

PENDING PETITION MEMO

Date: 5/17/2007

TO : OT
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FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE VIDEO SERVICES CORPORATION

SUBJECT: 07-V-0577

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



Harter Secret & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

May 16, 2007

VIA: FEDERAL EXPRESS

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

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

Dear Secretary Brillong:

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

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

Very truly yours,

HARTER SECRET & EMERY LLP

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JTP:lgj

Enclosures

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

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

Application of Empire Video Services Corporation for a Certificate of Confirmation Approving a Franchise Agreement in the Town of Wheeler 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 Wheeler Constitutes the Franchise Area, or, in the Alternative, an Exemption, Pursuant to 895.5(d), from the Requirements of 16 NYCRR Sections 895.1 and 895.5(a)-(c).

CASE 07-C-_____

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

SUMMARY

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

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

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

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

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

APPLICATION FOR A CERTIFICATE OF CONFIRMATION

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

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

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

PETITION

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

I. BACKGROUND

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

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

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

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

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

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

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

II. DISCUSSION

A. Petition for Declaratory Ruling Regarding the Franchise Area.

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

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

The Municipality and EVSC have agreed that the “franchise area” will be limited to the Footprint³. Consequently, the construction buildout of EVSC’s cable television system, which

³ See Section 12 of the Franchise Agreement filed as Exhibit A, hereto.

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

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

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

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

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

⁴ See 16 NYCRR § 895.5(a) and (b).

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

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

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

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

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

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

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

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

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

⁶ 47 U.S.C.S. §§ 251(c)(1)-(6).

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

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

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

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

c) Installing Traditional Cable Plant in Bordering ILEC Territory.

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

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

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

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

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

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

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

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

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

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

4. Recommendations Regarding Waiver

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

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

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

III. CONCLUSION

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

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

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

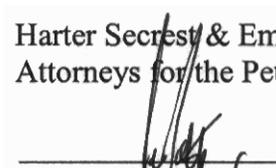
(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules,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

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

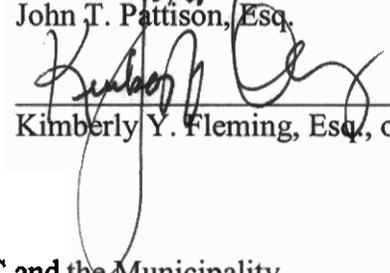
Regulations and the Rules of the Commission.

Respectfully submitted

Harter Secrest & Emery LLP
Attorneys for the Petitioner



John T. Pattison, Esq.



Kimberly Y. Fleming, Esq., of counsel

Attachments:

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

Exhibit A

Franchise Agreement between EVSC and the Municipality

COPY

CABLE TELEVISION FRANCHISE AGREEMENT

Town of Wheeler

THIS AGREEMENT, executed this 1st day of April, 2007 by and between the Town of Wheeler (hereafter referred to as "Municipality") by the Supervisor acting in accordance with the authority of the duly empowered local governing body, (hereinafter referred to as the Board), 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 "Empire Video").

WITNESSETH

WHEREAS, pursuant to the Town Law, the Board has the exclusive power on behalf of the Municipality to grant franchises providing for or involving the use of the Streets (as defined in Section 1 hereof) and to give the consent of the Municipality to any franchisee for or relating to the occupation of the Streets; and

WHEREAS, pursuant to the Communications Act of 1934, as amended, (the "Communications Act") the Board has the authority to grant cable television franchises and renewals thereof on behalf of the Municipality and whereas the Board and Empire Video pursuant to said Federal Law and pursuant to applicable State laws and the regulations promulgated thereunder, have complied with the franchise procedures required of Municipalities and cable operators in the grant of cable television franchises or their renewal; and

WHEREAS, the Municipality has conducted negotiations with Empire Video and has conducted one or more public hearings on Empire Video's franchise proposal affording all interested parties due process including notice and the opportunity to be heard; said deliberations included consideration and approval of Empire Video's technical ability, financial condition and character; said public hearing also included consideration and approval of Empire Video's plans for constructing and operating the cable television system; and

WHEREAS, following such public hearings and such further opportunity for review, negotiations and other actions as the Board deemed necessary and that is required by law, the Board decided to grant Empire Video's franchise as provided hereinafter; and

WHEREAS, The Board, in granting this franchise, as embodied in this Agreement, has determined that said Franchise Agreement and Empire Video fulfills and will fulfill the needs of the Municipality with respect to Cable Television Service and complies with the standards and requirements of the New York State Public Service Commission ("NYSPSC").

NOW, THEREFORE, In consideration of the foregoing clauses, which clauses are hereby made a part of this Franchise Agreement, and the mutual covenants and agreements herein contained, the parties hereby covenant and agree:

SECTION 1. - DEFINED TERMS

Unless the context clearly indicates that a different meaning is intended:

- (a) "Basic Service" means any service tier which includes the retransmission of local broadcast signals.
- (b) "Board" means the Board of Trustees of the Municipality.
- (c) "Cable Television Service" means:
 - (1) The transmission to Subscribers of Video Programming, or other programming service; and
 - (2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, or other programming service.
- (d) "Cable Television System" means a facility, consisting of a set of closed transmission including (without limitation) fiber optic wires or lines, and associated signal generation, reception and control equipment that provides Cable Television Service to multiple subscribers within a community.
- (e) "Effective Date" of this Agreement shall be that date of confirmation of this Agreement by the New York State Public Service Commission ("NYSPSC").
- (f) "FCC", means the Federal Communications Commission, its designees and any successor hereto.
- (g) "Gross Revenues" means all revenues net of franchise fees actually received by and paid to Empire Video by Subscribers residing within the Municipality for Cable Television Service purchased by such Subscribers on a regular, recurring monthly basis. Gross Revenues shall not include revenues received for telephone, internet or other non-video services.
- (h) "May" is permissive.
- (i) "Municipality" means the Town of Wheeler. Wherever the context shall permit, Board, Council and Municipality shall be used interchangeably and shall have the same meaning under this Agreement.
- (j) "NYSPSC" means New York State Public Service Commission.
- (k) "Person" means an individual, partnership, association, corporation, joint stock company trust, corporation, or organization of any kind.
- (l) "Service Tier" means a category of Cable Television Service provided by Empire Video over the Cable Television System for which a separate rate is charged for such category by Empire Video.

- (m) "Shall" or "will" are mandatory.
- (n) "Streets" means the surface of, as well as the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks and public grounds and waters within or belonging to the Municipality.
- (o) "Subscriber" means any person lawfully receiving any Cable Television Service in the Municipality provided over the Cable Television System.
- (p) "Video Programming" means any and all cable television programming services provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2. - CONSENT TO FRANCHISE AND CONDITION PRECEDENT

- (a) The Municipality hereby grants to Empire Video the non-exclusive right to construct, erect, operate and maintain a Cable Television System and to provide Cable Television Service within the Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across any and all said Streets such facilities (e.g., poles, wires, cables, conductors, ducts, conduits, vaults, pedestals, manholes, amplifiers, appliances, attachments and other property) as is deemed necessary or useful by Empire Video, for the operation of its cable system. Additionally, the Municipality, insofar as it may have the authority to so grant, hereby authorizes Empire Video to use any and all easements dedicated to compatible uses, such as electric, gas, telephone or other utility transmissions, for the purposes of erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon and across such easements such facilities of the Cable Television System as is deemed necessary or useful by Empire Video, for the operation of its cable system. Upon request by Empire Video and at Empire Video's sole expense, the Municipality hereby agrees to assist Empire Video in gaining access to and using such easements.
- (b) Nothing in this Agreement shall limit the right of Empire Video to transmit any kind of signal, frequency, or provide any type of service now in existence or which may come into existence and which is capable of being lawfully transmitted and distributed by those facilities owned and operated by Empire Video. The provision by Empire Video of any service other than Cable Television Service shall be subject to all applicable laws and regulations and to any right the Municipality may have to require fair and reasonable compensation for Empire Video's use of the rights-of-way to provide such service, provided that such requirement is non-discriminatory and competitively neutral.
- (c) Without waiver or restriction of the rights available to the parties hereto under applicable law, this Agreement and the attachments hereto constitute the entire

agreement between the parties and supersede any and all prior agreements pertaining to cable television by or between the parties hereto or their predecessors in interest as well as all rights, obligations and liabilities arising thereunder concerning or in any way relating to Cable Television Service.

- (d) In the event the Municipality grants to any other Person (being referred to as "Grantee" in the below quoted paragraph) a franchise, consent or other right to occupy or use the Streets, or any part thereof, for the construction, operation or maintenance of all or part of a cable television system or any similar system or technology, the Municipality shall insert the following language into any such franchise, consent or other document and/or promptly pass a resolution, conditioning the use of the Streets or any part thereof by any such Person, as follows:

"Grantee agrees that it will not move, damage, penetrate, replace or interrupt any portion of the Cable Television System of Empire Video without the prior written consent of Empire Video. Grantee shall indemnify Empire Video against any damages or expenses incurred by Empire Video as a result of any removal, damage, penetration, replacement or interruption of the services of Empire Video caused by the Grantee."

As used immediately above in the above quoted paragraph, the term "Empire Video" shall mean Empire, as defined in this Agreement, and its successors, assigns and transferees.

- (e) This Agreement is non-exclusive. Any grant of a subsequent franchise shall be on terms and conditions which are not more favorable or less burdensome than those imposed on Empire Video hereunder.

As used in this Section, the phrase, "occupancy or use of Streets," or any similar phrase, shall not be limited to the physical occupancy or use thereof but shall include any use above or below the Streets by any technology including but not limited to infrared transmissions.

SECTION 3. - APPROVAL OF COMPANY BY MUNICIPALITY

- (a) This Agreement is subject to and complies with all applicable Federal and State laws and regulations, including, without limitation, the rules of the NYSPSC concerning franchise standards. The Municipality hereby acknowledges and agrees that this Agreement has been entered into by it in accordance with and pursuant to the Communications Act of 1934, as amended, 47 U.S.C. Sec. 521 et seq. (hereinafter referred to as the "Communications Act"). The Municipality hereby represents and warrants that this Agreement has been duly entered into in accordance with all applicable local laws. The Municipality hereby acknowledges that it, by duly authorized members thereof, has met with Empire Video for the purposes of evaluating Empire Video and negotiating and consummating this Agreement.

- (b) In a full and public proceeding, affording due process, the Municipality has considered and approved Empire Video's technical ability and character and has considered and found adequate Empire Video's plans for constructing and operating the cable system.

SECTION 4. - FRANCHISE TERM

The term of this Agreement shall be fifteen (15) years commencing on the date of confirmation by the NYSPSC. This Agreement may be renewed in accordance with Section 891.2 of the Rules of the NYSPSC.

SECTION 5. - ASSIGNMENT OR TRANSFER OF FRANCHISE

- (a) Empire Video shall not transfer this Agreement to any person, firm, company, corporation or any other entity without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or denied.
- (b) In the event that the Municipality refuses to grant such consent, it shall set forth specific reasons for its decision in writing by municipal resolution.
- (c) Notwithstanding the above, this Section 5 shall not be applicable and no prior approval shall be required if Empire Video shall transfer this Agreement to any of its principal partners, to any parent, subsidiary or affiliate of any of the principal partners of Empire Video, or to any other firms or entities controlling, controlled, by or under the same common control as Empire Video.

SECTION 6. - REVOCATION

- (a) The Municipality may revoke this Agreement and all rights afforded Empire Video hereunder in any of the following events or for any of the following reasons:
 - (i) Empire Video fails after sixty (60) days written notice from the Municipality to substantially comply or to take reasonable steps to comply with a material provision of this Agreement. Notwithstanding the above, should Empire Video comply or take said reasonable steps to comply within said sixty days notice, the Municipality's right to revoke this Agreement shall immediately be extinguished; or
 - (ii) Empire Video is adjudged a bankrupt; or
 - (iii) Empire Video knowingly and willfully attempts or does practice a material fraud or deceit in its securing of this Agreement.
- (b) Notwithstanding the above, no revocation shall be effective unless and until (i) the Municipality shall have adopted an ordinance setting forth the cause and reason for the revocation and the effective date thereof, which ordinance shall not be adopted until the expiration of one hundred twenty (120) days from the date of delivery of written notice to Empire Video specifying the reasons for revocation

and (ii) an opportunity for Empire Video to be fully and fairly heard on the proposed adoption of such proposed ordinance has been afforded. If the revocation as proposed therein depends on a finding of fact, such finding of fact shall be made by the Municipality only after an administrative hearing providing Empire Video with a full and fair opportunity to be heard, including, without limitation, the right to introduce evidence, the right to the production of evidence and the right to question witnesses. A transcript shall be made of such hearing. Empire Video shall have the right to appeal any such administrative decision to a state or federal district court as Empire Video may choose and the revocation shall not become effective until any such appeal has become final or the time for taking such appeal shall have expired.

SECTION 7. - INDEMNIFICATION & INSURANCE

- (a) Empire Video shall indemnify and hold harmless the Municipality from all liability, damage and reasonable cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of Empire Video its employees or agents undertaken pursuant to this Agreement. The Municipality shall promptly notify Empire Video of any claim for which it seeks indemnification and afford Empire Video the opportunity to fully control the defense of such claim and any compromise, settlement, resolution or other disposition of such claim, including by making available to Empire Video all relevant information under its control.
- (b) Empire Video shall as of the Effective Date of this Agreement obtain liability insurance in the minimum amount set forth within and shall furnish to the Municipality evidence of such liability insurance policy or policies, in the form of a certificate of insurance naming the Municipality as an additional named insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Agreement; said policy and replacements shall be in the combined amount of Two Million Dollars (\$2,000,000.00) for bodily injury and property damage issued by a company authorized to do business in New York State. In addition, Empire Video shall carry Worker's Compensation insurance for its employees in such amounts as is required by the laws of the State of New York. The insurance coverage herein referred to above may be included in one or more policies covering other risks of Empire Video or any of its affiliates, subsidiaries or assigns.

SECTION 8. - USE OF EXISTING POLES AND LOCATION OF UNDERGROUND FACILITIES

- (a) Empire Video hereby agrees that when and wherever it deems it economical and reasonably feasible, it shall enter into agreements with telephone or electric or other utilities (collectively "utilities") for the use of said utilities' poles or conduit space whereby said utilities shall provide use of and access to said poles or conduit space by Empire Video for Empire Video's lines and other equipment. Notwithstanding the above, where necessary to service Subscribers and where attachment to the pole(s) or conduit space of utilities is not economically reasonable or otherwise feasible, Empire Video may erect or authorize or permit others to erect any poles or conduit space or any other facilities within the Streets of the Municipality pursuant to the issuance by the Municipality of any necessary authorizations which shall not be unreasonably withheld or delayed.
- (b) Subject to the provisions of sub-paragraph (c) below, in such areas of the Municipality where it or any sub-division thereof shall hereafter duly require that all utility lines be installed underground, Empire Video shall install its lines underground in accordance with such requirement.
- (c) Notwithstanding the foregoing, if Empire Video shall in any instance be unable to install or locate its wires underground, then the Municipality, on being apprised of the facts thereof, shall permit such wires to be installed above the ground even though other facilities in the area may be placed, or required to be placed, underground. However, any such permission shall be on such conditions as the Municipality may reasonably require.

SECTION 9. - RELOCATION OF PROPERTY

- (a) Whenever the Municipality shall require the relocation or reinstallation of any property of Empire Video in or on any of the Streets of the Municipality as a result of the relocation or other improvements by the Municipality of any such Streets, it shall be the obligation of Empire Video on written notice of such requirement to remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the Municipality. In the event any other person, including a public utility, is compensated for similar relocation or reinstallation then in such case Empire Video shall be similarly compensated.
- (b) Empire Video shall, on request of a person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings. The expenses of any such temporary removal, and/or the raising or lowering of wires or other property shall be paid in advance to Empire Video by the person requesting the same. Empire Video shall be given in such cases not less than five (5) working days prior written notice in order to arrange for the changes required.

SECTION 10. - USE & INSTALLATION

- (a) Empire Video or any person authorized by Empire Video to erect, construct or maintain any of the property of Empire Video used in the transmission or reception of Cable Television Service shall at all times employ due care under the facts and circumstances and shall maintain and install said property of Empire Video in accordance with commonly accepted methods and principles in the cable television industry so as to prevent failures and accidents likely to cause damage or injury to members of the public. All Cable Television System equipment shall conform to those standards of the National Electrical Code and the National Board of Fire Underwriters which exist at the time said equipment is installed and replaced.
- (b) Empire Video agrees to install all Cable Television System equipment in a manner to reasonably minimize interference to be expected with the usual use of the Streets and in no event shall any such Cable Television System equipment be located so as to substantially and regularly interfere with the usual public travel on any Street of the Municipality. Empire Video shall construct and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe, thorough and reliable manner. Empire Video shall promptly repair or replace any municipal property damaged or destroyed by Empire Video so as to restore it to serviceable condition.
- (c) Whenever Empire Video or any person on its behalf shall cause any injury or damage to public property or Street, by or because of the installation, maintenance or operation of the Cable Television System equipment, such injury or damage shall be remedied as soon as reasonably possible after the earlier of notice to Empire Video from the Municipality or after Empire Video becomes aware of the same, in such fashion so as to restore the property or Street to substantially the same serviceable condition. Empire Video is hereby granted the authority to trim trees upon and overhanging the Streets of, and abutting private property, (i.e., in the public way) in the Municipality to the extent it reasonably deems necessary so as to prevent the branches or growths from coming in contact with the wires, cable and other equipment of Empire Video's Cable Television System.

SECTION 11. - CONTINUOUS SERVICE

Empire Video shall continue to provide Cable Television Service to all subscribers who meet their obligations to Empire Video with respect to such service. Empire Video shall not abandon its cable television system or any portion thereof in such a way as would limit its ability to continue to provide Cable Television Service to all subscribers without the written consent of the Municipality or the NYSPSC.

SECTION 12. - FRANCHISE AREA AND LINE EXTENSION

Empire Video shall offer services throughout the authorized area to all Subscribers requesting service in any primary service area in accordance with Section 895.5 of the Rules and

Regulations of the Public Service Commission, unless the Commission issues an order waiving or amending such requirements based on the local service telephone territory of Empire Telephone Corporation, an affiliate of the Empire Video, within the municipality. A map detailing the extent of the local service territory of Empire Telephone Corporation is attached hereby as Exhibit A and made a part hereof. 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 requirements.

SECTION 13. - OPERATION AND MAINTENANCE

- (a) Empire Video shall contract and maintain its cable system using materials of good and durable quality and shall perform all work involved in the construction, installation, maintenance and repair of the cable system in a safe, thorough and reliable manner.
- (b) Empire Video shall maintain and operate its cable television system at all times in compliance with the duly promulgated and lawful provisions of Section 896 of the Rules and Regulations of the NYSPSC and the technical requirements set forth by the FCC. Empire Video shall maintain staffing levels and support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold time. Empire Video shall have, at all times, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. Empire Video shall respond to individual requests for repair service no later than the next business day. System outages, and problems associated with channel scrambling and switching equipment, shall be acted upon promptly after notification. Empire Video shall maintain a means to receive repair service requests and notice of system outages at times when its business office is closed. The Municipality shall have the right and authority to request an inspection or test performed, all at the Municipality's expense. Empire Video shall fully cooperate in the performance of such testing.
- (c) Throughout the term of this Agreement, Empire Video's Cable Television System shall have a minimum channel capacity of one hundred twenty (120) channels, including a variety of video, audio and other content.

SECTION 14. - RATES

Empire Video shall not illegally discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers.

SECTION 15. - SERVICE TO PUBLIC FACILITIES, ACCOUNTABILITY PROVISIONS AND INSPECTION OF RECORDS

- (a) At the request of the Municipality, Empire Video shall provide and maintain a single service outlet and basic service to any school, police station, firehouse and municipally owned building which is occupied for governmental purposes, provided the connection point is no further than two hundred feet (200') from the

closest feeder line of the Cable Television System. All such connections shall be above ground except where all utility lines and cables in the area are underground. The Municipality shall not extend such service to additional outlets, without the express written consent of Empire Video.

- (b) Municipality, upon reasonable notice and during normal business hours, shall have the right to inspect all books, records, maps, plans, financial statements and other like materials of Empire Video which are pertinent to Empire Video's compliance with the terms and conditions of this Agreement.
- (c) Municipality and Empire Video agree that Empire Video's obligations hereunder are subject to any applicable law, including laws regarding the privacy of information regarding subscribers.
- (d) Municipality will maintain the confidentiality of any information obtained pursuant to this provision to the extent permitted by law, provided Empire Video has advised Municipality of the confidential nature of the information. In the event that the Municipality receives request for the disclosure of such information with which it, in good faith, believes it must under law comply, then the Municipality will give Empire Video notice of such request as soon as possible prior to disclosure in order to allow Empire Video to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

SECTION 16. - PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS

Empire Video shall comply with the standards for public, educational and governmental (PEG) access channels as set forth in Section 895.4 of the Rules of the NYSPSC. The PEG access channels contemplated hereby may be shared among other municipalities served by Empire Video.

SECTION 17. - ADDITIONAL SUBSCRIBER SERVICES

- (a) Payment for equipment provided by Empire Video to subscribers and the installation, repairs, and removal thereof shall be paid in accordance with Empire Video's standard and customary practices and applicable rules and regulations of the FCC.
- (b) Notice of Empire Video's procedures for reporting and resolving billing disputes and Empire Video's policy and the subscribers rights in regard to "personally identifiable information," as that term is defined in Section 631 of the Communications Act, will be given to each subscriber at the time of such person's initial subscription to the Cable Television System services and thereafter to all subscribers as required by Federal or State law.

- (c) Empire Video shall offer to, and shall notify in writing, the subscribers of the availability of locking program control devices which enable the subscriber to limit reception of obscene or indecent programming in the subscriber's residence.
- (d) In accordance with the applicable requirements of Federal and State laws, Empire Video shall provide written notice of any increases in rates or charges for any Cable Television Service.
- (e) The Administrator, as the case may be, for the Municipality for this Agreement shall be Supervisor or Mayor of the Municipality. The Administrator is responsible for the continuing administration of the Agreement on behalf of the Municipality. All correspondence and communications between Empire Video and the Municipality pursuant to this Agreement shall be addressed by Empire Video to the Administrator.
- (f) It is agreed that all Cable Television Service offered to any subscribers under this Agreement shall be conditioned upon Empire Video having legal access to any such subscriber's dwelling units or other units wherein such service is provided.
- (g) Empire Video shall comply with the Customer Service Consumer Protection Standards set forth in Sections 890 and 896 of the Rules and Regulations of the NYSPSC.
- (h) At least once each year, Empire Video shall provide notice to each subscriber of its procedures for reporting and resolving subscriber complaints.

SECTION 18. - FRANCHISE FEES

- (a) Empire Video shall pay the Municipality an amount equal to 2% of Empire Video's Gross Revenues received by Empire Video directly from subscribers for Cable Television Service purchased by subscribers on a regular, recurring monthly basis.
- (b) There shall be applied as a credit against the Franchise Fee the aggregate of: (i) any taxes, fees or assessments of general applicability imposed on Empire Video or any subscribers, or both, which are discriminatory against Empire Video or any subscribers, (ii) any non-capital expenses incurred by Empire Video in support of the PEG access requirements of this Agreement and (iii) any fees or assessments payable to the NYSPSC which when combined with all other fees and credits would exceed 5% of gross revenues. Empire Video shall have the right to apply franchise fees paid as a credit against special franchise assessments pursuant to Section 626 of the New York State Real Property Tax Law.
- (c) Payment of the franchise fee shall be due quarterly within sixty (60) days of the end of the company's quarter. Empire Video shall submit to the Municipality, along with the payment of said fees, a report showing reasonable detail the basis for the computation thereof. Failure to render timely payment of the franchise fee, as listed above, will result in a penalty of \$50.00 a day until paid.

- (d) It is expressly recognized and acknowledged by the parties to the Agreement that internet service and telephone service are not cable television services and that revenues from such services are not to be included in the calculation of gross revenues upon which franchise: fees are determined herein,

**SECTION 19.- SEVERABILITY, GOVERNING LAW, POLICE POWERS
REQUESTS FOR AUTHORIZATION AND NON-DISCRIMINATION**

- (a) Should any provision of this Agreement be held invalid by a court or regulatory agency of competent jurisdiction, the remaining provisions of this franchise shall remain in full force and effect.
- (b) To the extent not inconsistent with or contrary to applicable federal law, the terms of this Agreement shall be governed and construed in accordance with the laws of the State of New York. The parties hereby acknowledge and agree that any provisions of this Agreement or any existing or future State or local laws or rules that are inconsistent with or contrary to any applicable Federal law, including the Cable Act, as the same may be amended, are and shall be prohibited, preempted and/or superseded to the extent of any inconsistency or conflict with any applicable Federal laws.
- (c) In addition to the provisions contained in this Agreement and in existing applicable ordinances, the Municipality may 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.
- (d) Empire Video shall file requests for any necessary operating authorization with the NYSPSC and the FCC within sixty (60) days from the date the Agreement is awarded by the Municipality.
- (e) Empire Video will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

SECTION 20. - NOTICE

All notices required herein shall be in writing and shall be deemed delivered when received by United States certified mail, return receipt requested, or on the date of delivery to addressee when sent by express mail, or overnight, or hand delivered to the parties and locations as specified below. Both Empire Video and Municipality may change where notice is to be given by giving notice to the other.

When notices sent to Empire Video:

Empire Video Services Corporation
34 Main Street

Prattsburgh, NY 14873
ATTN: Executive Vice President

When notices sent to Municipality:

Town of Wheeler
6429 Gardner Road
Bath, NY 14810
Telephone: (607) 776-0285
ATTN: Supervisor

SECTION 21. - FORCE MAJEURE

In no event, and notwithstanding any contrary provision in this Agreement, shall this Agreement be subject to revocation or termination, or Empire Video be subject to penalty or prejudice or in any way liable for non-compliance with or delay in the performance of any obligations hereunder, where its failure to cure or take reasonable steps to cure is due to reason of strike, Acts of God, acts of public enemies, order of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of Empire Video. Empire Video shall not be deemed to be in violation or default during the continuance of such inability and Empire Video shall be excused from its obligations herein during the course of any such events or conditions and the time specified for performance of Empire Video's obligations hereunder shall automatically extend for a period of time equal to the period of the existence of any such events or conditions and such reasonable thereafter as shall have been necessitated by any such events or conditions.

SECTION 22. - RIGHTS OF ENFORCEMENT

Nothing contained in this Agreement is intended to or shall confer any rights or remedies on any third parties to enforce the terms of this Agreement.

SECTION 23. - FURTHER ASSURANCES

The Municipality shall, without further consideration, execute and deliver such further instruments and documents and do such other acts and things as Empire Video may reasonably request in order to effect and confirm this Agreement and the rights and obligations contemplated herein.

SECTION 24. - INTEGRATION

This Agreement supersedes all prior negotiations between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and permitted assigns. This Agreement may be amended (except as otherwise expressly provided for herein) only by agreement in writing signed by duly authorized persons on behalf of both parties.

To the extent required by State law, amendments hereto shall be confirmed or approved by the NYSpsc.

This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one (1) original.

The headings of the various Sections of this Agreement are for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

The rights and remedies of the parties pursuant to this Agreement are cumulative and shall be in addition to and not in derogation of any rights or remedies which the parties may have with respect to the subject matter of this Agreement.

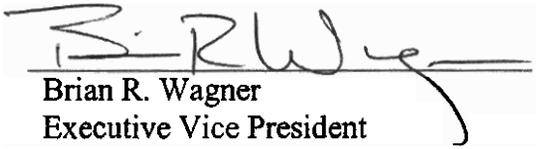
SECTION 25. - NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or any agency or employment relationship between the parties, and neither party is authorized to nor shall either party act toward any third parties or to the public in any manner which would indicate any such relationship with the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

Empire Video Services Corporation

TOWN OF WHEELER

By: 
Title: Executive Vice President

By: 
Title: Supervisor

EXHIBIT A

Map

Exhibit B

Certificate of Publication regarding the Notice of Public Hearing

STATE OF NEW YORK
SS
COUNTY OF STEUBEN

Tammy Simons

of Corning, in said County, being duly sworn doth depose and says that she is the designated representative - account clerk of The Leader, a public newspaper, published in said County, and that the

Town of Wheeler - Public Hearing

notice of which the annexed is a printed copy, cut from said newspaper, was printed

and published in said newspaper _____ time(s) each week for _____ week(s).

The first publication being on the 14th day of July, 2006,

and the last upon the 14th day of July, 2006.

(Signature) [Handwritten Signature]
Account Clerk
(Printed Name) Tammy Simons

Subscribed and sworn to before me, this 14th day of

July 2006

(Signature) [Handwritten Signature]
Notary Public
(Printed Name) Hugh E. Jones Sr.
Expiration Date 5/31/2010
License Number - 01JD4830641

Notary Public - Qualified in the State of New York - County of Steuben

NOTICE OF COMPLETION OF FINAL ASSESSMENT

NOTICE OF PUBLIC HEARING
Name: Drake Construction, LLC
Address: 157 Beare Hill Road, Horseheads, New York 14868

NOTICE OF PUBLIC HEARING
Name: Drake Properties, LLC
Address: 157 Beare Hill Road, Horseheads, New York 14868

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ADMINISTRATIVE SERVICES
Contact: 607-776-0284

PAINTED POST: 13 BR Upper of steel parking, \$500 per unit. No steel parking. No painting. 500-730-5813

PAINTED POST: 2 BR Upper of steel parking, \$500 per unit. No steel parking. No painting. 500-730-5813

PAINTED POST: 3 bedroom, carpet, \$500, no paint, required. 607-938-1434

BAYONA: 2 bedroom upper, large yard, parking, laundry, \$500. Apt. #415. 607-938-7828

LONG TERM ROOMS: 1200 sq. ft. laundry, furnished. No lease. Plans from \$420 monthly. 607-938-5221

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STATE OF NEW YORK
 SS
 COUNTY OF STEUBEN

Tammy Simons

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Town of Wheeler - Public Hearing

notice of which the annexed is a printed copy, cut from said newspaper, was printed

and published in said newspaper 1 time(s) each week for 1 week(s).

The first publication being on the 14th day of July 2006,

and the last upon the 14th day of July 2006.

(Signature)
 Account Clerk

Tammy Simons

(Printed Name)

Tammy Simons

Subscribed and sworn to before me, this 14th day of

July

2006

(Signature)
 Notary Public

[Signature]

Expiration
 Date
 5/31/2010

(Signature)
Account Clerk

Tammy Simons

(Printed Name)

Tammy Simons

Subscribed and sworn to before me, this 14th day of

July

2006

(Signature)
Notary Public

Hugh E. Jones Sr.

Expiration
Date

5/31/2010

(Printed Name)

Hugh E. Jones Sr.

License Number -

01J04630641

Notary Public - Qualified in the State of New York - County of Steuben

2012, 6/23, 6/30, 7/1, 7/10, 7/11, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/13, 7/14, 7/15, 7/16, 7/17, 7/18, 7/19, 7/20, 7/21, 7/22, 7/23, 7/24, 7/25, 7/26, 7/27

NOTICE OF COMPLETION OF FINAL ASSESSMENT ROLL
(Pursuant to Section 516 of the Real Property Tax Law)
Notice is hereby given that the assessors of the Town of Lindley, County of Steuben, have completed the final assessment roll and a certified copy has been filed in the office of the town clerk for public inspection where such roll shall be retained as a public record.
Guy R. Hill
1tz 7/14

NOTICE OF FORMATION OF LIMITED LIABILITY COMPANY
Name: R. Drake Construction, LLC. County: Chemung. Secretary of State is designated as agent for service of process. Address: 157 Beers Hill Road, Horseheads, New York 14845. Articles of Organization filed on February 6, 2006. Business: any lawful business purpose.
6tz 6/16, 6/23, 6/30, 7/7, 7/14, 7/21

NOTICE OF FORMATION OF LIMITED LIABILITY COMPANY
Name: Drake Properties, LLC. County: Chemung. Secretary of State is designated as agent for service of process. Address: 157 Beers Hill Road, Horseheads, New York 14845. Articles of Organization filed on January 26, 2006. Business: any lawful business purpose.
6tz 6/16, 6/23, 6/30, 7/7, 7/14, 7/21

NOTICE OF PUBLIC HEARING
Please Take Notice that the Town Board of the Town of Wheeler will hold a Public Hearing on August 14, 2006, at 7:45 PM at the Wheeler Town Hall, Gardner Road, Wheeler, NY, for the Application for a Cable Television Franchise License from Empire Video Services Corporation of Prattsburgh, NY.
By order of the Wheeler Town Board.
Dated this 10th day of July 2006
1tz 7/14

10:00 AM premises known as 296 Reynolds Avenue, Corning, New York 14830.

All that certain plot piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Corning, County of Steuben and State of New York Section, Block and Lot: 299.15-1-39. Approximate amount of lien \$54,989.90 plus interest and costs. Premises will be sold subject to provisions of filed Judgment Index #93662.
Peter H. Baker, Esq., Referee
Steven J. Baum, P.C., Attorney for Plaintiff
P.O. Box 1251
Buffalo, NY 14240-1291
Dated: 7/8/2006
6tz 7/13, 7/14, 7/20, 7/21, 7/27, 7/28

NOTICE OF SALE
SUPREME COURT
STEBEN COUNTY
U.S. Bank National Association, Trustee, et al., Plaintiff(s) vs. Thomas E. Howland; Brenda E. Howland, et al, Defendant(s).
Attorney(s) for Plaintiff(s): Rosicki, Rosicki & Associates, P.C., 2 Summit Court, Suite 301, Fishkill, NY 12524 (845) 897-1600
Pursuant to judgment of foreclosure and sale granted herein on or about June 30, 2006, I will sell at Public Auction to the highest bidder at the Courthouse Steps of the Steuben County Courthouse, 3 E. Putney, Bath, New York 14810. On August 14, 2006 at 10:00 AM Premises known as 3931 State Route 414, Corning, NY 14830.

ALL that tract or parcel of land, situate in the Town of Homby, County of Steuben and State of New York. Section: 282 Block: 1 Lot: 38.
As more particularly described in the judgment of foreclosure and sale. Sold subject to all of the terms and conditions contained in said judgment and terms of sale. Approximate amount of judgment \$193,493.80 plus interest and costs.
INDEX NO. 93828
Peter Baker, Esq., Referee
4tz 7/14, 7/21, 7/28, 8/4

LEGAL NOTICE
NOTICE TO CONTRACTORS
Sealed Proposals for: GENERAL CONSTRUCTION, HEATING.

Deputy Superintendent for Administrative Services
Dated: July 13, 2006
2tz 7/13, 7/14

0030
LOST

ORANGE TABBY CAT: Long hair, tailless. Sexton Hollow & Meads Creek Rd. REWARD \$100. 607-962-8862

0070
ROOMS

BUDGET INN: 11385 LPGA Drive, Corning. 937-5686 Weekly, \$99

LONG TERM ROOMS
Kitchen, coin laundry, furnished. No lease. Rates from \$400. monthly. Stillies Motel. 607-962-5221

0080
FURNISHED APARTMENTS

KEUKA LAKE: 1 Bdr. furnished apt. Enjoy lake living. \$750/mo. plus security, no pets. 607-868-4250

NORTHSIDE: VERY NICE
Large, 2 BR, lower, private. \$700+ No pets 607-368-8755

PTD. POST, 1 BDR. LOWER:
\$400 mo. plus electric & security. P.O. Box 373, Painted Post 14870

0090
UNFURNISHED APARTMENTS

1, 2 OR 3, BEDROOM APTS:
Corning / Elmira area
Call 607-742-8553

off street parking, appliances, no pets, \$450+ utilities. 607-569-2745

PAINTED POST: 1.5 BR Duplex full base W/D hook-up, very nice, off street parking. No pets/smkng 550+ 738-3813

PAINTED POST: 2 BR Upper, off-street parking, \$500, plus util. Sec. dep. No pets 607-936-1434

PAINTED POST: 3 bedroom, duplex, \$600+, ref. required. 607-329-8529

SAVONA: 2 bedroom upper, large yard, parking, laundry, Nice Apt. \$415.+ 607-329-7925

ECKSTON
Eckston Apartments
EFFICIENCIES
1, 2 & 3 Bedrooms
Heat & Water Included
24 Hour Service
862-4845

0110
HOUSES FOR RENT

BEAUTIFUL 3 BEDROOM MOBILE: Private 2 acre country setting in Homby. 10 minutes from Corning. Black top road. \$485/mo. Negotiable security deposit. Call 936-3450

CORNING: 3 BR. huge LR, DR, 2 baths, \$650+ utilities sec. & ref. 607-368-3505

GANG MILLS: 3 Bdr., \$950/mo plus utilities. Contact, 607-742-8553

HOUGHTON CIRCLE: 3 BR. Ranch, \$700+ utilities, sec./lease, no pets. 607-

607-425-2771

021
LOTS & A

3.1 ACRE LOT, of Addison o Lane off CR 5, Pinnacle. Gr south facing w end road, safe children. R Double-Wid: \$10,500. on t no down pay sary, \$200/mo work furnished. Farm, 607-3 10am or 4-6pr

025:
HUNTI FISHI

BAIT for sale: DC doz. Call 607-9

027:
ELDER OFFER

HOUSE CL
Experienced, with grocery appointments, 1 transportatio background. 6

027:
CHILD OFFER

MOTHER OF ON
care for your c Corning hon month to 7 607-936-3473

REGISTERED I
Coming/PTd.

Exhibit C

Resolutions adopted by the Municipality

August 14th, 2006

After a Public Hearing to discuss the Cable Franchise with Empire Telephone, held on August 14th, 2006 at 7:45 Pm the Town Board of the Town of Wheeler made the following Resolution to enter into agreement with Empire Vidieo Services for the existing Franchise Agreement presented by Brian Ketchun a Rep. Of Empire Telephone with correction for a waiver from the Public Service Commission to change the 30 homes per mile to less:

Proposed Resoloution by Councilman William Moyer sec. By Councilman Carolyn Trenchard and carried by aye votes from Councilmen Rhodes Evarts& Dale Dygert and Supervisor Brian Brinkhus.

Granting of a Cable Franchise to Empire Video Services Corporation

WHEREAS, pursuant to the Communications Act of 1934, as amended (the "Communications Act"), the Board has the authority to grant cable television franchises for and in the Town of Wheeler; 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 Wheeler on Aug 14 2006; and

WHEREAS, the Board has determined that the proposed cable franchise for EVSC fulfills the needs of the Town of Wheeler 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 Wheeler; and it is

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Wheeler and EVSC substantially in the form presented at the Town Meeting on August 14, 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 Wheeler, his execution thereof constituting proof of the effectiveness of such Franchise Agreement.

Exhibit D

Certificate of Publication regarding the Notice of Filing of this Application

Exhibit E

Full Environmental Assessment Form

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

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

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

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

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

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

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

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

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

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Name of Action

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

PART 1--PROJECT INFORMATION

Prepared by Project Sponsor

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

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

Name of Action Cable Television Franchising

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

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

Name of Applicant/Sponsor Empire Video Services Corporation

Address 34 Main Street

City / PO Prattsburgh State NY Zip Code 14873

Business Telephone (607) 522-3712

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

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

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

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

A. SITE DESCRIPTION

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

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

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

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

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

- a. Soil drainage: Well drained ____% of site Moderately well drained ____% of site,
 Poorly drained ____% of site

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

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

a. What is depth to bedrock _____ (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% 0 % 10- 15% ____% 15% or greater ____%

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

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

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

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

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

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

According to:

N/A

Identify each species:

N/A

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

Yes No

Describe:

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

Yes No

If yes, explain:

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

15. Streams within or contiguous to project area:

N/A

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

N/A

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

N/A

b. Size (in acres):

N/A

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 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: 29.06 (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

Yes No

Franchise Agreement

City, Town, Village Planning Board

Yes No

City, Town Zoning Board

Yes No

City, County Health Department

Yes No

Other Local Agencies

Yes No

Other Regional Agencies

Yes No

State Agencies

Yes No

Public Service Commission

Federal Agencies

Yes No

C. Zoning and Planning Information

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

If Yes, indicate decision required:

Zoning amendment

Zoning variance

New/revision of master plan

Subdivision

Site plan

Special use permit

Resource management plan

Other

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

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

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

N/A

4. What is the proposed zoning of the site?

N/A

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

N/A

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

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

[Empty text box for question 7]

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

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

a. What is the minimum lot size proposed? _____

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

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

Yes No

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

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

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

D. Informational Details

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

E. Verification

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

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

Signature _____

Title Agent for Empire Video Services Corporation

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

Exhibit F

Addendum to the Full Environmental Assessment Form

**ADDENDUM TO THE FULL ENVIRONMENTAL ASSESSMENT FORM
OF EMPIRE VIDEO SERVICES CORPORATION
RELATING TO A CABLE TELEVISION FRANCHISE IN THE
TOWN OF WHEELER, 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 Wheeler ("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 Steuben County. As of the 2000 Census, the Town had a population of 1,263 within a total area of approximately 46.1 square miles. 46.1 square miles of it is land and less than 0.04 miles (0.09%) of it is water.

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

A portion of the Town may be located above aquifers. The Town is not within a coastal area, but does have fifteen (15) designated wetland areas and a designated 100-year flood plains. EVSC's extensions and drop wires are and will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. As previously stated video programming will be delivered over the existing distribution routes and supporting structures of Empire Telephone Corporation. Thus, EVSC's construction activities would not impact otherwise undeveloped areas, Cable service is already provided within the franchise area by the incumbent, Time Warner Cable.

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

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

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 nineteen percent (19 %) 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.¹ In terms of the potential environmental impact of drop placement activities, the fiber and copper drops do not differ in any significant respect from industry standard facilities that are commonly used by Empire Telephone Corporation.

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

Exhibit 1

List of Steuben County Agricultural Districts

Steuben County Agricultural Districts Review Schedule

District Number	Year Created	Next Review Date	Acres in District	Towns Partially Included	Status	Consolidation Plans
1	1973	04/23/2013	28310.81	Bath, Cameron, Canisteo, Jasper, Rathbone, Troupsburg, Woodhull	Awaiting approval from Ag. and Markets	(Combined w/ 24 +25) Con and eventually 10/11
2	1975	04/22/2009	6744.78	Bath, Campbell, Thurston	Review complete; approved by Ag. and Markets	(Joined with No. 15) Comb +14
3	1975	01/15/2011	7081.94	Prattsburgh, Pulteney	Review complete; approved by Ag. and Markets	Combine w/ 4 + 17
4	1976	01/15/2011	5107.97	Bath, Urbana, Wheeler	Review complete; approved by Ag. and Markets	Combine w/ 3 + 17
5	1976	05/05/2008	39357.35	Avoca, Cohocton, Dansville, Fremont, Prattsburgh, Wayland	Review complete; approved by Ag. and Markets	none
6	1976	06/24/2012	19824.64	Addison, Campbell, Erwin, Lindley, Rathbone, Thurston, Tuscarora	Review complete; approved by Ag. and Markets	(Joined with 9 and 16) Com 18 + 22
7	1977	02/06/2008	44527.69	Canisteo, Dansville, Fremont, Hansville, Hornellsville, Howard	Review complete; approved by Ag. and Markets	(Joined with No. 8)
10	1978	04/27/2010	23676.62	Canisteo, Greenwood, Hartsville, Jasper	Review complete; approved by Ag. and Markets	Combine w/ 11 and eventual
11	1983	04/27/2010	9439.77	West Union	Review complete; approved by ag. and markets	Combine w/ 10 and eventual
12	1984	04/22/2009	3006.01	Wayne + Bradford	Review complete; approved by Ag. and Markets	Combine w/ 2 + 14
13	1984	06/24/2012	5030.33	Caton, Corning, Lindley	Review complete; approved by Ag. and markets	Combine w/ 6, 18 + 22
14	1984	04/22/2009	3943.94	Bath, Canisteo, Howard	Review complete; approved by Ag. and Markets	Combine w/ 2 + 12
17	1985	01/15/2011	46736.35	Avoca, Bath, Howard, Prattsburgh, Urbana, Wheeler	Review complete; approved by Ag. and Markets	(Joined w/ 19, 20, + 21 in 2) Combine w/ 3 + 4
18	1985	06/24/2012	13300.06	Lindley, Tuscarora, Woodhull	Review complete; approved by Ag. and Markets	Combine w/ 6, 13, + 22
22	1988	06/24/2012	5767.66	Campbell, Hornby	Review complete; approved by Ag. and Markets	Combine w/ 6, 13, + 18
23	1988	04/23/2013	26444.98	Jasper, Troupsburg, Woodhull	Review complete; approved by Ag. and Markets	Combine w/ 1 and eventual

Total Acres in Agricultural Districts: 288,300.90

[Return to Agriculture](#)

Exhibit 2

List of Critical Environmental areas in Steuben County

Critical Environmental Areas in Steuben County

More information from this division:

Division of Environmental Permits
SEQR

Designating Agency:	CEA	Recorded Date	Effective Date
Wayland, Town of	Valley Fill Aquifer	7-11-96	8-12-96

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

[Back to top of page](#)

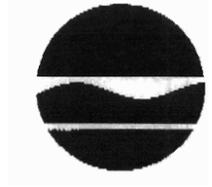
Exhibit 3

Unconsolidated Aquifers in Upstate New York

Exhibit 4

Schedule of Freshwater Wetlands in the Town

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



April 5, 2007

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

Dear Ms. Fleming,

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

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

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

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

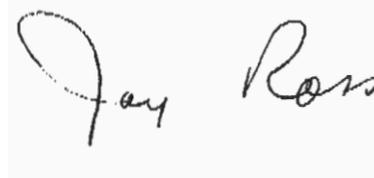
Village or Town **Number of New York State Freshwater Wetlands**

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

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

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

Sincerely,
Jay Ross

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

Fish and Wildlife Technician

WET ID	Wheeler CLASS	WETL ACRES
RH-1	2	213.8
RH-2	2	190.7
RH-3	3	41
RH-5	3	35.4
RH-4	2	180.7
AV-7	2	126.1
RH-6	2	70.7
RH-12	3	29.8
RH-11	3	84
RH-7	2	30.1
RH-8	3	87.5
RH-10	2	66.1
AV-4	2	50.7
AV-3	2	302.4
RH-9	3	20.9
RH-2 UPL	0	7.4

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Exhibit 5

Flood Plain Maps

Exhibit G

Limited Power of Attorney

LIMITED POWER OF ATTORNEY

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

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

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

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

[signature page follows]

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

Empire Video Service Corporation

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

Signed in the presence of:
Witness

Witness

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

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

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

[signature page to the Limited Power of Attorney]

Exhibit H

Map of Wheeler

Exhibit I

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



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

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

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

Rothfelder Stern, Westfield, New Jersey, by Martin C. Rothfelder, Esq., for the Petitioner
Township Clerk, Township of Vernon, New Jersey, by Patricia Lycosky, for the Township.

BY THE BOARD:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: March 6, 2002

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CAROL J. MURPHY
COMMISSIONER

(signed)

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)

HENRY M. OGDEN
ACTING BOARD SECRETARY