEMING@HSELAW.COM

JTP:lgf

Enclosures

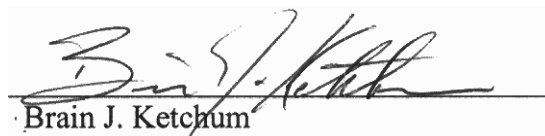
cc: Brian J. Ketchum (EVSC), w/encl.
John T. Pattison, Esq. (HSE), w/encl.
Carol McTague (NYPSC), w/encl.
Town of Pembroke, w/encl.
Brian Ossias (NYPSC), w/encl.

VERIFICATION

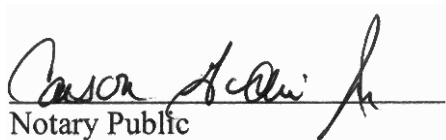
STATE OF NEW YORK)
) SS.:
COUNTY OF STEUBEN)

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 9th
Day of May, 2007.


Notary Public

CARSON GODWIN, JR.
Notary Public, State of New York
Qual. in Steuben Co., No. 01GO4775032
My Commission Expires January 31, 20 11

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

Application of Empire Video Services
Corporation for a Certificate of Confirmation
Approving a Franchise Agreement in the Town
of Pembroke 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
Pembroke 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-_____

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),¹ 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

¹ 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 Pembroke ("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.² 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

² 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.³ Consequently, the construction buildout of EVSC’s cable television system, which

³ See Section 17 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.⁴ 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).

⁴ 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.⁵

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,⁶ 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.

⁵ 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.

⁶ 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.⁷ 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.

⁷ 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.⁸ 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

⁸ 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.”⁹ 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.

⁹ 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

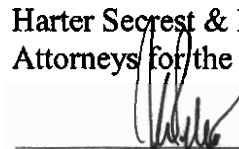
(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules, 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

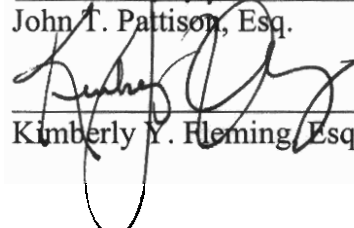
Regulations and the Rules of the Commission.

Respectfully submitted

Harter Secrest & Emery LLP
Attorneys for the Petitioner



John T. Pattison, 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 Pembroke
- Exhibit I **NJBPU Order In Re: Hometown Online, Inc -Vernon Township**

Exhibit A

Franchise Agreement between EVSC and the Municipality

TOWN OF PEMBROKE

FRANCHISE AGREEMENT

This Agreement, made this 30th day of March, 2007, granting to Empire Video Services Corporation, a New York corporation with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873, (hereinafter "Franchisee") permission to construct, operate and maintain a distribution system for television, radio and other electronic signals throughout the TOWN of PEMBROKE (hereinafter "Town") and setting terms and conditions herein.

WHEREAS, Franchisee's technical ability, financial condition and character were considered in a full public proceeding of the Town Board (hereinafter Board) 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 Board and found adequate and feasible, and

WHEREAS, this Agreement is subject to and complies with all applicable Federal and State laws 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 franchise with the Town for a term of fifteen (15) years, and

WHEREAS, this Agreement is non-exclusive.

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

SECTION ONE: DEFINITIONS

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 Federal Communications Commission, FCC Rules and Regulations, 47 CFR Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 CFR 521 et. seq., as amended and shall in no way be construed to broaden, alter or conflict with the Federal or State definitions.

1.1 "Cable Service" means: (a) the one-way 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.

1.2 "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 audio and 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 only Subscribers in one or more multiple unit dwelling under common ownership, control, or management, unless such facility or facilities uses 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.

1.3 "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.

1.4 "FCC" means the Federal Communications Commission.

1.5 "Franchise Agreement" or "Agreement" means this Franchise Agreement as approved by the Town Board.

1.6 "Franchisee" means the Cable System Operator, to whom a franchise is hereby granted for the construction, operation, maintenance, and reconstruction of a Cable System and its lawful successors, transferees, or assigns.

1.7 "Gross Subscriber Revenues" means all service fees, installation charges, and all other fees or charges collected from the provision of Cable Service to Subscribers of this franchised municipality. Gross Subscriber Revenues shall not include: (1) excise taxes; (2) sales taxes; (3) bad debt; or any other taxes or fees, including franchise fees, which are imposed on the Grantee or any Subscriber by any governmental unit and collected by the Grantee for such governmental unit; or (4) revenues received for the provision of telephone, internet, or other non-video services.

1.8 "Public Service Commission" means the State of New York Public Service Commission.

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

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

1.11 "Subscriber" means any person(s), firm, corporation, or other legal entity who lawfully receives the cable television service provided by the Franchisee in connection with the Cable System.

1.12 "Town" means all the territory within the present and future boundaries of the Town of Pembroke.

SECTION TWO: GRANT OF AUTHORITY

2.1 There is hereby granted by the Town to the Franchisee the nonexclusive 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, and the interception, sale, and redistribution of television, radio, digital, and other electronic signals in order to provide cable service to its Subscribers within the Town.

2.2 The Town agrees that it shall not move, damage, penetrate, replace 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, replacement or interruption of the services of the Franchisee caused by the Town.

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

2.4 The rights and privileges of this Agreement shall continue for a period of fifteen (15) years from the approval by the Town, acceptance by the Franchisee, and formal approval by the NYS Public Service Commission.

SECTION THREE: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

3.1 The Franchisee shall be subject to and shall comply with all properly adopted applicable laws, rules and regulations of the United States, the Federal Communications Commission, The NYS Public Service Commission, the State of New York and the Town in the construction and operation of its Cable Television System.

3.2 The terms and conditions of this Agreement are subject to the approval of the Public Service Commission.

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 boundaries of the Town, as currently constituted or modified from time to time. The primary service area with the franchise area is defined in Section 17 hereof.

SECTION FIVE: LIABILITY AND INDEMNIFICATION

5.1 Franchisee shall indemnify and hold harmless the Town from all liability, damage and reasonable cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of Franchisee, its employees or agents undertaken pursuant to the Agreement. The Town shall promptly notify Franchisee of any claim for which it seeks indemnification: afford the Franchisee the opportunity to fully control the defense of such claim and any compromise, settlement, resolution or other disposition of such claim; and fully cooperate with Franchisee in the defense of such claim, including by making available to Franchisee all relevant information under its control.

5.2 Notwithstanding any provision contained within this Agreement, the Town and Franchisee hereby expressly agree that the Franchisee shall not be liable for and shall not indemnify the Town in any manner and in any degree whatsoever from and against any action, demand, claims, losses, liabilities, suits or proceedings arising out of or related to any: (i) programming carried over or transmitted by or through the Cable Television System (other than locally originated programming produced by the Franchisee); or (ii) the negligent or intentional wrongdoing of the Town or any of its employees, agents or officers.

5.3 By its acceptance of this 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:

5.3.1 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.

5.3.2 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.

5.3.3 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

5.4 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 such additional general regulations in the exercise of its police power as it shall find necessary, provided that such regulations shall be reasonable and not materially in conflict with the rights and privileges herein granted.

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 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 such inspections as it may find necessary to insure compliance with the terms of this Agreement and other pertinent provisions of law.

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 Subscribers, 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 of 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 this Agreement shall remain in full force and effect.

SECTION SEVEN: FILING AND COMMUNICATIONS WITH REGULATORY AGENCIES

7.1 The Franchisee shall, upon request, submit copies to the Town of all petitions, applications and communications relating to the Town submitted by the Franchisee to the FCC, the Public Service Commission, or any other Federal, State or Local regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications authorized pursuant to this Agreement.

7.2 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 Board.

SECTION EIGHT: TRANSACTIONS AFFECTING OWNERSHIP OF THE FRANCHISE

The Franchisee shall not transfer this Agreement to any other person, firm, company, corporation or entity other than to a parent corporation or an entity of which either the Franchisee or its parent has majority ownership, without the prior approval of the Town as to the financial and technical ability of such transferee to operate the System. Such permission shall not be unreasonably withheld.

SECTION NINE: TERMINATION OF FRANCHISE

9.1 The Town shall have the right to revoke this Agreement for substantial breach by the Franchisee of any of the material terms and conditions of this Agreement pursuant to existing and applicable law. Written notice of the violation(s) constituting ground for revocation must be served upon the Franchisee by certified mail, return receipt requested. Said revocation will not be effective until sixty (60) days after receipt of such written notice, and the Franchisee shall have failed to correct such violation(s) or failed to commence to cure such violation(s) within said sixty (60) day period. If by reason of an Act of God, the Franchisee is unable in whole or in part

to correct said violations within such sixty (60) day period as provided for above, then the period of time to correct such violation(s) shall be extended. Notwithstanding the above, should the Franchisee cure, or take reasonable steps to comply within sixty (60) days of such notice, the right to revoke this Agreement shall immediately be extinguished.

9.2 Prior to any such revocation, the Franchisee shall have the right to challenge the Town's allegations before an impartial administrative fact finder or court of competent jurisdiction. In any such proceeding, both the Franchisee and the Town shall have the right to introduce evidence, to require production of evidence and to question witnesses in accordance with the standards of due process and fair hearing applicable to administrative hearings in the State of New York. The cost of the administrative proceedings shall be borne by the party incurring such costs. Either party may thereafter seek judicial review.

9.3 The Franchisee shall not be in violation of this Agreement and no revocation shall be effected if the Franchisee is prevented from performing its duties and obligations or observing the terms and conditions of this Agreement by "Acts of God", labor disputes, manufacturers' or contractors' inability to timely provide personnel or material or other causes of like or different nature beyond the control of the Franchisee, collectively referred to as "Acts of God". However, this provision shall not excuse failures to comply with applicable state and federal law without the consent of the commissions or agencies enforcing such law.

SECTION TEN: FRANCHISE RENEWAL

10.1 Upon the expiration of the term hereof, this Agreement may be renewed by the Town pursuant to the procedures established in this Section and applicable Federal and State law and regulations.

10.1.1 During the six-month period which begins with the 36th month before the expiration of the Agreement, the Town may on its own initiative, and shall at the request of Franchisee, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purposes of identifying future cable-related community needs and interests; and reviewing the performance of Franchisee under the Agreement during the then current term.

10.1.2 Upon completion of such proceedings, Franchisee may submit a proposal for renewal. Upon the request of the Town, Franchisee shall submit a proposal for renewal. Any such proposal shall contain such material as the Town may require, including proposals for an upgrade of the cable system. The Town may establish a date by which any such proposal shall be submitted.

10.1.3 Upon submittal of the proposal for renewal, the Town shall provide prompt, public notice of such proposal and, during the four-month period which begins on the submission of a proposal under Subsection 10.1.2, shall either renew the Agreement or issue a preliminary assessment that the Agreement should not be renewed and commence at the request of Franchisee or on its own initiative, an administrative proceeding to consider whether:

- (a) Franchisee has substantially complied with the material terms of the existing Franchise Agreement and with applicable law;
- (b) The quality of Franchisee's cable service, except for the mix, quality and level of programming or other services provided over the system, has been reasonable in light of community needs;
- (c) Franchisee has the financial, legal and technical ability to provide the cable services, facilities, and equipment as set forth in the proposal; and
- (d) The proposal is reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

10.1.4 In any administrative proceeding, Franchisee and the public shall be afforded notice, and Franchisee and the Town shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding. At the completion of an administrative proceeding, the Town shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and shall transmit a certified copy of such decision to Franchisee. Such decision shall state the reasons therefor.

10.1.5 Any refusal to renew this Agreement or denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors set forth in Subsection 10.1.3, based upon the record of the proceeding. The Town may not base a refusal to renew or a denial of renewal upon factors (a) and (b) unless the Town has given Franchisee notice of and an opportunity to cure violations or problems, or has waived its right to object to, or effectively acquiesced in, such violations and problems.

10.1.6 If Franchisee's proposal for renewal has been denied by a final decision of the Town made pursuant to this Section, or if Franchisee has been adversely affected by a failure of the Town to act in accordance with the procedural requirements of this Section, Franchisee may seek review of such final decision or failure within one hundred twenty (120) days of the issuance of the decision either in the United States District Court for the Western District of New York, Rochester Division, or in New York State Supreme Court, Monroe County. The court shall grant appropriate relief if it finds that any action of the Town is not in compliance with the procedural requirements of this Section or that the denial of the renewal proposal by the Town is not supported by a preponderance of the evidence based on the record of the proceeding conducted under this Section.

10.1.7 Any decision of the Town on a proposal for renewal shall not be considered final unless all administrative review by the State of New York has occurred, or the opportunity therefore has lapsed.

10.1.8 Notwithstanding the provisions of this Section, Franchisee may submit a proposal for the renewal of this Agreement at any time, and the Town may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time

(including after proceedings pursuant to this Section have commenced). The provisions of Sections 10.1.1 through 10.1.7 shall not apply to a decision to grant or deny a proposal to this Sub-section. The denial of a proposal for renewal pursuant to this Sub-section shall not affect action on a renewal proposal that is submitted in accordance with Sections 10.1.1 through 10.1.7.

10.1.9 If the current Franchise Agreement expires by its own terms before the Town and Franchisee have reached agreement on the terms and conditions of a renewal franchise or before the completion of the formal renewal procedures set forth in Sections 10.1.3 through 10.1.7, subject to the approval of the NYS Public Service Commission, if required, the Town shall extend the expiration date of the current franchise Agreement until either a new Agreement has been granted or the Franchisee has exhausted all appeals.

SECTION ELEVEN: RATES

11.1 The Franchisee may establish charges for cable television service, installations, and equipment as it deems appropriate in the area served. If permitted by law, the Town may apply for certification to regulate rates.

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

11.2.1 The rates set forth in Exhibit B and the regulation thereof are subject to the provisions of the Cable Communications Policy Act of 1984, Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and the rules and regulations of the Federal Communications Commission promulgated thereunder.

11.3 Changes in subscriber service rates or charges shall be announced by the Franchisee by written notice which may be contained with or on the subscriber's bill at least thirty (30) days prior to the effective date of the change.

11.4 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.

11.5 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.

11.6 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.

11.7 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 TWELVE: SYSTEM REQUIREMENT

12.1 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.

12.2 The Franchisee shall provide, without charge, the installation of one drop, one outlet, and Standard service to municipal buildings and 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. The locations of the municipal and educational buildings are identified in Exhibit C.

12.2.1 No more than one (1) drop shall be provided without charge to any one (1) location specified in Exhibit C. Additional cable distribution at these locations shall be at cost plus 15% and the responsibility of the municipality or school. There shall be no commercial use of the drops.

12.2.2 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 is within one hundred fifty feet (150') of the Franchisee's existing cable television facilities. Should a municipal building or school who 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 municipality or school be responsible for the cost of installing cable service at the new location.

12.3 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 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. The PEG access channels contemplated hereby may be shared with or among other municipalities.

SECTION THIRTEEN: PHYSICAL FACILITIES

Franchisee shall design a cable television system that will have at least 120 channels of content and operate in conjunction with state-of-the-art, 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. All construction of the system shall employ the use of good and durable materials.

SECTION FOURTEEN: CONSTRUCTION STANDARDS

14.1 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.

14.2 All poles, cables, wires, antennae, conduit, or appurtenances shall be constructed and erected in a workmanlike manner.

14.2.1 Any poles erected by the Franchisee are to be sightly 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. Should any installation of the Franchisee be found by the Town to be hazardous to the public safety, said installation shall be brought into conformance by the Franchisee at its expense.

14.2.2 The Franchisee shall, at its own expense, move or relocate within a reasonable time any of its installations, at the request of the Town, whenever or wherever the installation is found to 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 or payment as is authorized by the terms of such grants.

14.2.3 In all newly installed underground installation in the Town's right-of-way, the cable shall not be less than 18 inches from the surface of the ground. All wires shall be grounded and all necessary safeguards against lightning, contact with live wires, danger of falling wire or interference with Town or private utilities or facilities shall be taken as required by the Town Department of Public Works. The wires shall be properly shielded cable.

14.3 This Agreement shall not be construed as to deprive the Town of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets or right-of-way areas.

14.4 All construction of the Franchisee, including installations, shall conform to all applicable Federal, State, and Local laws, codes, regulations, rules, and ordinances, and the National Electrical Safety Code. Any opening, obstructions, or other safety hazard in streets, sidewalks, public ways, or other municipal or public property made by the Franchisee or its agent, shall be guarded and protected at all times by the placement of adequate barriers, fences, boardings, or other protective and/or warning devices at the sole expense of the Franchisee.

14.5 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.

14.6 The Franchisee shall, on request of any private party holding a valid permit from the appropriate Town authority, temporarily raise or lower its cables 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 cables and renders such payment at least 24 hours in advance of the requested action.

14.7 The Franchisee will construct and maintain the Cable Television System subject to the supervision of the Town, and in compliance with all federal, state and local laws, ordinances, rules and regulations. 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.

14.8 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 wire and cables of the Franchisee.

14.9 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 FIFTEEN: OPERATION AND SYSTEM MAINTENANCE

15.1 Franchisee shall comply with the minimum consumer protection and customer service standards set forth in 16 NYC RR Sections 890 and 896. The Agreement 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 the Town, and shall occur, insofar as possible, during periods of minimum system use.

15.2 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 Section 890.65 of the Regulations of the Public Service Commission.

15.3 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 and customer service standards. In the event of conflicting provisions, the Franchisee shall comply with the provisions establishing the stricter standard.

15.4 The signal of any television or radio station carried on the Cable System shall be carried without material or foreign EMF degradation as required by the FCC and the Public Service Commission. The Cable System shall be operated so that there will be no undue interference with over-the-air-television reception, radio reception, telephone communication, microwave communications, or other installations now in use in the Town.

15.5 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.

15.5.1 The Franchisee shall annually inform all Subscribers, of its procedures for the reporting and resolving of Subscriber complaints.

15.6 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 SIXTEEN: FRANCHISE FEE

16.1 As a franchise fee herewith, the Franchisee shall pay, annually on or before April 1 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 Subscribers by the Franchisee as permitted by law.

16.2 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 SEVENTEEN: LINE EXTENSIONS

17.1 The Franchisee shall offer services throughout the authorized area to all subscribers requesting service in any "primary service area." The primary service area will be as defined in 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 municipal boundaries is attached hereby as Exhibit A and made a part hereof. With respect to those parts of the Town that are not served as part of the primary service area, service shall be extended in accordance with Part 895.5 of the rules and regulations of the Public Service Commission regarding line extensions or with an order waiving or modifying such requirements.

SECTION EIGHTEEN: 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. At such time as a section of the subdivision meets the minimum density required as described in Section 17 above, the system shall be energized so as to provide service to those who request it. 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 NINETEEN: ABANDONMENT


Franchisee shall continue to provide cable 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 TWENTY: EFFECTIVE DATE

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

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the date first written above.

TOWN OF PEMBROKE


By: Edward L. Beidock
Its: Supervisor

Empire Video Services Corporation



By: Brian R. Wagner
Its: Executive Vice President

Exhibit A

Map

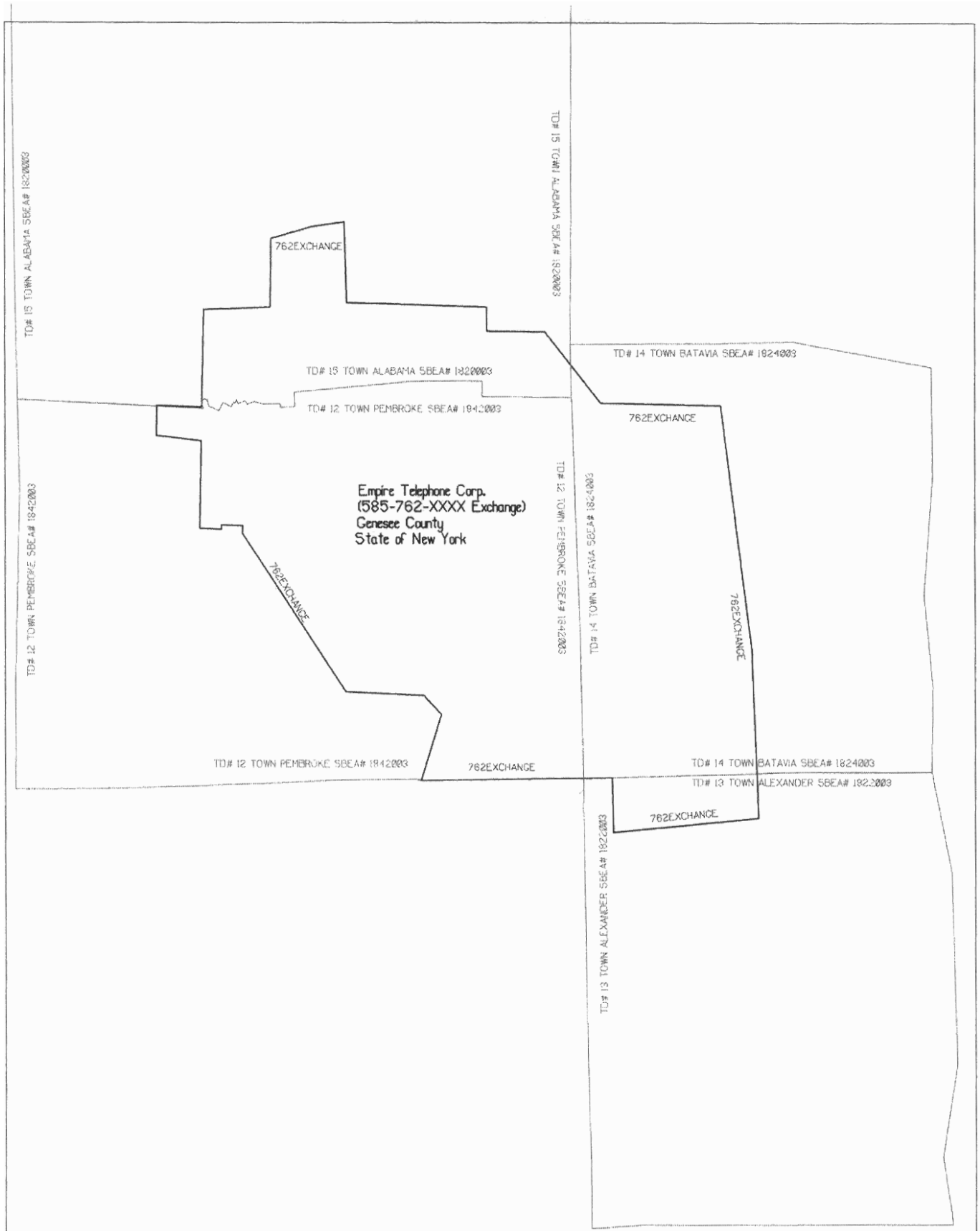


Exhibit B

Rates

(TBD)

Exhibit C

Municipal and Educational Buildings

(TBD)

Exhibit B

Certificate of Publication regarding the Notice of Public Hearing

BATAVIA NEWSPAPERS CORPORATION
The Daily News
Batavia, New York
AFFIDAVIT OF PUBLICATION

BATAVIA NEWSPAPERS CORPORATION

ANDREA DAVIS
TOWN OF PEMBROKE
1145 MAIN RD
CORFU NY 14036-9799

REFERENCE: 56290
936292 066 PUBLIC HEARING

STATE OF NEW YORK

GENESEE COUNTY

ss.:

Nicole Seppa being duly sworn, deposes and says that she is Legal Billing Clerk of Batavia Newspapers Corporation, Publishers of "The Daily News," a newspaper printed and published in Batavia, and that a notice, of which the annexed is a copy, was duly printed and published in said Newspaper.

NOTICE OF PUBLIC
HEARING OF THE TOWN OF
PEMBROKE TOWN BOARD
PUBLIC NOTICE IS HEREBY
GIVEN that a Public Hearing
will be held by the Town Board
of the Town of Pembroke,
County of Genesee, State of
New York, at the Pembroke
Town Hall, located at the inter-
sections of Routes 5 and 77,
1145 Main Road in the Town
of Pembroke, New York, on
the 12th day of July 2006, at
7:15 P.M. on the said day
upon a proposed franchise
agreement between Empire
Video Services Corporation
and the Town of Pembroke for
the purpose of extending video
service to the Town of Pem-
broke Residents serviced by
Empire Telephone Corp.
All interested parties and citi-
zens attending will be heard at
the Public Hearing to be held
as aforesaid.
BY ORDER OF THE TOWN
BOARD OF THE TOWN OF
PEMBROKE
Andrea M. Davis
Pembroke Town Clerk
Dated: June 22, 2006 (066)

PUBLISHED ON: 06/24

TOTAL COST: 17.22 AD SPACE: 42 LINE
FILED ON: 06/24/06

Sworn to and subscribed before me the

27th day of June, 2006

Rebecca L. Nichols

REBECCA L. NICHOLS
Notary Public, State of N.Y., Genesee Co.
My Commission Expires January 31, 2007

Exhibit C

Resolutions adopted by the Municipality

TOWN OF PEMBROKE

**1145 Main Road
Corfu, New York 14036
(585) 599-4892 or 762-8246
Fax (585) 762-8233**

CERTIFICATION

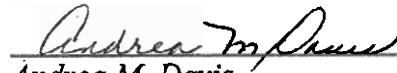
**STATE OF NEW YORK}
COUNTY OF GENESEE}**

ss:

*I, Andrea M. Davis, Town Clerk of the Town of Pembroke, County of Genesee,
State of New York, **DO HEREBY CERTIFY** that I have compared the attached
Resolution #86 of 2006 as adopted by the Town Board of the Town of Pembroke
on the 26th day of July 2006, with the original now on file in my office, and
the same is a correct and true copy of said Resolution and of the whole thereof.*

WITNESS WHEREOF,

*I have hereunto set my hand and affixed
The corporate seal of said Town this
27th Day of July 2006*



Andrea M. Davis
Pembroke Town Clerk
Genesee County, State of New York

{SEAL}

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.

ALL AYES - MOTION CARRIED

RESOLUTION #86 of 2006 – 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 Pembroke; 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 reconstructing 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, a legal advertisement in the Daily News and being posted on the official sign board of the Town of Pembroke on July 17, 2006; and

WHEREAS the Board has determined that the proposed Cable Franchise for EVSC fulfills the needs of the Town of Pembroke with respect to cable television service and complies with the standards and requirement 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 Pembroke; and it is

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Pembroke and EVSC substantially in the form presented at the Town Meeting on July 12, 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 Pembroke, his execution thereof constituting proof of the effectiveness of such Franchise Agreement.

Exhibit D

Certificate of Publication regarding the Notice of Filing of this Application

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

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)

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 Pembroke, 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.

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><1</u> acres
Other (Indicate type) _____	<u> </u> acres	<u> </u> 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 617? ☐ 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: 82.56 (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	Franchise Agreement	
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	Public Service Commission	
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?

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

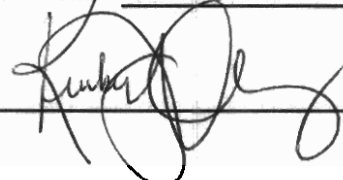
D. Informational Details

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 Kimberly Y. Fleming, Esq. Date 6-15-07

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 PEMBROKE, 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 Pembroke ("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 Genesee County. As of the 2000 Census, the Town had a population of 4,530 within a total area of approximately 41.7 square miles. 41.7 square miles of it is land and less than 0.02% miles of it is water.

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 thirty-one (31) 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 Genesee County Agricultural Districts, attached hereto as Exhibit 1 and made a part hereof;
2. List of Critical Environmental areas in Genesee County, showing that none are listed for the Town, attached hereto as Exhibit 2 and made a part hereof;
3. 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 3 and made a part hereof;
4. Schedule of Freshwater Wetlands in the Town, attached hereto as Exhibit 4 and made a part hereof;
5. The flood plain maps, issued by the Federal Emergency Management Agency, for the Town, attached hereto as Exhibit 5 and made a part hereof; and
6. List of Nationally Registered Historic sites in the Town, showing that there are none in the Town, attached hereto as Exhibit 6, 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. Construction of the Facilities has been completed for approximately fifty-one percent (51 %) of the area in the Town.

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.¹ 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.

¹ 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 Genesee County Agricultural Districts

**Genesee County
Agricultural Districts Relevant to the Project**

District Number	Towns Partially Included
2	Alabama, Batavia, Pembroke
7	Alexander, Batavia, Pembroke
8	Alexander, Batavia
10	Alexander

Exhibit 2

List of Critical Environmental areas in Genesee County



Critical Environmental Areas in Genesee County

More information from this division:

Division of Environmental Permits

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

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

[Back to top of page](#)

Exhibit 3

Unconsolidated Aquifers in Upstate New York



EXPLANATION

[illegible]

CONFIDENTIAL SOURCE, 1 TO HUNG THAT WAS CALLING FOR MINUTE--was
where a relatively unexplored hill, very fine sand, with
or clay layer separating the topsoil sand and gravel
surface from the underlying surficial aquifer.

ADDITIONAL INFORMATION--If you are not sure of the type of deposit, indicate the type of deposit.

G Keep home lawn, driveway, or sidewalk—Seed and grow) at minimum distance of occupation. Field potential is greater when nitrogen is present.

U Unfilled aquifer—Area of lake deposits or till possibly

POULTRY WATER-SUPPLY AQUIFER—A highly productive aquifer that is being used as a source of water supply by major public-supply systems. Further indicates some of aquifer areas (see my below) and report number in list of references.

<u>Reference</u>	<u>Symbol</u>	<u>Reference</u>	<u>Symbol</u>
1A	Self-Defense Unit	A	Self-Defense Unit

[illegible]

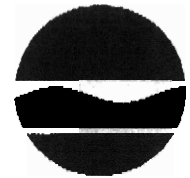
Big Flow

Environ Biol Fish (2015) 98:1177–1187

Exhibit 4

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.

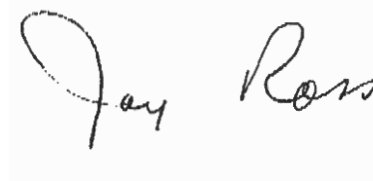
Also note that a figure for UPL (upland inclusions) shows at the bottom of some lists. This is not another wetland for your number count.

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.

<u>Village or Town</u>	<u>Number of New York State Freshwater Wetlands</u>
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, flowing style. The first name "Jay" is written with a large, looped capital "J", and the last name "Ross" is written with a capital "R" and a trailing flourish.

Fish and Wildlife Technician

Pembroke		
WET ID	CLASS	WETL
AX-13	3	47.8
AK-12	3	43.4
AK-9	3	64.6
AX-16	3	20.2
CR-10	2	753.6
AK-10	2	54.1
CR-9	3	21.2
CR-8	3	57.1
AK-14	3	43.9
AX-2	2	88.9
AX-17	3	24.1
AK-15	3	29.4
AK-16	3	300.7
CR-4	3	53.9
OK-24	3	49.5
AX-3	2	55.5
CR-1	2	52.2
OK-23	2	1002.2
OK-26	2	58.9
CR-6	2	29.4
AX-1	2	620.6
OK-25	3	150.3
AK-13	3	63.7
CR-5	2	37.3
AX-14	2	929.6
CR-7	3	58.8
CR-3	3	33.9
AK-11	3	78.8
CR-16	2	263.3
CR-28	3	80.5
CR-28	3	29.7
CR-10 UPL	0	18.1
AX-1 UPL	0	78.5
AX-14 UPL	0	78.3

Exhibit 5

Flood Plain Maps

Exhibit 6

National Register

Index by State and City

National Register Information System

Pembroke

03/27/2007 15:22:05

No filter

Include filter in navigation ☐

Row	STATE ▾	COUNTY ▾	RESOURCE NAME ▾	ADDRESS ▾	CITY ▾	LISTED ▾	MULTIPLE ▾
-----	---------	----------	--------------------	-----------	--------	----------	------------

The retrieve data option has been set to off or there is no data.

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 STEUBEN, State of New York

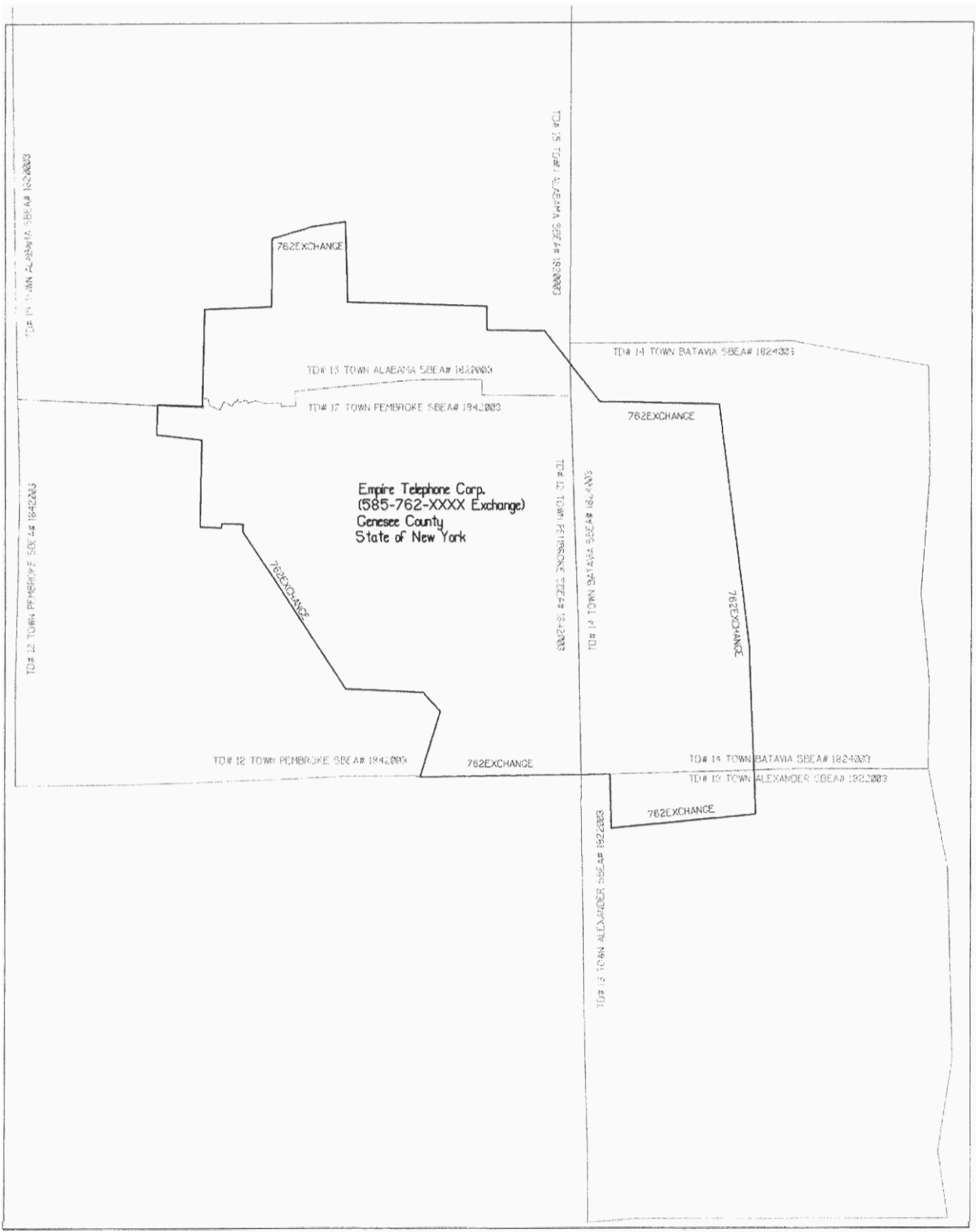
My commission expires 1/31/2011.

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 Pembroke



Empire Telephone Corp.
(585-762-XXXX Exchange)
Genesee County
State of New York

762EXCHANGE

TD# 13 TOWN ALABAMA SBEA# 1822003

TD# 12 TOWN PEMBROKE SBEA# 1842003

TD# 15 TOWN ALEXANDER SBEA# 1823003

TD# 14 TOWN BATAVIA SBEA# 1824003

762EXCHANGE

TD# 12 TOWN PEMBROKE SBEA# 1842003

TD# 14 TOWN BATAVIA SBEA# 1824003

762EXCHANGE

TD# 14 TOWN BATAVIA SBEA# 1824003

TD# 13 TOWN ALEXANDER SBEA# 1823003

762EXCHANGE

TD# 13 TOWN ALEXANDER SBEA# 1823003

762EXCHANGE

TD# 12 TOWN PEMBROKE SBEA# 1842003

762EXCHANGE

TD# 14 TOWN BATAVIA SBEA# 1824003

TD# 12 TOWN PEMBROKE SBEA# 1842003

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)
HOMETOWN ONLINE, INC. FOR A)
CERTIFICATE OF APPROVAL TO PROVIDE)
VIDEO SERVICES IN THE TOWNSHIP OF)
VERNON, SUSSEX COUNTY, NEW JERSEY)

CABLE TELEVISION

CERTIFICATE OF APPROVAL

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