

PENDING PETITION MEMO

Date: 5/17/2007

TO : OT  
OGC  
OEE

FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE VIDEO SERVICES CORPORATION

SUBJECT: 07-V-0578

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



**Harter Secrest & Emery LLP**

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

May 16, 2007

**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 Jerusalem 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 Jerusalem, w/encl.  
Brian Ossias (NYPSC), w/encl.

2007 MAY 17 AM 10:00

FILED  
PUBLIC SERVICE  
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SECRETARY  
ALBANY

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

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Application of Empire Video Services Corporation for a Certificate of Confirmation Approving a Franchise Agreement in the Town of Jerusalem 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 Jerusalem 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).

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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),<sup>1</sup> seeking a state-wide exemption from the primary service area and cable line extension rules found in Section 895.5(a)–(c). The 2006 PDR was held in abeyance while EVSC (i) engaged in telephone conferences with Staff in an attempt to reach a clear understanding of the Commission’s rules and processes related to cable buildout and line extension rules and exemptions, given EVSC’s technology choice; and (ii) monitored FCC MB Docket No. 05311 to determine whether the

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

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

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

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

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

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

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



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

## **PETITION**

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

### **I. BACKGROUND**

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

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

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

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

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

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

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

## II. DISCUSSION

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

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

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

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

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<sup>3</sup> See Section 6 of the Franchise Agreement filed as Exhibit A, hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

### **III. CONCLUSION**

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

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

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

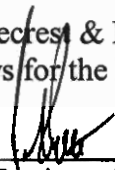
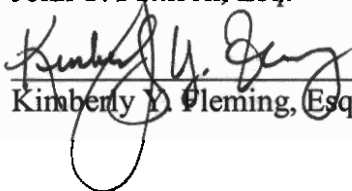
(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules,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

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

Regulations and the Rules of the Commission.

Respectfully submitted

Harter Secrest & Emery LLP  
Attorneys for the Petitioner

  
\_\_\_\_\_  
John T. 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 Jerusalem**
- Exhibit I      NJBPU Order In Re: Hometown Online, Inc -Vernon Township**

## VERIFICATION

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

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

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



Brian J. Ketchum

Sworn to before me this 9th  
Day of May, 2007.



Notary Public

CARSON GODWIN, JR.  
Notary Public, State of New York  
Qual. in Steuben Co., No. 01GO4775C 32  
My Commission Expires January 31, 20 12

**Exhibit A**

**Franchise Agreement between EVSC and the Municipality**

COPY

**TOWN OF JERUSALEM  
FRANCHISE AGREEMENT**

THIS AGREEMENT is entered into this 1<sup>st</sup> day of March, 2007, by and between the Town of Jerusalem, hereinafter referred to as "Grantor" or "Grantor Community", a municipal corporation duly organized under the laws of the State of New York, and Empire Video Services Corporation, or its designated affiliate, a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873, hereinafter referred to as "Grantee", for the purpose of setting forth the terms under which Grantee shall construct, operate, and maintain a cable television system in the above referenced community in the State of New York.

WHEREAS, Grantor is empowered to grant and renew franchises for the installation, operation and maintenance of cable television systems within its boundaries by virtue of the authority granted to it by: (1) the Cable Communications Policy Act of 1984, as amended by the Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, (together, the "Cable Act") and the rules and regulations promulgated thereunder; (2) by the rules and regulations of the New York State Public Service Commission; (3) by its power to regulate and control the public streets, alleys, and rights-of-way; and (4) by its general police powers; and

WHEREAS, Grantor and Grantee have a mutual desire to enter into a new non-exclusive franchise agreement setting forth the terms and conditions under which Grantee will continue to provide cable television service within the Grantor Community; and

WHEREAS, the construction, maintenance, and operation of said Cable Television System involves the use and occupation of Grantee of the streets, thoroughfares, and other rights-of-way belonging to Grantor; and

WHEREAS, the technical and financial ability of Grantee, and its principals, and the character and reputation of said Grantee and its principals, have been considered and approved by the Grantors; and

NOW, THEREFORE, in compliance with the franchise standards of the New York State Public Service Commission, Grantor hereby grants a non-exclusive franchise to Grantee to construct, operate, and maintain a Cable Television System within the Grantor Community; provided, however, that the rights and privileges accorded by said franchise are fully subject to the following rights and conditions:

1. DEFINITIONS

When used in this Agreement, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural).

- a. "Agreement" refers to this Franchise Agreement entered into by the parties.

- b. "Board" means the governing body of the Town of Jerusalem.
- c. "Cable Television System" or "CATV" means a cable television system, as defined by Section 212 of the New York State Public Service Law and Section 522 of 47 of the United States Code.
- d. "Commission" means the New York State Public Service Commission.
- e. "Franchise Area" means that area within the corporate limits of the Town of Jerusalem as now or hereafter constituted.
- f. "Grantee" means Empire Video Services Corporation, its successors and assigns, the grantee of rights under this Agreement.
- g. "Grantor" or "Grantor Community" means the Town of Jerusalem.
- h. "Gross Annual Revenues" means annual revenues from cable subscribers in connection with the carriage of cable television services in the Grantor Community on a regular recurring monthly basis, and shall include revenues from subscribers for premium and pay-per-view services, guides, installations and reconnections, except that the amount which the Grantee pays to the programming provider for premium programming costs shall be excluded for the purposes of calculating franchise fees. It shall not include non-subscriber revenue such as advertising, nor refunds and credits made to subscribers, bad debt or any taxes or regulatory fees imposed on the services furnished by the company. It shall not include revenues received from internet, telephone or other non-video services.
- i. "Person" means any natural person, company, or entity of any kind.
- j. "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a cable television business in the Town of Jerusalem.
- k. "Standard Service" refers to a level of service above the Basic tier of service, now consisting of an additional selection of cable networks.
- l. "Street" means the surface of and the space above and below any public right-of-way and through easement by whatever name called, now or hereafter existing as such within the Franchise Area.

## 2. RIGHTS GRANTED

In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the right is hereby granted to Grantee, to erect, maintain, and operate cable television transmission and distribution facilities and additions thereto in, under, over, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges, and other public places in the Grantor Community, and subsequent additions thereto, for the purpose of transmission and distribution of audio and visual impulses, data and communications, and television energy and for any other lawful purpose specifically authorized under this Agreement in accordance with the laws and regulations of the Grantor for the period of fifteen (15) years



from the date of the approval of this Agreement by the Public Service Commission. Grantee may renew this Agreement in accordance with regulations of the Public Service Commission. The office or officer of the Grantor responsible for continuing administration of the franchise is the Board or its designated representative.

The Grantee shall not abandon service to any portion of the system during any contract period without first notifying Grantor in writing and then receiving the consent of Grantor. Such consent shall not be unreasonably withheld.

### 3. USE OF UTILITY POLES AND FACILITIES

There is hereby granted to Grantee the further right, privilege, and authority to lease, rent, or in any other lawful manner obtain the use of towers, poles, lines, cable and equipment and facilities from all holders of public licenses and franchises within the corporate limits of Grantor, and to use such towers, poles, lines, cables, and other equipment and facilities, subject to all existing and future local laws and regulations of Grantor. When and where practicable, Grantee's distribution system shall be erected upon poles owned and maintained by the existing utility companies, providing mutually satisfactory rental agreements can be entered into with such companies.

### 4. ERECTION AND MAINTENANCE OF POLES

Notwithstanding the above, where attachments to the pole(s) of utilities is not economically feasible, or otherwise, Grantee shall have the right to erect and maintain its own poles as may be necessary for the proper construction and maintenance of the television distribution system.

Grantee's transmission and distribution system, poles, wires, and appurtenances shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons or to interfere with new improvements that the Grantor may deem proper, or unnecessarily hinder or obstruct the free use of streets, alleys, bridges, and other public property. Any removal of the distribution system, poles, wires, or appurtenances to avoid such interference shall be at the Grantee's expense, provided, however, that Grantee shall share proportionately with other users of the poles in any federal or state funds furnished to Grantor for the purpose of community development or urban renewal projects.

In those sections of the Grantor Community where all utilities are underground, newly planted cable TV lines will be placed underground at the Grantee's expense, provided that to the extent funding is available for utilities to place lines underground, such funding shall be made available to Grantee as well.

### 5. USE OF EXISTING POLES

It is the stated intention and desire of Grantor that all other holders of public licenses and franchises within the corporate limits of the Grantor Community shall cooperate with Grantee to allow Grantee's joint usage of their poles and pole line facilities wherever possible or wherever such usage does not interfere with the normal operation of said pole and pole lines so that the

number of new or additional poles constructed by the Grantee within the Grantor Community may be minimized.

## 6. SERVICE AREA AND CONSTRUCTION

Grantee will make every reasonable effort to comply with the following schedule:

a. Within one (1) year following receipt of a certificate of confirmation from the New York State Public Service Commission, cable television service will be available to a significant number of subscribers within the primary service area pursuant to Part 895.5 of the New York State Public Service Commission Rules and Regulations or pursuant to an order waiving or modifying such requirements such that the primary service area is linked to the local service telephone territory of Empire Telephone Corporation, an affiliate of the Grantee, within the municipal boundaries. A map detailing the extent of the local service territory of Empire Telephone Corporation within the municipality is attached hereby as Exhibit A and made a part hereof.

b. Grantee shall apply for necessary operating authorizations with the Commission and FCC within 60 days from the date the franchise is awarded.

c. Areas outside of the primary service area will be served in accordance with Part 895.5 of the NYSPSC Rules and Regulations regarding line extensions or with an order waiving or modifying such requirement.

Should the Franchise Area of Grantor ever expand, Grantee will make cable television service available to new areas of Grantor Community located within the primary service area.

## 7. CORPORATE LIABILITY, INDEMNIFICATION

a. The Grantee, by its acceptance of this Agreement, specifically agrees that it shall indemnify and save harmless the Grantor from, and shall pay all damages, losses, costs, charges and penalties which the Grantor may legally be required to pay as a result of Grantee's operation of its cable television system in the Grantor Community. These damages, losses, costs, charges and penalties shall include, but shall not be limited to, damages, installation, operation or maintenance of the CATV system authorized herein. However, nothing herein contained shall be construed to relieve Grantor from any and all liability due to its own negligence.

b. The Grantee, by its acceptance of this Agreement, specifically agrees that it shall defend Grantor and shall pay all expenses incurred by the Grantor in defending itself with regard to all damages and penalties covered by subsection (a) above. These expenses shall include all out-of-pocket expenses such as attorneys' fees and shall also include the reasonable value of any services rendered by any employee of the Grantor.

c. The Grantee, by its acceptance of this Agreement, specifically agrees that it shall maintain, throughout the term of this Agreement, liability insurance insuring the Grantor and the Grantee in regard to all damages covered by subsection "a" above in the minimum amounts of \$1,000,000 combined-single limit for bodily injury or death and property damage per occurrence, with an annual aggregate of \$2,000,000. The Grantee shall also carry such insurance

as it deems necessary to protect it from all claims under Worker's Compensation laws in effect and that may be applicable to Grantee.

d. All insurance required by this Agreement shall be purchased from a company licensed to do business in New York State and shall be and remain in full force and effect for the entire life of this Agreement. A current certificate of the above listed insurance shall be filed with the Clerk of the Grantor, upon request.

#### 8. INTERFERENCE PROHIBITED

It shall be the duty of Grantee to erect and maintain its transmission and distribution facilities so as not to interfere with television reception of those persons who are non-users of Grantee's cable facilities.

#### 9. THE CABLE SYSTEM

The Grantee will construct a state-of-the-art Cable Television System comprising at least 120 channels of video programming and operating in conjunction with state-of-the-art, remote control capable, addressable converters. The Grantee will carry television broadcast stations, a variety of cable programming networks, premium pay-TV services and pay-per-view. The Grantee shall have the right to transmit advertising of some form through the system and shall have the right to solicit for said advertising.

The Cable Television System shall be installed, operated and maintained in full conformance with the technical standards established by the Federal Communications Commission and the New York State Public Service Commission.

#### 10. FRANCHISE PAYMENTS

As compensation for the franchise granted herein and in consideration of the permission to use the Streets and public ways of Grantor for the construction, maintenance, and reconstruction and operation of a Cable Television System in the Grantor Community, Grantee shall pay to Grantor five percent (5%) of its Gross Annual Revenues, as defined herein in this Agreement, less amounts assessed to the Grantee by the New York State Public Service Commission pursuant to Sections 217 and 218 of the New York State Public Service Law and in accordance with Section 626 of the New York State Real Property Tax Law.

Payments of the annual franchise fees shall be made annually and shall be accompanied by a financial report as to gross annual revenues broken down by service level which shall be used for the purpose of verifying the franchise fee payments. Grantor, at Grantor's own expense and upon at least thirty (30) business days written notice, may cause the books and records of the Grantee to be audited, for the purpose of determining the correctness of the annual payments to the Grantor.

#### 11. FEES AND CHARGES

The Grantee may make such charges for services provided to subscribers as are permitted by the F.C.C. and/or the Cable Act and/or the Rules and Regulations of the New York State

Public Service Commission as may affect rates for basic service, premium and pay-per-view programming, installation, disconnection and reconnection, advanced or pre-paid services, promotional campaigns, converter rentals, refunds, late payment charges, billing practices and any matter dealing with rates not specifically mentioned herein. Under this paragraph, neither party surrenders any other rights or obligations due them under any other federal, state or local statute, rule or regulation.

Grantee at all times shall keep on file with the Clerk of Grantor a schedule of rates. If at any time any change is made in the schedule of rates, such change or changes shall also be filed with Clerk of Grantor so that Grantor shall always have on file a list of the current charges made by Grantee to its subscribers.

12. PUBLIC HEARINGS

Grantee shall participate in public hearings to be called by the Grantor for the purpose of allowing public input to both parties. These hearings may be held at the discretion and request of the Grantor but shall not exceed, unless an emergency arises, one (1) per calendar year.

13. SERVICE TO SCHOOLS AND OTHER BUILDINGS

Grantee shall make available, upon written request of the proper authorities, Basic and Standard Service by Grantee without charge for equipment, installation or maintenance thereof to one outlet at the following, provided that the Grantee's lines pass within one hundred fifty (150) feet of these buildings:

- a. Fire and police stations;
- b. Municipal buildings; and
- c. Public and private schools.

Grantee shall upon request, without charge and within a reasonable time after such request, install in the buildings listed in a. to c. above, cable connections sufficient to enable one outlet in each such building to receive Basic and Standard programming transmitted and distributed over Grantee's system.

14. OTHER FRANCHISES, LICENSES, OR PERMITS

The rights granted under this Agreement authorize only the rights granted hereunder and do not take the place of any other franchise, license, or permit which might be required by law of the Grantee.

15. PREFERENTIAL PRACTICES PROHIBITED

Grantee shall not, as to rates, charges, services, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person; including its subsidiaries, parent and affiliates; nor subject any person to any prejudice or disadvantage.

16. GRANTEE NOT TO VIOLATE ZONING OR PRIVATE PROPERTY RESTRICTIONS

This Agreement and franchise shall not give any rights to the Grantee to violate any provision now existing or hereinafter rendered in zoning laws or other local laws of Grantor or to violate private property restrictions of record.

17. OPERATIONS AND MAINTENANCE

Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Grantee in accordance with Part 896.8 of the Commission's Rules will initiate investigative action in response to service calls on the same day they are received, if possible, and in all events on the business day following receipt of the calls. Grantee at all times during construction and throughout the term of the Agreement shall adhere to all technical regulations and standards of the Federal Communications Commission, the National Electric Code of the National Board of Fire Underwriters, the New York State Public Service Commission, the Grantor Community and the utility companies. The Grantee shall maintain at a location of its choice an office and service department which shall be open during normal business hours and shall have a listed, toll-free, telephone number available twenty-four (24) hours a day for the reception of complaints and requests for repair and adjustments. During some of this time, the telephone may be operated by an answering service or automatic recording service. Any municipal property damaged or destroyed by Grantee shall be promptly repaired or replaced by Grantee and restored to serviceable condition. Grantee at all times will adhere to the Rules and Regulations of the New York State Public Service Commission for issuance of credits for subscriber outages, and for all other service standards.

18. NON-EXCLUSIVE FRANCHISE

This Agreement and any rights granted hereunder shall be non-exclusive, and Grantors reserve the right to grant another similar franchise or right to any person or firm. No franchise granted to a video provider shall include terms or provisions that are more favorable than the terms or provisions granted to Grantee hereunder. If, however, Grantor should grant an additional franchise to one or more multi-channel video providers containing terms or provisions inconsistent with or more favorable than this Agreement, Grantee at its option shall have the right to incorporate and/or substitute those terms within this Agreement and have these additional or substituted terms binding on both parties for the remainder of the Agreement, subject to any approval required by law. Further, no multi-channel video provider shall have the right to provide any service upon terms more favorable than those applicable to the provision of such service by the Grantee, unless Grantee is allowed such terms.

19. INSPECTION OF RECORDS, FILINGS AND COMMUNICATIONS WITH REGULATORY AGENCIES

The Grantor shall have the right to inspect, upon two weeks written notice, at any time during normal business hours at the system office all books, records, maps, plans, financial statements, service complaint logs, performance test results, record of requests for service and other like materials of Grantee which are reasonably necessary to monitor compliance with the terms of this Agreement. Grantee shall first be given two (2) weeks written notice of the inspection request, the description of and purpose for the inspection and description, to the best of the Grantor's ability, of the books, records, documents and equipment it wants to inspect.

## 20. REPORTS

Grantee shall file with Grantor certificates of insurance as required herein and financial information as to gross receipts for the purpose of verifying franchise fee payments. Grantee shall file rate schedules as required herein upon request.

## 21. CONDITIONS ON STREET OCCUPANCY

a. Any construction work which requires disturbing the surface of any street shall be performed in a manner so as to cause minimum interference with the proper use of streets, public ways, and places; and in a manner which shall cause minimum interference with the rights and reasonable convenience of property owners adjoining any of the streets, public ways, and places.

b. In case of disturbance of any street, sidewalk, public, way, or paved area, the Grantee shall at its own cost and expense and in conformity with all the requirements of the local laws and regulations of Grantor and with the National Electric Safety Code, replace and restore each street, sidewalk, and public way in as good a condition as before the work involving such disturbance was done.

c. Grantee shall, provided it has at least forty-eight (48) hours' notice, on the request of any person holding a building moving permit, temporarily raise or lower its cable to permit the moving of buildings. The expense incurred by Grantee because of said move shall be borne by the party requesting the move. The cost shall be calculated on the basis of Grantee's time and materials.

d. Grantee shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the Grantor Community so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done, at the expense of Grantee, under the supervision and direction of the Grantor Community.

## 22. SAFETY REQUIREMENT

Grantee shall at all times employ reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisances to the public; and the Grantor's streets shall be properly protected at all times with suitable barricades and other protective devices to protect all members of the public having occasion to use the portion of any street which may be involved in Grantee's work.

## 23. ACCESS CHANNEL AND EMERGENCY USE

Grantee shall comply with Part 895.4 of Commission's rules and regulations. Grantee shall provide one channel for public access, educational access and government access. Grantee may use allocated channel time until such time as demand for PEG services increase. The Grantor hereby agrees that the PEG access channel (s) contemplated herein shall be shared among the municipalities now or hereafter served by the Grantee.

The Grantee shall comply with applicable provisions of the FCC Emergency Alert System regulations and shall cooperate with the Grantor Community during any period of such emergency or disaster.

24. RIGHT OF REVOCATION, TERMINATION, AND CANCELLATION PROCEEDINGS. RIGHTS AT EXPIRATION OF FRANCHISE

The rights, powers, and privileges granted in this Franchise Agreement may be revoked by resolution of Grantor for the following reasons, subject to the procedure hereinafter set forth:

- a. Non-compliance by the Grantee with the material terms of this Franchise Agreement.
- b. Non-use and abandonment of the system for a period of thirty (30) days or more.
- c. Failure to pay to Grantor proper franchise fee payments as required by this Franchise Agreement.
- d. Knowingly submitting false reports or records to Grantor.

In the event of any of the above occurrences, Grantee shall be given written notice and have sixty (60) days from such notice to remedy the material deficiency. If after such sixty (60) day period, no corrective action has been taken, a hearing shall be held by the Grantor to determine whether the period of cure should be extended or whether the license and franchise should be terminated and canceled. Grantee shall receive ten (10) days written notice of such hearing. No revocation, termination, or cancellation shall occur for causes beyond Grantee's control or so long as Grantee is diligently and continuously proceeding with corrective action.

25. GRIEVANCE PROBLEMS

Grantee shall provide written notice to all present and initial subscribers, and thereafter on a yearly basis to all subscribers, explaining procedures for reporting and resolving complaints and the Grantee's billing procedures. Such procedures and notice shall be in compliance with the New York State Public Service Commission rules.

26. COMPLIANCE WITH APPLICABLE STANDARDS

The cable television system to be constructed by Grantee, pursuant to this Franchise Agreement shall be designed to meet the technical standards set by the New York State Public Service Commission. All materials used in this system will be of good and acceptable quality.

27. NONDISCRIMINATION

Grantee shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, national origin, or sex.

28. SEVERABILITY

If any section or portion of this contract is for any reason held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions hereof. However, in the event

that the FCC and/or the State Commission declares any paragraph, subparagraph, sentence, clause, or phrase invalid, then such paragraph, subparagraph, sentence, clause, or phrase will be re-negotiated by the Grantee and the Grantor.

29. PRE-EMPTION OF LOCAL REGULATORY AUTHORITY

The Grantor and Grantee specifically acknowledge that State and Federal Laws have been enacted which may restrict, limit or foreclose the Grantor's rights to regulate various aspects of Grantee's conduct during the course of construction, operation and maintenance of a cable television system or to impose various conditions in granting such franchise.

The Grantor reserves the right to adopt such additional regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations are reasonable and not materially in conflict with the privileges granted in this Agreement.

30. SAVINGS CLAUSE

Except as otherwise provided for herein, the Rules and Regulations of the New York State Public Service Commission shall be binding upon the parties.

31. SUCCESSORS AND ASSIGNS

This Agreement constitutes the understanding between the parties and shall be binding upon the parties hereto, their respective assigns, transferees, and successors.

32. COMMISSION APPROVAL

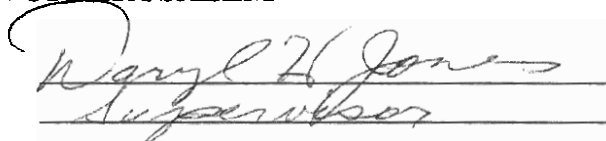
The terms of this Agreement are subject to the approval of the Commission, and the Agreement shall become effective as of the date of approval by the Commission.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have affixed their signatures and seals as of the date first written above.

**TOWN OF JERUSALEM**

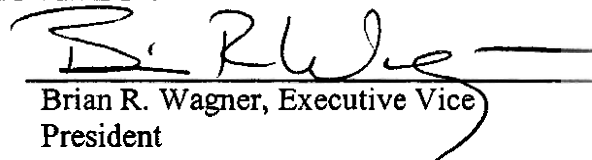
By:

Title:

  
Daryl H. Jones  
Superintendent

**EMPIRE VIDEO SERVICES CORPORATION**

By:

  
Brian R. Wagner, Executive Vice  
President



**EXHIBIT A**

**Map**

TD# 5  
TOWN of ITALY  
SBEA# 5724003

TD# 6  
TOWN of JERUSALEM  
SBEA# 572689

TD# 3  
TOWN of PULTENEY  
SBEA# 4662003

TD# 1  
TOWN of PRATTSBURGH  
SBEA# 4660003

Empire Tel.  
522 Exchange

TD# 2  
TOWN of WHEELER  
SBEA# 4680003

TD# 3  
TOWN of PULTENEY  
SBEA# 4662003

TD# 4  
TOWN of URBANA  
SBEA# 4672003

EMPIRE TELEPHONE CORP.  
607-522-XXXX EXCHANGE AREA  
TOWN OF PRATTSBURGH  
STEBEN COUNTY, NEW YORK

empire

—E— Exchange Boundary  
—T— Town Boundary

No Scale  
2/3/2006

868 Exchange

868 Exchange

**Exhibit B**

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

LEO4481

AFFIDAVIT

STATE OF NEW YORK

SS

YATES COUNTY

**Karen L. Morris**

being duly sworn, deposes and says that she resides in the **Town of Starkey, County of Yates, and State of New York**, that she is the **General Manager of *The Chronicle-Express***, a public newspaper, published weekly in the **Village of Penn Yan, by Liberty Group New York Holdings, Inc.**, and that a notice, of which the annexed is a printed copy, was published in said weekly newspaper.

said publication therein being on the following date(s):

October 11 and 18, 2006

Karen L. Morris General Manager

Subscribed and sworn to before me on this 18th

day of October, 2006

PATRICIA L. CHRISTENSEN  
Notary Public, State of New York  
Qualified in Yates County  
No. 01CH8042773  
Commission Expires 08-08-2010

Patricia L. Christensen  
NOTARY PUBLIC

18  
DATED

NOTICE OF SALE  
SUPREME COURT OF THE  
STATE OF NEW YORK  
NASSAU COUNTY

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all, New York, where it is available for inspection by any interested person during the hours of 9:00 A.M. to 4:00 P.M. Monday - Friday.

**KNIGHT**

SCOTT

**DRUGS**

9

**NOTICE OF PUBLIC HEARING**

**TOWN OF JERUSALEM  
COUNTY OF YATES**

NOTICE IS HEREBY GIVEN THAT THE TOWN BOARD OF THE TOWN OF JERUSALEM WILL HOLD A PUBLIC HEARING ON AN APPLICATION FOR CABLE TELEVISION FRANCHISE LICENSE FROM EMPIRE TELEPHONE CORP. THE HEARING WILL BE HELD ON OCTOBER 18, 2006 AT 7:10 P.M. AT THE TOWN OFFICES, 3816 ITALY HILL ROAD, BRANCHPORT, NEW YORK.

ALL PERSONS INTERESTED IN THIS MATTER WILL BE HEARD BY THE TOWN BOARD AT THE PUBLIC HEARING TO BE HELD AS STATED ABOVE. COPIES OF THE PROPOSED APPLICATION MAY BE OBTAINED AT THE OFFICE OF THE JERUSALEM TOWN CLERK DURING REGULAR BUSINESS HOURS.

BY ORDER OF THE JERUSALEM TOWN BOARD  
SHEILA McMICHAEL  
JERUSALEM TOWN CLERK  
OCTOBER 9, 2006

Certified to be an exact and true copy of a document on  
file in the Office of the Jerusalem Town Clerk.

Sheila McMichael, Town Clerk

**Exhibit C**

**Resolutions adopted by the Municipality**

Jerusalem Town Board  
October 18, 2006

RESOLUTION #176-06

GRANTING OF A CABLE FRANCHISE TO EMPIRE VIDEO SERVICES CORPORATION

On a motion of Councilperson Stewart, seconded by Councilperson Folts, the following was

ADOPTED   Ayes           5       Barden, Folts, Hopkins, Jones, Stewart  
          Nays           0

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 Jerusalem; and

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

WHEREAS, notice of said public hearing was provided to all parties so entitled to notice, being posted on the official sign board of the Town of Jerusalem on October 9, 2006; and

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

NOW, THEREFORE, BE IT:

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

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Jerusalem and EVSC substantially in the form presented at the Town Meeting on October 18, 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 Jerusalem his execution thereof constituting proof of the effectiveness of such Franchise Agreement.

Certified to be an exact and true copy of a document on  
file in the Office of the Jerusalem Town Clerk.

Shirley McMichael, Town Clerk



**Exhibit D**

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

LEO4705

AFFIDAVIT

STATE OF NEW YORK

SS

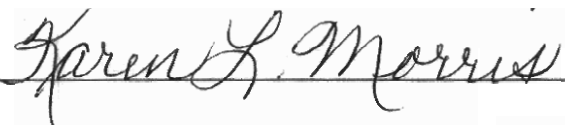
YATES COUNTY

**Karen L. Morris**

being duly sworn, deposes and says that she resides in the **Town of Starkey, County of Yates, and State of New York**, that she is the **Publisher of *The Chronicle-Express***, a public newspaper, published weekly in the **Village of Penn Yan**, by **Liberty Group New York Holdings, Inc.**, and that a notice, of which the annexed is a printed copy, was published in said weekly newspaper.

Said publication therein being on the following date(s):

**April 11, 2007**

 Publisher

Subscribed and sworn to before me on this 12<sup>th</sup>

day of April, 2007

**PATRICIA L. CHRISTENSEN**  
Notary Public, State of New York  
Qualified in Yates County  
No. 01CH6042773  
Commission Expires 06-05-2010

  
NOTARY PUBLIC

-12-2007  
DATED

# PUBLIC NOTICE

PUBLIC NOTICE DEADLINE NOON MONDAYS.

the will conduct informational meetings concerning wind towers. These meetings are intended to be conducted only for fact-finding information. The meetings are scheduled as follows:

Empire State Wind Farms - Thursday - April 19, 2007, at 7:30 p.m.

Ecogen LLP - Thursday - April 26, 2007, at 7:30 p.m. These meetings will be held at the newly constructed Potter Town Highway Barn located at 1306 Phelps Road near the Town's gravel pit.

Any further questions, please call the Potter Town Clerk at 585-554-6758.

**BY ORDER OF THE POTTER PLANNING BOARD**

**PATRICIA BOOTES  
POTTER TOWN CLERK  
LE04704-15PN1**

## NOTICE OF FILING

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

**LE04705-15PN1**

## NOTICE OF FUNDING FOR COMMUNITY BASED PRIVATE NOT-FOR-PROFIT CORPORATIONS AND PUBLIC AGENCIES SERVING YATES COUNTY YOUTH

The Yates County Youth Bureau/Youth Board is soliciting proposals for program year 2008, to be funded under the New York State Office of Children and Family Services: Special Delinquency Prevention Program (SDDP) allocation available is approximately \$12,874.00, Youth Development Delinquency Prevention Services (YDDP) allocation available is approximately \$14,021.00 and Youth Initiatives (YI) allocation available is approximately \$5,199.00. The funding is available for the program year January 1, 2008 through December 31, 2008. The program concept form deadline is June 1, 2007.

Applications and additional information can be obtained from the Yates County Youth Bureau, 417 Liberty Street, Suite 2021, Penn Yan, NY 14527; phone 315-536-5140. Requests for applications may be emailed to [sshoff@yatescounty.org](mailto:sshoff@yatescounty.org).

**LE04701-15PN2**

of judgment is \$69,111.40, plus costs, fees and interest. Sold subject to provisions of filed Judgment.

Paul Bleaky, Esq., Referee Block, Colucci, Spellman & Peller, LLP, Attorneys for Plaintiff, P.O. Box 5018, Clifton Park, New York 12065

All that tract or parcel of land, situate in the Town of Middlesex, County of Yates, State of New York, and being more particularly described as follows:

Beginning at a railroad spike in the centerline of Robeson Road, said spike being located 624 feet, more or less, westerly from the centerline of Vine Valley Road;

Thence South 13 deg 21' 00" West, in the westerly line of lands, now or formerly owned by Kenneth L. and Janice E. Graff (Liber 353 of Deeds, page 67), a distance of 78.59 feet to an iron rod;

Thence North 78 deg 26' 00" West in the northerly line of Graff, a distance of 135.41 feet to a p.k. nail;

Thence North 41 deg 46' 17" East, a distance of 72.00 feet to a point in the centerline of Robeson Road;

Thence South 86 deg 07' 16" East, in the centerline of Robeson Road, a distance of 71.00 feet to a point;

Thence North 89 deg 19' 00" East in the centerline of Robeson Road, a distance of 32.00 feet to the point or place of beginning, intending to describe 0.186 acre of land;

Subject to all covenant, easements and restrictions of record, if any, which may affect the premises herein conveyed and subject to the rights of the public in and to that portion of the premises conveyed herein which lies within the boundaries of the public highway.

This deed is extinguishing the life-use of Kenneth L. Graff and Janice E. Graff as well as conveying their interest in said premises.

Being the same premises as conveyed to the party of the first part, herein, by Warranty Deed dated 1/5/00 and recorded 1/5/00 in Liber 427 at Page 19.

**LE04702-15PN4**

## PUBLIC NOTICE ZONING BOARD OF APPEALS

A Public Hearing before the Zoning Board of Appeals of the Town of Jerusalem will be held on Tuesday, April 24th, 2007 at the Jerusalem Town Offices at 3816 Italy Hill Rd., Branchport, to consider the following application and to take care of any other Zoning Board business as deemed necessary.

Application #896 for Dou-

be received by the Zoning Board of Appeals, Town of Jerusalem, 3816 Italy Hill Rd., Branchport, NY, prior to the above mentioned date.

**Town of Jerusalem  
Zoning Board of Appeals  
LE04706-15PN1**

## PUBLIC NOTICE

The *Chronicle-Express* welcomes letters to the editor and encourages the use of this forum as a means of active community involvement.

Our goal is to run all signed letters to the editor in a timely manner with as little editing as possible. We ask that letters be typed or neatly printed, and that writers be brief, making their points concisely.

Only the name and hometown of letter writers will be published in the newspaper. However, submissions must include the author's name (typed or printed), signature, address and telephone numbers.

We reserve the right to reject letters, but will do so only on rare occasions, typically when what is written prompts legal or ethical concerns, or when the letter is unusually lengthy. In some cases, however, we will contact writers to suggest changes that could make their letters acceptable for print.

Your opinion counts! Please write to: Letters to the Editor, The *Chronicle-Express*, 138 Main St., Penn Yan, NY 14527.

## THE CHRONICLE-EXPRESS GUIDELINES FOR POLITICAL NEWS COVERAGE, LETTERS & POLITICAL ADVERTISING NEWS & EDITORIAL COVERAGE:

1. The newspaper does not endorse candidates for local, state or national office.

2. When a person announces his or her candidacy, the newspaper will run a news story & photo at no charge.

3. The newspaper will publish news stories about write-in campaigns.

Since decisions to run write-in campaigns sometimes are made shortly before an election, there is no deadline set on receiving such announcements.

4. Election-related news coverage beyond or in exception to what is stated above will be at the discretion of the editor in the name of reader interest and information and will be done with fairness to all candidates.

## LETTERS TO THE EDITOR:

1. The newspaper does not publish letters that endorse local political candidates based on their record, reputation and qualifications. (This constitutes paid political advertising.)

2. Election-related letters must deal with pertinent issues.

ten and delivered promptly to the editor's desk (See No. 6).

Responses may rebut charges, innuendos or misstatements of fact from the initial letter, but may not present new charges or level inflammatory counterattacks on the opposing political camp.

6. Under no circumstances will any election-related letter be published after the Wednesday immediately prior to Election Day.

7. In the case of questionable content (e.g. statements of fact that are suspect, assaults on a candidate's character or moral standards, etc.), the newspaper will follow its established letters policy to satisfy its ethical and legal concerns. Any suggested changes to letters will be cleared with their authors.

8. All letters must be signed and include an address and telephone number. (Phone numbers are for questions & verification purposes only and will not be published.)

9. Political letters will not be accepted via e-mail. Faxed and mailed letters will be accepted.

## POLITICAL ADVERTISING:

1. All political advertising is charged at the prevailing open rate.

2. All political advertising must be paid for in advance.

3. All political advertising must carry a line reading "Authorized By..." or "Paid For By..." If authorized by the candidate, his authorized political committee or their agents, the ad must clearly state such. If not authorized the ad must clearly and specifically state the name of the person, committee or organization who placed or financed the ad. (Personal identification may be requested.) In the case of committees, groups and organizations, they must be established, registered and/or reasonably identifiable to the newspaper's readers. If not, the name of the treasurer or another officer may be required.

4. The phrase "PAID POLITICAL ADVERTISEMENT" by itself is insufficient.

5. Guaranteed position is an additional 25% of the cost of the ad. Subject to availability.

6. No political ads of a derogatory or attacking nature will be published after Wednesday's edition, 6 days prior to Election Day. (NOTE: Production deadlines require that all ads be placed with our sales department no later than 5 p.m. three working days prior to publication... or 5 p.m. Friday for an ad to appear Wednesday. In the name of fairness and our responsibility to the local voting public, responses to derogatory

**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 Jerusalem, 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>&lt;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: 4.97 (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. \_\_\_\_\_ %
- f. Number of off-street parking spaces existing \_\_\_\_\_; proposed \_\_\_\_\_
- g. Maximum vehicular trips generated per hour: \_\_\_\_\_ (upon completion of project)?
- h. If residential: Number and type of housing units:
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | _____      | _____      | _____           | _____       |
| Ultimately | _____      | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; \_\_\_\_\_ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? \_\_\_\_\_ ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? 0 tons/cubic yards.
3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A
- a. If yes, for what intended purpose is the site being reclaimed?
- 
- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 0 acres.

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

☐ Yes

☒ No

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

7. If multi-phased:

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

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

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

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

8. Will blasting occur during construction? ☐ Yes ☒ No

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

10. Number of jobs eliminated by this project 0 .

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

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☒ No

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

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

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

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

If yes, explain:

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

16. Will the project generate solid waste? ☐ Yes ☒ No

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

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

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

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

e. If yes, explain:

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

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

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

18. Will project use herbicides or pesticides? ☐ Yes ☒ No

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

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

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

If yes, indicate type(s)

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

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

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

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

If yes, explain:

**25. Approvals Required:**

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

**C. Zoning and Planning Information**

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

If Yes, indicate decision required:

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

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

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

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

N/A

4. What is the proposed zoning of the site?

N/A

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

N/A

6. Is the proposed action consistent with the recommended uses in adopted local land use plans?

☒ Yes

☐ No

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

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile?

☒ Yes

☐ No

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

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

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

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

☐ Yes ☒ No

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

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

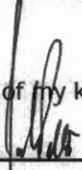
a. If yes, is the existing road network adequate to handle the additional traffic. ☐ Yes ☐ No

**D. Informational Details**

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

**E. Verification**

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

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

Signature \_\_\_\_\_

Title Agent for Empire Video Services Corporation

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

**Exhibit F**

**Addendum to the Full Environmental Assessment Form**

**ADDENDUM TO THE FULL ENVIRONMENTAL ASSESSMENT FORM  
OF EMPIRE VIDEO SERVICES CORPORATION  
RELATING TO A CABLE TELEVISION FRANCHISE IN THE  
TOWN OF JERUSALEM, 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 Jerusalem ("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 Yates County. As of the 2000 Census, the Town had a population of 4,525 within a total area of approximately 65.4 square miles. 58.9 square miles of it is land and 6.5 square miles (9.97%) of it is water.

The Town contains portions of agricultural districts, but is not substantially contiguous to a National Natural Landmark. While the Town does not contain any state registered historic sites, it does contain nationally 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 ten (10) 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, Adelphia Cable Communications.



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

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

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

If extension of the Facilities were to be under taken following award of the franchise, any construction in the Town's rights-of-way with respect to cable television services would only involve facilities that will also be used for Empire Telephone Corporation's services. Construction of the Facilities has been completed for approximately five percent (5 %) 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. The number of households that would require new facilities is nominal.<sup>1</sup> In terms of the potential environmental impact of drop placement activities, the fiber and copper drops do not differ in any significant respect from industry standard facilities that are commonly used by Empire Telephone Corporation.

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

**Exhibit 1**

**List of Critical Environmental areas in Yates County**



## Critical Environmental Areas in Yates County

**More information from this division:**

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

---

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

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

[Back to top of page](#)

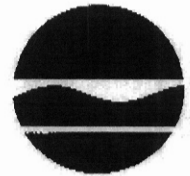
**Exhibit 2**

**Unconsolidated Aquifers in Upstate New York**

**Exhibit 3**

**Schedule of Freshwater Wetlands in the Town**

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



April 5, 2007

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

Dear Ms. Fleming,

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

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

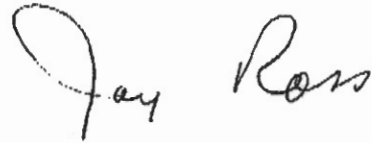
Also note that a figure for UPL (upland inclusions) shows at the bottom of some lists. This is not another wetland for your number count.

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

<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 cursive script that reads "Jay Ross". The signature is written in dark ink and is positioned below the typed name "Jay Ross".

Fish and Wildlife Technician

WET ID	Jerusalem	WETL
	CLASS	
PU-3	2	228.4
PU-6	2	20.2
PY-4	3	19.6
PY-2	3	34.8
PU-2	2	27.9
KP-5	2	45.1
PY-1	1	81.6
PU-5	3	18.8
PO-3	2	118.3
PU-1	1	46.5
		<u>10</u>



**Exhibit 4**

Flood Plain Maps

**Exhibit 5**

National Register

**Index by State and City**

National Register Information System

03/27/2007 15:20:18

No filter

Include filter in navigation ☐

Row	STATE ▾	COUNTY ▾	RESOURCE NAME ▾	ADDRESS ▾	CITY ▾	LISTED ▾	MULTIPLE ▾
1	NY	Yates	<b>Bitley, Peter, House</b>	W. Lake Rd. (Co. Rt. 54A)	Jerusalem	1994-08-24	Yates County MPS
2	NY	Yates	<b>Bitley, Thomas, House</b>	Lake St.	Jerusalem	1994-08-24	Yates County MPS
3	NY	Yates	<b>Botsford, Samuel, House</b>	County House Rd.	Jerusalem	1994-08-24	Yates County MPS
4	NY	Yates	<b>Esperanza</b>	NY 54A E of Keuka Lake	Jerusalem	1995-12-07	Yates County MPS
5	NY	Yates	<b>Hampstead</b>	3170 Co. Rt. 54A	Jerusalem	1994-08-24	Yates County MPS
6	NY	Yates	<b>Hanford, Uriah, House</b>	W. Lake Rd.	Jerusalem	1994-08-24	Yates County MPS
7	NY	Yates	<b>Hays, George, House</b>	County House Rd.	Jerusalem	1994-08-24	Yates County MPS
8	NY	Yates	<b>Perry, Ezikial, House</b>	287 Sherman Hollow Rd.	Jerusalem	1994-08-24	Yates County MPS
9	NY	Yates	<b>Sill Tenant House</b>	3232 Co. Rt. 54	Jerusalem	1994-08-24	Yates County MPS
10	NY	Yates	<b>St. Luke's Episcopal Church</b>	W. Lake Rd. (Co. Rt. 54A)	Jerusalem	1994-08-24	Yates County MPS

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 Jerusalem**

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

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

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

#### **BY THE BOARD:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: March 6, 2002

BOARD OF PUBLIC UTILITIES  
BY:

(signed)

JEANNE M. FOX  
PRESIDENT

(signed)

FREDERICK F. BUTLER  
COMMISSIONER

(signed)

CAROL J. MURPHY  
COMMISSIONER

(signed)

CONNIE O. HUGHES  
COMMISSIONER

ATTEST:

(signed)

HENRY M. OGDEN  
ACTING BOARD SECRETARY