

PENDING PETITION MEMO

Date: 5/17/2007

TO : OT
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FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE VIDEO SERVICES CORPORATION

SUBJECT: 07-V-0575

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



Harter Secrest & Emery LLP
ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

May 16, 2007

VIA: FEDERAL EXPRESS

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

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

Dear Secretary Brilling:

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

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

Very truly yours,

HARTER SECREST & EMERY LLP

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

JTP:lgf

Enclosures

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

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RECEIVED
PUBLIC SERVICE
COMMISSION
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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 Newfield 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
Newfield 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 Newfield ("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 13 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

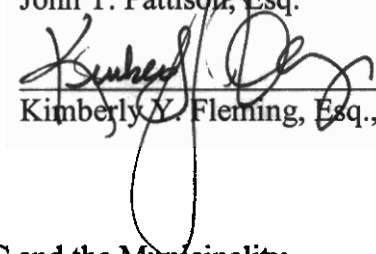
Regulations and the Rules of the Commission.

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

VERIFICATION

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

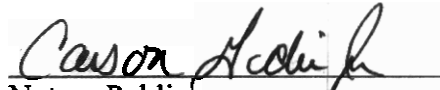
Brian J. Ketchum, being duly sworn, states that:

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



Brian J. Ketchum

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



Notary Public

CARSON GODWIN, JR.
Notary Public, State of New York
Qual. in Steuben Co., No. 01GO47756 12
My Commission Expires January 31, 20 11

Exhibit A

Franchise Agreement between EVSC and the Municipality

COPY

**CABLE TELEVISION
FRANCHISE AGREEMENT**

TOWN OF NEWFIELD

THIS AGREEMENT, executed this 8th day of March, 2007, by and between the Town of Newfield (hereinafter referred to as the Municipality), by the Supervisor acting in accordance with the authority of the duly empowered local governing body (hereinafter referred to as the Board), party of the first part, and Empire Video Services Corporation, a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873 (hereinafter referred to as the Company), party of the second part:

WITNESSETH

WHEREAS, pursuant to the Town Law the Board has the exclusive power on behalf of the Municipality to grant a franchise 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 or use 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 or renewals thereof on behalf of the Municipality and whereas the Board and the Company pursuant to said federal law and pursuant to applicable state laws and the regulations promulgated thereunder, have complied with the procedures required of Municipalities and of cable operators in the grant of cable television franchises; and

WHEREAS, the Municipality has conducted negotiations with the Company and has considered the Company's technical ability, financial condition, and character. Said considerations took into account the Company's plans for constructing and operating the cable television system; and

WHEREAS, the Board, in granting this Agreement, has determined that this Agreement fulfills or 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; and

WHEREAS, the Board has obtained any approvals or passed any resolutions pertaining to the Agreement granted herein deemed necessary or required by law; and

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

SECTION 1 - DEFINED TERMS

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

- (a) “Basic Service” means such cable television service as is provided in the lowest priced Service Tier.
- (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 cable programming services; and/or
 - (2) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, or other programming service; and/or
 - (3) Interactive Service.
- (d) “Cable Television System” means the system which operates for hire the service of receiving and amplifying programs broadcast by one or more television or radio stations or any other programs originated by the Company or by any other party, and distributed by wire, cable, microwave or other means, except that a system shall be considered a Cable Television System only to the extent such system is used in the transmission of video programming directly to Subscribers and only if the systems serves fifty of more Subscribers.
- (e) “Communications Service” means the one-way or two-way transmission and distribution of analog or digital audio, video and/or data signals.
- (f) “Company” means Empire Video Services Corporation, its successors, assigns and transferees.
- (g) “Effective Date” of this Agreement shall be the date upon which the New York State Public Service Commission approves this Agreement.
- (h) “FCC” means the Federal Communications Commission, its designees and any successor thereto.
- (i) “Gross Revenues” means all revenues actually received by and paid to Company for regular, recurring monthly cable television services by cable television Subscribers residing within the Municipality and pursuant to the rights granted by this Agreement. Gross revenues shall not include revenues received for voice, internet or other non-video services.
- (j) “Interactive Service” means the transmission of information over the Cable Television System including but not limited to, data transmission.
- (k) “May” is permissive.

“Municipality” means the Town of Newfield. Wherever the context shall permit, Board, Council and Municipality shall be used interchangeably and shall have the same meaning under this Agreement.

- (m) **“NYSPSC” means New York State Public Service Commission.**
- (n) **“Person” means an individual, partnership, association, corporation, joint stock company, trust, corporation, or organization of any kind, the successors or assigns of the same.**
- (o) **“Service Tier” means a category of Cable Television Service provided by the Company over the Cable Television System for which a separate rate is charged for such category by the Company.**
- (p) **“Shall” or “will” are mandatory.**
- (q) **“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.**
- (r) **“Subscriber” means any person lawfully receiving any Cable Television Service in the Municipality provided over the Cable Television System.**
- (s) **“Video Programming” means any or all 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 the Company 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 including any poles, wires, cables, conductors, ducts, conduits, vaults, pedestals, manholes, amplifiers, appliances, attachments and other property as is deemed necessary or useful by the Company, for the operation of its cable system. Additionally, the Municipality, insofar as it may have the authority to so grant, hereby authorizes the Company 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 the Company in order to provide Cable Television Service. Upon request by Company and at Company’s sole expense, the Municipality hereby agrees to assist the Company in gaining access to and using any such easements.**
- (b) **Nothing in this Franchise shall limit the right of the Company 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 the Company. The provision by the Company of any service other than cable 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 the Company'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 matters discussed herein and other agreements or instruments 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 the Company without the prior written consent of the Company. Grantee shall indemnify the Company against any damages or expenses incurred by the Company as a result of any such removal, damage, penetration, replacement or interruption of the services of the Company caused by the Grantee."

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

- (e) This Franchise 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 Franchisee hereunder.

In addition to the foregoing, in the event any such grants of franchises, consents or other rights to occupy the Streets, or the provision of any service pursuant thereto, are on terms more favorable than those contained herein, the provisions of this Agreement may be modified to match any such less onerous provisions.

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

This Franchise is subject to and complies with all applicable Federal and State laws and regulations, including, without limitation, the rules of the NYPSC concerning franchise standards. The Municipality hereby acknowledges and agrees that this Agreement has been approved and 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 the "Communications Act") and all other applicable laws, rules and regulations including, but not limited to, the rules and regulation of the FCC and the NYSPSC, and hereby represents and warrants that this Agreement has been duly approved and entered into in accordance with all applicable local laws. The Municipality hereby acknowledges that it, by duly authorized members thereof, has met with the Company for the purposes of evaluating the Company and negotiating and consummating this Agreement. The Municipality has determined, after affording the public all required notices and opportunities for comment in public proceedings affording due process, that the Company is likely to satisfy cable-related community needs and has found the Company's technical ability, financial condition, and character to be satisfactory and has also found to be adequate and feasible the Company's plans for constructing and operating the Cable Television System. In making said determination, the Municipality considered the past performance of the Company and its affiliated entities and the Company's likelihood of satisfactory performance of its obligations hereunder and other factors the Municipality deemed necessary for approval of the Company as the cable television franchisee, which approval will not be unreasonably withheld.

SECTION 4 - FRANCHISE TERM

The Agreement is for a term of fifteen (15) years commencing on the Effective Date.

Company and Municipality hereby agree that from the date hereof until the date of NYSPSC confirmation, Municipality and Company shall be bound by and comply with terms of this Agreement and shall take no action contrary thereto; from and after NYSPSC Confirmation.

The Company may renew this Agreement following the expiration of the original fifteen (15) year term in accordance with Part 891 of the NYSPSC Rules and Regulations.

SECTION 5 - ASSIGNMENT OR TRANSFER OF FRANCHISE

- (a) The Company shall not transfer this Franchise 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) Notwithstanding the above, this Section 5 shall not be applicable and no prior approval shall be required if the Company shall transfer this Franchise to any of its principal partners, to any parent, subsidiary or affiliate of any of the principal partners of the Company, or to any other firms or entities controlling, controlled, by or under the same common control as the Company.
- (c) 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.

SECTION 6 - REVOCATION

- (a) The Municipality may revoke this Agreement and all rights of the Company hereunder in any of the following events or for any of the following reasons:
 - (i) Company fails after sixty 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 Company comply or take said reasonable steps to comply with said sixty (60) day notice, the right to revoke this Agreement shall immediately be extinguished; or

- (ii) Company is adjudged a bankrupt; or
 - (iii) Company 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 the Municipality shall have adopted an ordinance or resolution setting forth the cause and reason for the revocation and the effective date thereof. Such ordinance or resolution shall not be adopted until (i) the expiration of one hundred twenty (120) days from the date of delivery of written notice to the Company specifying the reasons for revocation and (ii) an opportunity for the Company to be fully and fairly heard on the adoption of such proposed ordinance or resolution has been afforded. If any revocation depends on a finding of fact, such finding of fact shall be made by the Municipality only after an administrative hearing providing the Company 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. The Municipality shall cause a transcript of such hearing to be made. The Company shall have the right to appeal any such administrative decision to a state court or a federal district court as the Company may choose, and any 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) The Company hereby agrees to indemnify the Municipality for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct of the Company, its employees or agents undertaken pursuant to this Agreement. The Municipality shall promptly notify the Company of any claim for which it seeks indemnification; afford the company 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 the Company all relevant information under its control.
- (b) The Company shall as of the Effective Date of this Agreement obtain liability insurance in the minimum amount set forth herein 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 insured, which policy or policies or replacements thereof shall remain in effect throughout the term of this Agreement at the cost and expense of the Company; 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, the Company shall carry Worker's Compensation insurance for its employees in the amounts required by the laws of the State of New York. The insurance coverage hereinabove referred to may be included in one or more policies covering other risks of the Company or any of its affiliates, subsidiaries, or assigns.

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

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

- (a) The Company 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 the Company of the Company'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, the Company 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) of this Section 7, below, in such areas of the Municipality where it or any sub-division thereof shall hereafter duly require that all utility lines and related facilities be installed underground, the Company shall install its lines and related facilities underground in accordance with such requirement.
- (c) Notwithstanding the foregoing in sub-paragraph (b) of this Section 7, if the Company shall in any instance be unable to install or locate any part of its property underground, then the Municipality, on being apprised of the facts thereof, shall permit such property 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

Whenever the Municipality or a public utility franchised or operating within the Municipality shall require the relocation or reinstallation of any property of the Company in or on any of the Streets of the Municipality as a result of the regarding or other improvements of any such Streets, it shall be the obligation of the Company 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 or the public utility. In the event any other person, including a public utility, is compensated for any similar relocation or reinstallation, the Company shall be similarly compensated.

The Company 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, raising or lowering of wires or other property shall be paid in advance to the Company by the person requesting the same. The Company shall be given in such cases not less than ten (10) working days prior written notice in order to arrange for the changes required.

SECTION 10 - USE & INSTALLATION

The Company or any person authorized by the Company to erect, construct or maintain any of the property of the Company 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 the Company 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 or replaced.

The Company agrees to use its best efforts 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. All work involved in the construction, installation, maintenance, operation and repair of the Cable Television System shall be performed in a safe, thorough and reliable manner and all materials and equipment shall be of good and durable quality. In the event that any municipal property is damaged or destroyed in the course of operations by the Company, such property shall be repaired by Company within thirty (30) days and restored to serviceable condition.

Whenever the Company shall cause 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 the Company from the Municipality or after the Company becomes aware of the same in such fashion as to restore the property or street to substantially its former condition. The Company 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, cables and other equipment of the Company's Cable Television System.

SECTION 11 - CONTINUOUS SERVICE

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

SECTION 12 - REMOVAL AND ABANDONMENT OF PROPERTY

If the use of any part of the Company's Cable Television System occupying the Streets of the Municipality is discontinued for any reason (other than for reasons beyond the Company's reasonable control) for a continuous and uninterrupted period of twelve months, the Company shall on being given sixty (60) days prior written notice thereafter by the Municipality, provided no such notice is sent without prior vote of the Board or Council directing the forwarding of said notification, remove that portion of its Cable Television System from the Streets of the Municipality which has both remained unused and which the Municipality for good cause shown and articulated in said notice deems necessary to remove to protect the public health and safety. The cost and expense of said removal shall be borne by the Company, and said Streets shall be placed in as nearly as good condition as immediately before the removal as is reasonable. In the event the Company shall fail to timely remove said unused portion of said system and after an additional thirty (30) days written notice from the Municipality to the Company, the said portion of the System shall be deemed abandoned and the Municipality may remove or cause to move said portions of the Cable Television System from the Streets of the Municipality which it deems necessary in order to protect the public health and safety. It is understood that the cost of any such removal shall be borne by the Company.

SECTION 13 - OPERATION AND MAINTENANCE; CONSTRUCTION AND LINE EXTENSION

- (a) The Company will construct a cable television system capable at least 120 channels of content and operate in conjunction with state-of-the-art, remote control capable, addressable converters. Company will carry television broadcast stations, a variety of cable programming networks, audio content, premium pay-TV services, and pay-per-view.
- (b) The Company 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 of the FCC. The Company shall maintain staffing levels and support equipment to assure that telephone inquiries are handled promptly in order to minimize busy signals and hold time. The Company shall have, at all times, a person on call able to perform minor repairs or corrections to malfunctioning equipment of the cable system. The Company 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. The Company 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 of the cable system by the NYSPSC, the FCC, or to have such inspection or test performed, all at the Municipality's expense. The Company shall fully cooperate in the performance of such testing.
- (c) The primary service area will include those areas described in Section 895.5 of the Rules and Regulations of the NYSPSC or those areas described in an order of the Commission waiving or modifying such requirements based on the local service telephone territory of Empire Telephone Corporation, an affiliate of the Company, within the municipality. A

map detailing the extent of the local service territory of Empire Telephone Corporation within the municipality is attached hereby as Exhibit A and made a part hereof. With respect to those parts of the municipality that are not served as part of the primary service area, service shall be extended in accordance with Part 895.5 of the NYSPSC Rules and Regulations regarding line extensions or with an order waiving or modifying such requirement.

- (d) The Company is prohibited from abandoning any service to any area of the franchise area or any portion thereof without the written consent of the Municipality and the NYSPSC. In the event Company makes a showing of financial loss or technical infeasibility, such consent shall not be reasonably withheld.
- (e) Contribution-in-aid-of construction in Line Extension Areas (as that term is defined in the rules and regulations of the NYSPSC) shall be determined, as may be applicable, by application of the NYSPSC formula provided for in Part 895.5(b)(2) of the NYSPSC Rules and Regulations.

SECTION 14 - PUBLIC, EDUCATIONAL, GOVERNMENTAL ACCESS (PEG)

The Company provides access channels(s) designated for non-commercial, educational and governmental use by the public on a first come, first served, nondiscriminatory basis. Requirements and guidelines for utilization of access channel(s) set forth pursuant to Part 895.1(f) and 895.4 of the NYSPSC rules as may be approved are available in the local office and subscribers are notified on an annual basis of availability. The Municipality agrees that the access channel(s) and content thereon may be shared with other municipalities served, or which may become served, by the Company.

SECTION 15 - RATES

- (a) The rates and charges imposed by the Company for cable television service shall be subject to the approval of the Municipality and the NYSPSC; provided, however, no such regulated by or for the Municipality shall be contrary to or inconsistent with applicable federal statutes or the rules and regulations, including, without limitation, rates or charges concerning Cable Television Service.

The Municipality further acknowledges that it may not regulate the content of Cable Television Service except that under current federal law, it may exercise certain rights to object to or prohibit programming that is obscene or otherwise unprotected by the Constitution of the United States. To the extent not inconsistent with applicable laws, and notwithstanding any contrary provision of this Agreement, the Company may delete, add or rearrange Video Programming and other communication services, as well as Service Tiers, or portions thereof, as it deems necessary or desirable provided it has first notified the Municipality and its subscribers in accordance with the terms of this Agreement and applicable regulatory requirements.

- (b) The Company shall not unfairly discriminate against individuals in the establishment and application of rates and charges for Video Programming or other communication services available to generally all subscribers. This provision is not intended to and shall not prohibit: (i) sales, promotions or other discounts which the Company deems necessary or desirable to market its Video Programming and other services; (ii) the Company from

providing any of its services (and at such rates) as it shall deem necessary or desirable to any or all Subscribers where cable television service or any similar service is offered or provided in competition with the Company's services; or (iii) the Company from discounting rates to persons who subscribe to any services on a seasonal basis or discounting rates to persons who subscribe to any services that are provided on a bulk billed basis.

SECTION 16 - SERVICE TO PUBLIC FACILITIES AND ACCOUNTABILITY PROVISIONS

- (a) At the request of the Municipality, the Company shall provide and maintain a single service outlet 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 the Company.
- (b) Upon reasonable notice and during normal business hours, the Municipality shall have the right to inspect all pertinent books, records, maps, plans, financial statements, and other like materials of the Company which are pertinent to the Company's compliance with the terms and conditions of this Agreement; provided, however, that none of the Municipality, its officers, employees, executives, elected officials, agents nor any other person shall have any right to inspect or review "personally identifiable information" of or concerning any Subscribers, as that term is now or hereafter defined pursuant to Section 631 of the Communications Act. In the event of the improper collection or disclosure of personally identifiable information under either the Cable Act or other applicable laws by the Municipality or any of its employees or agents, and notwithstanding any other provision to the contrary in this Agreement, the Municipality shall be fully liable for any and all damages, costs, and expenses arising out of such improper collection or disclosure and shall reimburse, indemnify and hold harmless the Company therefrom.
- (c) Municipality and the Company agree that the Company'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 the Company 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 the Company notice of such request as soon as possible prior to disclosure in order to allow the Company to take such steps as it may deem appropriate to seek judicial or other remedies to protect the confidentiality of such information.

SECTION 17 - ADDITIONAL SUBSCRIBER SERVICES

- (a) Payment for cable television service rendered to Subscribers is due and payable in advance. A late charge, as determined by the Company, shall be applied to delinquent accounts.
- (b) Payment for equipment provided by the Company to Subscribers and the installation, repairs and removal thereof shall be paid in accordance with the Company's standard and customary practices and applicable rules and regulations of the FCC.
- (c) The Company shall have the right to disconnect delinquent Subscribers and charge such Subscribers therefor a disconnection charge as determined by the Company, where:
 - (1) At least five days have elapsed after written notice of discontinuance has been served personally upon a Subscriber; or
 - (2) At least eight days have elapsed after mailing to the Subscriber written notice of discontinuance addressed to such person at the premises where the service is rendered.
- (d) Notice of the Company procedures for reporting and resolving billing disputes and the Company'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.
- (e) The Company 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. Any Subscriber requesting such device shall pay the Company in full upon the receipt of the same the charge imposed by the Company therefor. The notice provided by the Company shall be given to new Subscribers at the time of installation and thereafter to all Subscribers as required by the federal or state law.
- (f) In accordance with the applicable requirements of federal and state laws, the Company shall provide written notice of any increases in rates or charges for any Cable Television Service.
- (g) The Administrator, as the case may be, for the Municipality for this Agreement shall be Supervisor or Mayor of the Municipality. All correspondence and communications between the Company and the Municipality pursuant to this Agreement shall be addressed by the Company to the Administrator.
- (h) It is agreed that all Cable Television Service offered to any Subscribers under this Agreement shall be conditioned upon the Company having legal access to any such Subscribers' dwelling units or other units wherein such Service is to be provided.

- (i) The Company shall comply with the Customer Service and Consumer Protection Standards set forth in Part 890.
- (j) At least once each year, the Company shall provide notice to each subscriber of its procedures for reporting and resolving subscriber complaints.

SECTION 18 - FRANCHISE FEES

- (a) The Company shall pay to the Municipality during the term of this Agreement an amount equal to zero (0) percent of the Gross Revenues less the Credit (defined below) ("Franchise Fee").

Gross Revenues should be reduced by a credit in the aggregate of: (i) any taxes, fees or assessments of general applicability imposed on the Company or any Subscribers, or both, which are discriminatory against the Company or any Subscribers; (ii) any non-capital expenses incurred by Company in support of the PEG access requirements of this Agreement; and (iii) any fees or assessments payable to NYSPSC which when combined with all other fees and credits would exceed five percent (5%) of gross revenues ("Credit"). The Company shall have the right to apply any Franchise Fee paid against special franchise assessments pursuant to Sec. 626 of the New York State Real Property Tax Law.

Payment of the Franchise Fee shall be due annually within one hundred twenty (120) days of the end of the Company's fiscal year. The Company shall submit to the Municipality, along with the payment of said fees, a report showing in reasonable detail the basis for the computation thereof.

SECTION 19 - SEPARABILITY, POLICE POWERS, GOVERNING LAW, REQUESTS FOR AUTHORIZATIONS AND NON-DISCRIMINATION

If any provision in this Agreement (as well as any law or regulation applicable or purported to be applicable to this Agreement) is for any reason held invalid, void, unenforceable, illegal or unconstitutional by any court of competent jurisdiction, the remaining portions hereof or of such law shall remain in full force and effect.

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.

The Municipality reserves the right to adopt in addition to the provisions contained in this Agreement and existing applicable ordinances, such additional regulations as it shall find necessary and lawful in the exercise of its police powers to protect the public health and safety; provided, however that such regulations are reasonable and not in conflict with state or federal law, rule, regulation or order. In no event shall any regulation or other act be taken which shall have the effect of imposing or otherwise result in a fee in excess of the Franchise Fee permitted herein.

This Agreement is subject to approval by the NYSPSC. The Company shall file requests for all necessary operating authorizations with the NYSPSC and the FCC within sixty (60) days of the Effective Date of this Agreement.

The Company shall not refuse to hire or employ and shall neither bar nor discharge from employment, and shall not discriminate against any person in compensation, terms, or conditions 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 the Company and Municipality may change where notice is to be given by giving notice to the other.

When to the
Company:

Empire Video Services Corporation
Attn: Brian R. Wagner
34 Main Street
Prattsburgh, NY 14873

When to the
Municipality:

Town of Newfield
Attn: Town Supervisor
166 Main Street
Newfield, NY 14867

SECTION 21 - FORCE MAJEURE

- (a) In no event, and notwithstanding any contrary provision in this section or elsewhere in this Agreement, shall this Agreement be subject to revocation or termination, or the Company be liable for non-compliance with or delay in the performance of any obligation hereunder, where its failure to cure or to take reasonable steps to cure is due to acts of God, acts of public enemies, an order of any kind from the government of the United States of America or of New York State or any of their departments, agencies, political subdivisions, or other events beyond the control of the Company. The Company shall not be deemed to be in violation or default of this Agreement during the continuance of its inability to perform resulting from such events, and it shall be excused from its obligations herein during the course of any such events or conditions, and the time specified for performance of the Company'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 time thereafter as shall have been necessitated by any such events or conditions.

SECTION 22 - RIGHTS OF ENFORCEMENT

- (a) 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 the Company may reasonably request in order to effect or 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 an 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. Changes in rates charged or Cable Television Services rendered by the Company shall not be deemed an amendment to this Agreement.

This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one 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 this 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 other rights or remedies which the parties may have with respect to the subject matter of this Agreement.

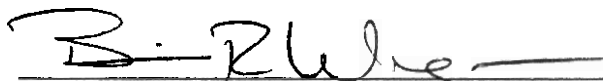
SECTION 25 - NO JOINT VENTURE

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 the public in any manner which would indicate any such relationship with the other.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives the day and year first written above.

EMPIRE VIDEO SERVICES CORPORATION



By: Brian R. Wagner

Title: Executive Vice President)

TOWN OF NEWFIELD

By: 

Title: Town Supervisor

EXHIBIT A

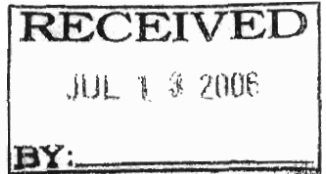
Map

Exhibit B

Certificate of Publication regarding the Notice of Public Hearing

AFFIDAVIT OF PUBLICATION

The Ithaca JOURNAL



State of New York, Tompkins County, ss.:

Linda C. Ackley being duly sworn, deposes and says that she/he resides in Ithaca, county and state aforesaid and that she/he is Clerk of The Ithaca Journal a public newspaper printed and published in Ithaca aforesaid and that a notice of which the annexed is a true copy was published in said paper

7/6 2006

and that the first publication of said notice was on the 6th day of July 2006

Subscribed and sworn to before me this 11 day of

July 2006

Jean Ford

Notary Public

JEAN FORD

Notary Public, State of New York

No. 4654410

Qualified in Tompkins County

Commission Expires May 31, 2007

NOTICE OF PUBLIC HEARING

Pursuant to 16 NYCRR 894.7, the public is invited to comment on the application for a cable television franchise of Empire Video Services Corporation at a legislative hearing to be held at 6:30PM on July 13, 2006, at the Town of Newfield, Town Hall, 166 Main St. It is not necessary to file in advance to speak at the hearing. Copies of all franchise applications are available for inspection during normal office hours at the Town Hall.
BY ORDER OF THE
NEWFIELD TOWN BOARD
Katharine Crance
Town Clerk
7/6/06

Exhibit C

Resolutions adopted by the Municipality

July 26, 2006

RECEIVED

JUL 27 2006

KYF

HARRIS BEACH PLLC
ATTORNEYS AT LAW

119 EAST SENECA STREET
ITHACA, NY 14850
(607) 273-6444

EDWARD C. HOOKS

DIRECT: (607) 273-6444
FAX: (607) 273-6802
EHOOKS@HARRISBEACH.COM

Kim Fleming, Esq.
Harter Seacrest & Emery, LLP
1600 Bausch & Lomb Plaza
Rochester, New York 14604

Re: Empire Video Services Corporation, Newfield

Dear Ms. Fleming:

I enclose a copy of the minutes of the Newfield Town Board meeting conducted on July 20, 2006 at which they adopted resolution number 5-2006 pertaining to the Empire Video Services Corporation ("EVSC") Franchise. Please advise when the franchise agreement has been finally approved by the PSC and then send me the final, approved version for Supervisor Berggren's signature in accord with that resolution.

Thank you.

Very truly yours,



Edward C. Hooks

ECH/acc
Enclosure
cc: Ms. Chrissy Wright


**PUBLIC HEARING TOWN OF NEWFIELD
JULY 13, 2006**

A Public Hearing was held on Thursday July 13, 2006 for the purpose of allowing public comment on the proposed application for cable television franchise to Empire Video Services Corporation. Present: CP Cutter, CP Schulte, Supervisor Berggren. Absent: CP Dolge due to illness. Also present: Town Atty. Ron Halpin and Representatives from Empire Video Services.

Meeting was called to order by Supervisor Berggren at 6:30PM.

There being no one to speak either for or against the proposed application motion was made by CP Schulte to adjourn the meeting at 6:40PM. Motion was seconded by CP cutter. All approved.

Respectfully submitted,


Katharine Crance
Town Clerk

July 20, 2006
Date

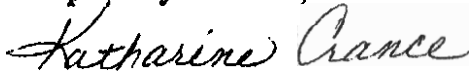
PUBLIC HEARING TOWN OF NEWFIELD
JULY 13, 2006

A public hearing was held on Thursday July 13, 2006 for the purpose of allowing public comment on the 2006 Stormwater Annual Report. Present: CP Cutter, CP Schulte, Supervisor Berggren. Absent: CP Dolge, due to illness. Also present: Town Atty. Ron Halpin

Meeting was called to order by Supervisor Berggren at 6:45PM.

There being no one to speak either for or against the Annual Stormwater Report motion was made by CP Schulte to adjourn the meeting at 6:50PM. Motion was seconded by CP Cutter. All approved.

Respectfully submitted,



Katharine Crance
Town Clerk

July 13, 2006
Date

NEWFIELD TOWN BOARD MEETING

July 20, 2006

The regular meeting of the Newfield Town Board was called to order by Supervisor Berggren at 7:00PM. Present: CP Cutter, CP Schulte, CP Hart and Supervisor Berggren. Also present: Town Attorney Ron Halpin, Code Enforcer Harry Petito

Motion was made by CP Hart to approve the minutes of the June 8, 2006 Board Meeting. Motion was seconded by CP Schulte. CP Cutter abstained due to being absent from the meeting. Motion carried.

PRIVILEGE OF THE FLOOR

Cheryl Littell spoke to the Board regarding the Mill Park and her concerns that open air bands will be at the park. She realized that during "Old Home Days" and other community events it would be appropriate but she is very concerned about the noise level that would be created in the town if bands were to play. The Board assured Ms. Littell that this was the first they had heard about bands being "booked" to play at the park and would look into. They also assured her that it was not their intention to have bands playing at will there.

Mr. Richard Cooper presented to the Board a map proposing the roads the ATV Group would like to be able to drive on. He also gave the Board an All Terrain Vehicle Road Usage sheet and the Candor Town Law. The Board will be working on this issue during a work session. A copy of the map and proposed Town Law from Candor will be left on file in the Town Clerk's Office.

OLD BUSINESS

Upon review motion was made by CP Schulte to approve the following resolution. Motion was seconded by CP Cutter.

RESOLUTION NO. 5-2006

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 Newfield; 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 of reconstructing and operating, maintaining and repairing the herein described and referred to video system; and

WHEREAS, notice of said public hearing was provided to all parties so entitled to notice, being posted on the official sign board of the Town of Newfield on July 6, 2006 and published in The Ithaca Journal on July 6, 2006,

WHEREAS, the Board has determined that the proposed cable franchise for EVSC fulfills the needs of the Town of Newfield with respect to cable television service and either complies or

Town of Newfield Board Meeting Minutes
July 13, 2006

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prior to implementation shall comply 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 Newfield; and it is

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Newfield and EVSC substantially in the form presented at the Town Meeting on July 13, 2006, subject to modifications approved by the Supervisor upon advice of the Town attorney or as may be required by the New York Public Service Commission; and it is

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

AYES

CP Cutter

CP Schulte

CP Hart

Supervisor Berggren

NAYES

Motion carried.

Water District II Update – Andy Sciarabba, Engineer from T.G. Miller's reported to the Board that the construction is on schedule with the target date the end of August 2006. The original Bond Resolution was for \$3,643,175.00. EFC set aside \$26,938 from the original Bond Resolution and has been working off a budget of \$3,616,237. Per Fiscal Advisors there is a \$33,000.00 contingency left for the project under the EFC budget. T.G. Miller estimates the final cost of Construction for Contracts A, B and C will be approximately \$2,974,000 requiring the use of approximately \$25,000.00 of the \$33,000 contingency. The \$8,000 balance may not be enough to cover the legal and administrative costs required for conversion to the long-term loan. T.G. Miller recommends the board authorize Fiscal Advisors to send in a request to the Dept. Of Health to add the \$26,938.00 to the EFC Budget. This will result in a contingency of \$32,938.00 which should keep the project on budget.

Motion was made by CP Schulte to authorize the Fiscal Advisors to write a letter requesting the Dept. of Health add the \$26,938.00 to the EFC Budget. Motion was seconded by CP Cutter. All approved.

**Town of Newfield Board Meeting Minutes
July 13, 2006**

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Mr. Sciarabba also reported that the emergency generator for the Pine Circle pump station is sub-standard. The cost of the emergency generator was not included in the estimates and Mr. Sciarabba request this be included in the 2006 budget which could be a shared cost between district 1 & 2. This benefits both districts.

Motion was made by CP Cutter to allow T.G. Miller to put out the letters of proposals for bids on the generator. The bids will be returned for the next Board Meeting. Motion was seconded CP Hart. All approved.

NEW BUSINESS

CP Schulte stated that we have applied a water improvement grant program for a couple of public outreach and education programs for Stormwater issues. One proposal is to have a rain garden demonstration in the Town of Newfield on August 19th. We will be planting a rain garden to catch some of the run off at the Town Hall before it hits the driveway. The Town Highway Superintendent is in support of this garden.

CP Schulte made a motion that the Town of Newfield enter into an Agreement with the Cayuga Lake Watershed Project to build a rain garden at the Town Hall. Motion was seconded by CP Cutter. All approved.

CP Schulte stated that the second program was the volunteer water quality monitoring program. of the three Cayuga Lake Tributaries and compliance of the MS4 from the NYS DEC.

Motion was made by CP Schulte authorizing the Town Supervisor to sign the Agreement between the Town of Newfield and the Community Science Institute, Inc. at a price of \$2,796.00. Motion was seconded by CP Hart. All approved.

CP Schulte stated that this money would be matched with the grant monies.

Supervisor Berggren stated he had discussed with the Highway Superintendent sealing the parking lot at the Town Hall. He received a quote from a business in Newfield called "It's Now or Never". They will lay the work out, strip it, line it, mark the handicapped parking, fill all cracks, and clean it for \$1800.00. Supervisor Berggren will ask the Highway Superintendent to get another quote to make sure we are getting the best pricing.

REPORTS

Supervisor – Supervisor Berggren stated that Atty. Hooks has been working on the land project and the town will be taking over the land at the end of the summer. It is a purchase of 21 acres. CP Schulte asked if there would be enough room for a skate board park and the Board agreed

**Town of Newfield Board Meeting Minutes
July 13, 2006**

Page: 4

that there would be room. Supervisor Berggren stated that there were a lot of rumors because the Board did not wish to buy the Fire Hall for \$1. He and the Board felt that when the new fire building was built it would be the residents that would be paying for it through their taxes and the Board did not want an increase in taxes. This was not made clear the way it was written in the newspaper.

CP Hart asked what the next step would be in developing this project. Supervisor Berggren stated we needed to get some interested community people.

CP Cutter stated that he would like to see some interested community people come to a work session and discuss fund raising and grant writing. The work session will be held probably in Nov. or Dec. since the town will not take possession of the property until Sept.

CP Schulte stated she would email some of the people on the Community Action Committee and update on the property issue and see if they will attend a Work Session with the Board.

A work session with the Fire Dept. needs to be scheduled. The Town Clerk will contact Tim Payne and set up a meeting in August.

Code Enforcer – Code Enforcer Tony Petito reported on the cases he is working on.

Recreation – Recreation Director, Richard Berggren reported to the Board that the Day Camps are all up and running to full capacity. Pool is being used every day. Mr. Berggren also thanked the community for helping with the pool and special thank you to CP Cutter for all his work in getting the pool fixed for the children.

County Legislature – Greg Stevenson gave his report on issues he is working on with the County Legislatures. The Legislatures are working on the budget for 2006

Supervisor Berggren asked the Board for approval to have the Town Highway mow the lawn on Van Kirk Rd where the Old School House was located. The Board approved.

Motion was made by CP Hart to approve the payment of the July 2006 monthly bills. Motion was seconded by CP Schulte. All approved.

General Fund totaling	\$ 6,111.40
Highway Fund totaling	\$52,557.61
Water fund totaling	\$ 879.12
Sewer fund totaling	\$ 29,515.14
Capital Fund Project total	\$166,513.30
Streetlight Fund	\$ 1,377.00


A Work Session to discuss the ATV issue and Mill Park band issue is set for July 27 6:30PM.

Town of Newfield Board Meeting Minutes
July 13, 2006

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There being no further business motion was made by CP Schulte to adjourn the regular meeting at 8:00PM. Motion was seconded by CP Hart. All approved.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katharine Crance".

Katharine Crance
Town Clerk

July 20, 2006
Date

Exhibit D

Certificate of Publication regarding the Notice of Filing of this Application

AFFIDAVIT OF PUBLICATION

The Ithaca JOURNAL

State of New York, Tompkins County, ss.:

Christine M. Rumsey being duly sworn, deposes and
says that she/he resides in Ithaca, county and state aforesaid and that
she/he is Clerk of The Ithaca
Journal a public newspaper printed and published in Ithaca aforesaid
and that a notice of which the annexed is a true copy was published
in said paper

4/10/07

and that the first publication of said notice was on the 10th
day of April 2007

Subscribed and sworn to before me this 12 day of April
2007

Jean Ford

Notary Public

JEAN FORD

Notary Public, State of New York

No. 4654410

Qualified in Tompkins County

Commission Expires May 31, 20 11

Notice of Filing

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

4/10/07

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 Newfield, 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: 1.72 (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:

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

C. Zoning and Planning Information

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

If Yes, indicate decision required:

- ☐ 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?

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 NEWFIELD, 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 Newfield ("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 Tompkins County. As of the 2000 Census, the Town had a population of 5,108 within a total area of approximately 59.0 square miles. 58.9 square miles of it is land and 0.1 square miles (0.15%) of it is water.

The Town contains portions of agricultural districts, but is not substantially contiguous to a National Natural Landmark. While the Town does not contain any state registered historic sites, it does contain one (1) nationally registered historic site. 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 it has a designated 100-year flood plains. It may also contain a small number of designated wetland areas 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. Summary of Tompkins County Agricultural Districts, attached hereto as Exhibit 1 and made a part hereof;
2. List of Critical Environmental areas in Tompkins 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. The flood plain maps, issued by the Federal Emergency Management Agency, for the Town, attached hereto as Exhibit 4 and made a part hereof; and
5. List of Nationally Registered Historic sites, attached hereto as Exhibit 5, and made a part hereof.

Description of Potential Construction Activities

If extension of the Facilities were to be under taken following award of the franchise, any construction in the Town's rights-of-way with respect to cable television services would only involve facilities that will also be used for Empire Telephone Corporation's services. Construction of the Facilities has been completed for approximately six percent (6 %) 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 Tompkins County Agricultural Districts

Planning Department

Mapping

Census

Annual Reports

FAQS

Comprehensive Plan

Housing Choices

Transportation Choices

Jobs and Business

Rural Resources

Water Resources

Natural Features

Community Planning

Planning Tools

Advisory Boards

Staff

Home> [Rural Resources](#)> Agricultural Districts

Agricultural Districts

The purpose of agricultural districting is to encourage the continued use of farmland for agricultural purposes. The New York State Agriculture and Markets program is based on a combination of landowner incentives and protections, all of which are designed to forestall the conversion of farmland to non-agricultural uses. These benefits are preferential real property tax treatment (agricultural assessment) and protection from nuisance suits involving agricultural practices, government funded acquisition or construction of agricultural lands, and restrictive local laws. New York State Agriculture and Markets provides guidance documents on agricultural districts.

There are two agricultural districts in Tompkins County. Agricultural District #1 covers the eastern half of the County and includes lands in the Towns of Lansing, Groton, Dryden, Caroline and parts of Danby. The district encompasses 101,898 acres, which include 55,876 acres of land that is owned and rented for farming purposes. Agricultural District #2 covers the western half of Tompkins County and includes the Towns of Ulysses, Enfield, Newfield, and parts of Danby and Ithaca. The district encompasses 33,492 acres of land that is owned and rented by farmers for farming purposes.

These districts are reviewed and updated every eight years. Agricultural District #1 was last updated in 2000. Agricultural District #2 was last updated in 2000. Landowners are also permitted during the meeting each year to submit requests to the county legislature for inclusion of viable agricultural lands in the established districts. For more information on inclusion in the Agricultural Districts contact Coc 607-272-2292.

For more information on the New York State Agriculture and Markets Agricultural Districts program, click here link to <http://www.agmkt.state.ny.us/AP/agsservices/agdistricts.html>

For guidance documents for farmers and local governments on Agricultural Districts, click here link to <http://www.agmkt.state.ny.us/AP/agsservices/new305/guidance.pdf>

For more information on the Tompkins County Department of Assessment's real property tax treatment of agricultural land, please visit their website and review programs on Agricultural Assessment link to <http://www.tompkins-co.org/assessment/>

• Tompkins County Planning Department • 121 E. Court Street Ithaca, New York 14850 • Phone: (607) 274-5560 Fax: (607) 274-5578 • [E-mail](#)

Exhibit 2

List of Critical Environmental areas in Tompkins County

Critical Environmental Areas in Tompkins County

More information from this division:

[Division of Environmental Permits](#)
[SEQR](#)

Designating Agency:	CEA	Recorded Date	Effective Date
Ithaca, Town of	Coy Glenn	1-15-79	2-14-79

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

[Back to top of page](#)

Exhibit 3

Unconsolidated Aquifers in Upstate New York

Exhibit 4

Flood Plain Maps

Exhibit 5

National Register

Index by State and City

National Register Information System

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Row	STATE ▾	COUNTY ▾	RESOURCE NAME ▾	ADDRESS ▾	CITY ▾	LISTED ▾	MULTIPLE ▾
1	NY	Tompkins	Newfield Covered Bridge	Covered Bridge St.	Newfield	2000-02-25	

Page 1

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Page

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Export

Exhibit G

Limited Power of Attorney

LIMITED POWER OF ATTORNEY

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

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

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

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

[signature page follows]

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

Empire Video Service Corporation

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

Signed in the presence of:
Witness

Witness

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

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

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

[signature page to the Limited Power of Attorney]

Exhibit H
Map of Newfield

Exhibit I

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



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

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

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

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

BY THE BOARD:

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

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

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

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

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

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

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


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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