

PENDING PETITION MEMO

Date: 6/18/2007

TO : Office of General Counsel
Office of Telecommunications

FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE TELEPHONE CORPORATION

SUBJECT: 07-C-0722

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



Harter Secrest & Emery LLP
ATTORNEYS AND COUNSELORS

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June 15, 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 Alabama 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

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JTP:lg]

Enclosures

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

VERIFICATION

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

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

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

rain J. Ketchum

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

Carson A. Allen Jr.
Notary Public

CARSON GODWIN, JR.
Notary Public, State of New York
Qual. in Steuben Co., No. 01GO4775032
My Commission Expires January 31, 2016

**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 Alabama Pursuant to 16 NYCRR Section
897;

CASE 07-C-_____

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
Alabama 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).

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 Alabama ("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 11(e) 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

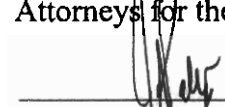
(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules,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

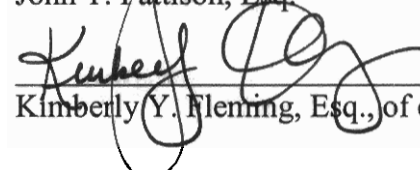
(iv) granting such other and further relief as may be necessary or advisable and proper pursuant to the applicable provisions of the New York Public Service Laws and its related

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

Exhibit A

Franchise Agreement between EVSC and the Municipality

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement"), executed in triplicate this 12 day of March 2007, by and between the Town of Alabama (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, or its designated affiliate, a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873 (hereinafter referred to as 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 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 franchise procedures required of Municipalities and cable operators in the grant of cable television franchises; and

WHEREAS, The Municipality conducted all requisite public proceedings and negotiations concerning this Agreement and the franchise granted herein and all proposals relating thereto and has considered the Company's technical ability, financial condition, and character. Said public proceedings and negotiations included considerations of the Company's plans for re-constructing and operating, maintaining and repairing the herein described and referred to video system; and

WHEREAS, The Board, in granting this franchise, as embodied in this Agreement, has determined that the franchise 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 Public Service Commission; and

WHEREAS, The Board has obtained approvals and passed all 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 Video Delivery Service as is provided in the lowest priced Service Tier.
- (b) **"Board"** means the Board of Trustees of the Municipality.
- (c) **"Communications Service"** means the one-way or two-way transmission and distribution of analog or digital audio, video and/or data signals.
- (d) **"Company"** means Empire Video Services Corporation, its successors, assigns, and transferees.
- (e) **"Effective Date"** of this Agreement shall be the date upon which both parties to this Agreement shall have affixed their signatures hereto.
- (f) **"Agreement"** means the grant or authority given hereunder to the Company with the due consent of the Municipality, which consent or authority is evidenced by regulations, ordinances, permits, this Agreement or any other authorization, to conduct and operate a Video Delivery System in the Municipality in accordance with the terms hereof.
- (g) **"FCC"** means the Federal Communications Commission, its designee and any successor thereto.
- (h) **"Gross Revenues"** means all revenues actually received by and paid to Company for regular, recurring monthly Video Delivery Service by video subscribers residing within the Municipality and pursuant to the rights granted by this Agreement.
- (i) **"Interactive Service"** means the two-way transmission of information over the Video Delivery System including but not limited to, data transmission, but excluding internet access transmission and communication and voice transmission and communications.
- (j) **"May"** is permissive.
- (k) **"Municipality"** means the Town of Alabama. Wherever the context shall permit, Board, Council and Municipality shall be used interchangeably and shall have the same meaning under this Agreement.
- (l) **"NYSPSC"** means New York State Public Service Commission.
- (m) **"Person"** means an individual, partnership, association, corporation, joint stock company, trust, corporation, or organization of any kind, the successors or assigns of the same.
- (n) **"Service Tier"** means a category of Video Delivery Service provided by the Company over the Video Delivery System for which a separate rate is charged for such category by the Company.

- (o) "Shall" or "will" are mandatory.
- (p) "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.
- (q) "Subscriber" means any person lawfully receiving any Video Delivery Service in the Municipality provided over the Video Delivery System.
- (r) "Video Delivery Service" means
 - (1) The transmission to Subscribers of Video Programming, or other cable and communications services; and/or
 - (2) Subscriber interaction, if any, which is required for the selection of such Video Programming, or other communications services; and/or
 - (3) Interactive Service.
- (s) "Video Delivery System" means a facility, consisting of a set of closed transmission paths, including (without limitation) fiber optic wires or lines, and associated signal generation, reception, and control equipment that is designed to provide Video Delivery Service to multiple Subscribers within a community.
- (t) "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 Video Delivery System and to provide Video Delivery Service and related Communications Service within the Municipality as it now exists and may hereafter be changed, and in so doing to use the Streets of the Municipality by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, over, under, upon, and across any and all said Streets such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as is deemed necessary or useful by the Company, subject to the Company's obligation to provide efficient Video Delivery Service. 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 items of the Video Delivery System as is deemed necessary or useful by the Company in order to provide Video Delivery 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) 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 Video Delivery Service.
- (c) 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 Video Delivery 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 enact legislation, conditioning the use of the Streets or any part thereof by any such Person, as follows:

"Grantee agrees that it shall not move, damage, penetrate, replace or interrupt any portion of the Video Delivery 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.

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 shall be deemed modified without any further action so as to match any such less onerous provisions.

As used in this Part, the phrase "occupancy or use of the 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

The Municipality hereby acknowledges and agrees that the Agreement granted herein 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 Chapter VIII of 16 NYCRR, 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 adequate and due notice and opportunity for comment in public proceedings affording due process, that the Company is likely to satisfy video-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 Video

Delivery 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 a cable television franchisee.

SECTION 4 - TERM AND THE RIGHTS ARISING HEREUNDER

The Agreement herein granted and the rights arising hereunder are for a term of fifteen (15) years commencing on the date of issuance by the NYSPSC of a Certificate of Confirmation.

Company and Municipality hereby agree that from the Effective Date until the date of issuance by the NYSPSC of a Certificate of 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, Municipality and Company shall continue to be bound by and comply with the terms of this Agreement.

The Company is hereby given an automatic option to renew the Agreement granted herein for an additional five (5) years following the expiration of the original fifteen (15) year term upon notice given to the Municipality in accordance with Part 891 of 16 NYCRR.

SECTION 5 - REVOCATION

- (a) The Municipality may revoke the Agreement granted herein 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 or material provisions 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 the 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: (a) the Municipality shall have adopted an ordinance or resolution setting forth the cause and reason for the revocation and the effective date thereof, which ordinance or local law shall not be adopted until 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 (b) an opportunity for the Company to be fully and fairly heard on the proposed adoption of such proposed ordinance or local law has been afforded. If the revocation as proposed therein depends on a finding of fact, such finding of fact shall be made by the Municipality only after an administrative hearing providing 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. A transcript shall be made of such hearing, at the expense of the Municipality. 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 the revocation shall not become effective until any appeal is finally resolved or the time for taking such appeal shall have expired.

- (c) In no event, and notwithstanding any contrary provision in this Section 5 or elsewhere in this Agreement, shall this Agreement or the Agreement granted herein 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 or other events beyond the control of the Company. The Company 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.
- (d) 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 6 - INDEMNIFICATION & INSURANCE

- (a) The Company hereby agrees to indemnify the Municipality for, and hold it harmless from, all liability, damage, cost or expense (including reasonable attorney's fees) arising from claims of injury to persons or damage to property caused by reason of any negligent conduct undertaken by the Company, its employees or agents in the construction, installation and maintenance of the Video Delivery System.
- (b) The Company shall as of the Effective Date of this Agreement furnish to the Municipality evidence of a 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 costs and expense of the Company; said policy and replacements shall be in the combined amount of Three Million Dollars (\$3,000,000.00) 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 such amounts as is 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 Video Delivery 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 7 - 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), 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, 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 8 - 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.

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 9 - 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 Video Delivery 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 Video Delivery 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 Video Delivery 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 Video Delivery 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 Video Delivery 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 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 Video Delivery 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 Video Delivery System.

SECTION 10 - REMOVAL AND ABANDONMENT OF PROPERTY

If the use of any part of the Company's Video Delivery 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 Video Delivery 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 Video Delivery 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 11 - OPERATION AND MAINTENANCE; CONSTRUCTION AND LINE EXTENSION

- (a) The Company will construct a state-of-the-art Video Delivery System capable of providing Video Delivery Service comprising at least 120 channels of video programming and operating in conjunction with state-of-the-art, remote control capable, addressable converters. The Company will carry television broadcast stations, a variety of cable programming networks, premium pay-TV services, and pay-per-view.
- (b) The Company shall maintain and operate its Video Delivery System at all times in compliance with the duly promulgated and lawful provisions of Section 896 of 16 NYCRR 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) To the extent consistent with and subject to the Communications Act, and notwithstanding any other provision of this Agreement, the primary service area will be determined and any requests for Video Delivery Service in areas outside the primary service area will be governed by Part 895.5 of 16 NYCRR or by an order issued by the NYSPSC waiving or amending such requirements.
- (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. In the event Company makes a showing of financial loss or technical infeasibility, such consent shall not be reasonably withheld.
- (e) The Company will offer services to all subscribers requesting service in the primary service area and line extension areas in accordance with Part 895.5 of the Rules and Regulations of the New York Public Service Commission, or in accordance with an order of the Commission waiving or amending such requirements. The housing requirement for the contribution-in-aid-of construction formula in line extension areas, if applicable, shall be reduced from 35 homes to 20 homes.

SECTION 12 - 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 16 NYCRR as may be approved are available in the local office and subscribers are notified on an annual basis of availability. The Municipality hereby agrees that the PEG access channel (s) contemplated herein shall be shared among the municipalities now or hereafter served by the Company.

SECTION 13 - RATES

- (a) No rates or charges shall be regulated by or for the Municipality contrary to or inconsistent with applicable federal statutes or the rules and regulations of the FCC, including, without limitation, rates or charges concerning Video Delivery Service.

The Municipality further acknowledges that it may not regulate the content of Video Delivery Service except that under current federal law it may exercise whatever rights it may have thereunder 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 Video Delivery 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 14 - SERVICE TO PUBLIC FACILITIES AND ACCOUNTABILITY PROVISIONS

- (a) At the request of the Municipality, the Company shall provide and maintain a standard single service outlet to each school, firehouse and municipally owned building which is occupied for governmental purposes, and police station as agreed to herein or as may be reasonably requested by the Municipality within sixty days (60) after the Effective Date of this Agreement provided the point chosen by the Company for connection of such wire to the institution is no further than two hundred feet (200') from the closest feeder line of the Video Delivery 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, at its expense, without the express written consent of the Company.
- (b) The Company shall maintain the following records:

- (1) A record of all service orders received regarding subscriber complaints including the date and time received, nature of complaint, date, and time resolved, and action taken to resolve.
 - (2) A log showing the date, approximate time and duration, type and probable cause of all cable system outages, whole or partial, due to causes other than routine testing or maintenance.
- (c) To the extent not inconsistent with or prohibited by the provisions of Section 631 of the Cable Act and all other laws relating to subscriber privacy, the Municipality reserves the right to inspect any and all records the Company is required to maintain pursuant to this Agreement upon reasonable notice and during normal business hours. The Company shall promptly make such materials available at its local business office.

SECTION 15 - ADDITIONAL SUBSCRIBER SERVICES

- (a) Payment for Video Delivery 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 Video Delivery 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 to 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) The Company shall give credit for Video Delivery System outages involving all Video Programming and other services carried on the Video Delivery System, which outage results in the interruption of such service provided such outage is due to no fault of the affected Subscriber. Such credit shall be provided in accordance with all applicable federal and state laws and regulations.
- (g) 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 Video Delivery Service.
- (h) 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.
- (i) It is agreed that all Video Delivery 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.

SECTION 16 - FRANCHISE FEES

- (a) The Company shall pay to the Municipality during the term of the Agreement an amount equal to three (3) percent of the value of Gross Revenues less the Credit (defined below) ("Agreement 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 Agreement Fee paid against special franchise assessments pursuant to Sec. 626 of the New York State Real Property Tax Law.

Payment of the Agreement 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.

- (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 relate to the Video Delivery System and its operation; 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.

SECTION 17 - SEPARABILITY, POLICE POWERS, GOVERNING LAW, REQUESTS FOR AUTHORIZATIONS AND NON-DISCRIMINATION

If any section, sub-section, sentence, clause, paragraph or portion of this Agreement (as well as any law or regulation applicable or purported to be applicable to this Agreement) is for any reason held to be invalid, void, unenforceable, illegal or unconstitutional by any court of competent jurisdiction, such law, regulation or provision of this Agreement shall be deemed separate and distinct and shall have no effect on the validity of the remaining portions hereof.

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 Agreement 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 18 - 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 by facsimile transmission or by any other means to the parties and locations:

When to the
Company:

Empire Video Services Corporation

34 Main Street
Prattsburgh, NY 14873
(607) 522-3712 telephone

When to the
Municipality:

Town of Alabama
2218 Judge Road
Oakfield, NY 14125
Telecopy: N/A

SECTION 19 - 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 20 - 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 Video Delivery 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 21 - 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.

SECTION 22 - ASSIGNMENT

The Company shall not assign this Agreement or the Agreement granted herein without the prior written consent of the Municipality, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, assignment by the Company to any entity which is its subsidiary or affiliate shall not require the approval of the Municipality.

The Municipality hereby consents to the grant by Company of a security interest in this Agreement and all other assets of the Video Delivery System to such lending institution or institutions as may be designated by the Company, which institution(s) shall have all rights and remedies of a secured party under the applicable provisions of the Uniform Commercial Code.


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.

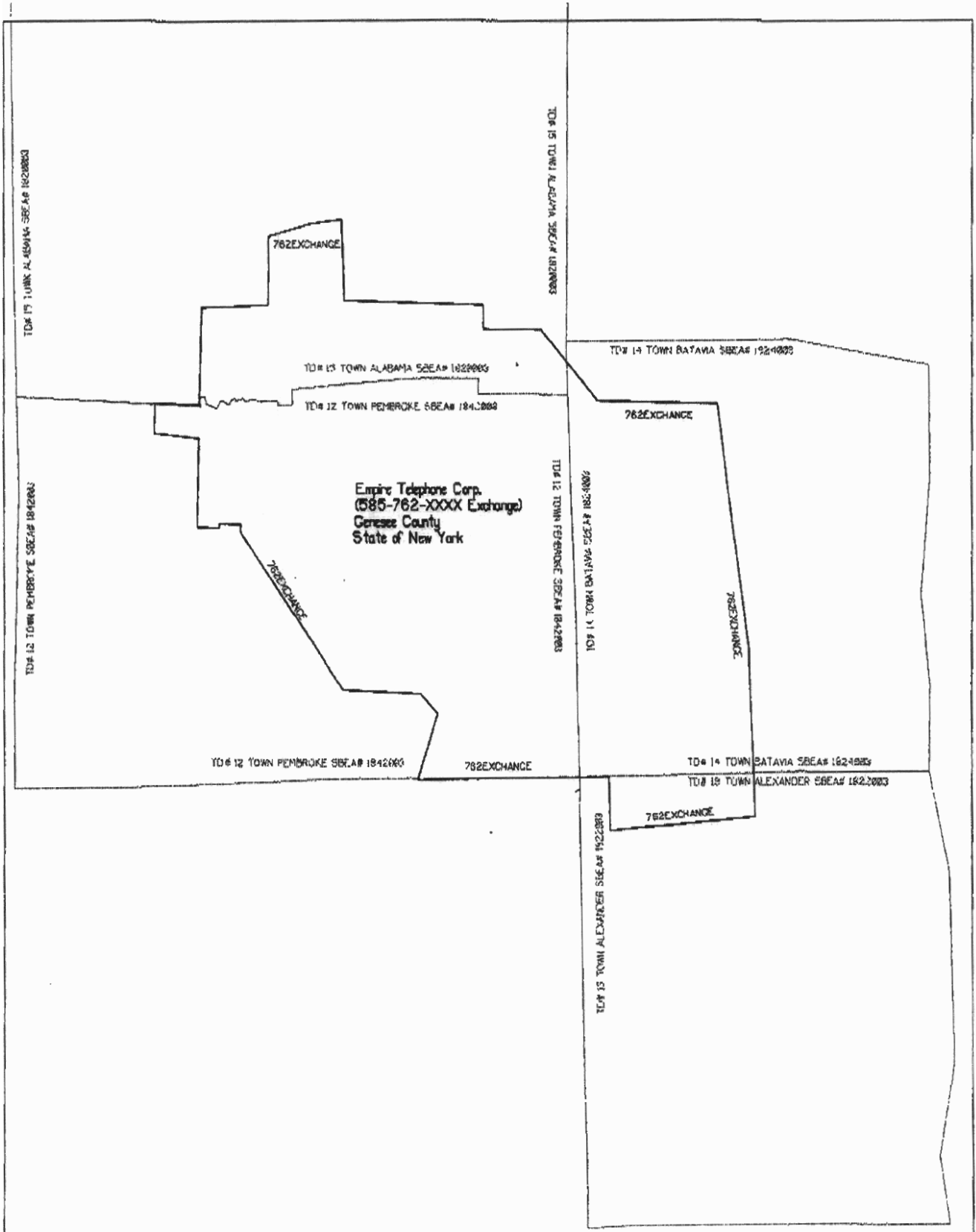
Empire Video Services Corporation



By: Brian R. Wagner
Title: Executive Vice President
Date: _____

**MUNICIPALITY
TOWN OF ALABAMA**

By: 
Name: Guy T. Winkson
Title: Supervisor
Date: 3/15/07



TOWN OF ALABAMA

2218 Judge Road
Oakfield, NY 14125
Phone: (585) 948-9341
Fax: (585) 948-9423

Fax

To:	Kim Fleming, Esq. Harter Secrest & Emery LLP	From:	Kay Clurzynski, Town Clerk
Fax:	585-232-2152	Date:	May 31, 2007
Phone:		Pages to follow:	
Re:		CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Kim

Forthcoming, is a Franchise Agreement signed by Brian R. Wagner, Empire Video Services Corp. and Guy T. Hinkson-Supervisor-Town of Alabama.

This was signed by Guy on March 15, 2007 and returned to the Town Attorney-Mark Boylan, Boylan Law Office, PO Box 307-45 West Main St., LeRoy, NY 14482-0307. Phone #585-768-8148.

If you have any questions, please do not hesitate to contact me.

Exhibit B

Certificate of Publication regarding the Notice of Public Hearing

The Daily News
Batavia, New York
AFFIDAVIT OF PUBLICATION

BATAVIA NEWSPAPERS CORPORATION

KAY CIURZYNSKI
TOWN OF ALABAMA
2218 JUDGE RD
OAKFIELD NY 14125-9711

REFERENCE: 56100
901577 #300 PUBLIC HEARING

STATE OF NEW YORK }
GENESEE COUNTY } ss.:

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

LEGAL NOTICE OF PUBLIC HEARING

Please take notice that the Town Board of the Town of Alabama will hold a Public Hearing on March 13, 2006 at 7:15 PM at the Town Hall, 2218 Judge Road, Town of Alabama, Genesee County, NY, for the purpose of reviewing the application from Empire Video Services Corporation for an application for Cable Television Franchise Agreement. A complete and written copy of the application for the Franchise Agreement, as submitted by Empire Video Services Corporation, is on file and available for public inspection during regular business hours at the Office of the Town Clerk.

BY ORDER OF THE TOWN BOARD TOWN OF ALABAMA
Kay Ciurzynski
Town Clerk
DATED: March 2, 2006
(300)

PUBLISHED ON: 03/04

Linda Dixon

TOTAL COST: 17.22
FILED ON: 03/04/06

AD SPACE: 42 LINE

Sworn to and subscribed before me the
7th day of *March*, 2006
Rebecca L. Nichols

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

Exhibit C

Resolutions adopted by the Municipality

**TOWN OF ALABAMA
EMPIRE VIDEO SERVICES CORP.
RESOLUTION**

At a meeting of the Town Board of the Town of Alabama held on the 13th day of March 2006, at the Town Hall in said Town, Councilman Cassidy moved adoption of the following resolution; Councilman Phelps seconded the motion;

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

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

WHEREAS, notice of said public hearing was provided to all parties so entitled to notice, being posted on the official sign board of the Town of Alabama on March 2, 2006; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby grants EVSC a cable franchise in the Town of Alabama; and it is

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

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

State of New York
County of Genesee

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the Town Board of the Town of Alabama on the 13th day of March 2006

{Seal}

Dated: Alabama, New York

September 6, 2006

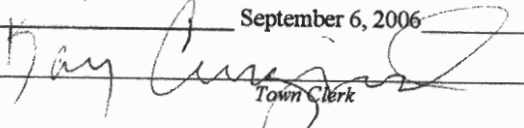

Town Clerk

Exhibit D

Certificate of Publication regarding the Notice of Filing of this Application

Exhibit E

Full Environmental Assessment Form

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

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

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

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

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

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project:

☐

Part 1

☒

Part 2

☐

Part 3

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

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

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Name of Action

Name of Lead Agency

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

PART 1--PROJECT INFORMATION

Prepared by Project Sponsor

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

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

Name of Action Cable Television Franchising

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

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

Name of Applicant/Sponsor Empire Video Services Corporation

Address 34 Main Street

City / PO Prattsburgh State NY Zip Code 14873

Business Telephone (607) 522-3712

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

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

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

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

A. SITE DESCRIPTION

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

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

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

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

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

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

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

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

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

5. Approximate percentage of proposed project site with slopes:

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

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

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

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

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

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

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

According to:

N/A

Identify each species:

N/A

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

☐ Yes ☒ No

Describe:

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

☐ Yes ☒ No

If yes, explain:

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

15. Streams within or contiguous to project area:

N/A

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

N/A

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: 15.51 (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	Franchise Agreement <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
City, Town, Village Planning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
State Agencies	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Public Service Commission <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<hr/> <hr/> <hr/>	<hr/> <hr/> <hr/>

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

Signature 

Title Agent for Empire Video Services/Corporation

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

Exhibit F

Addendum to the Full Environmental Assessment Form

**ADDENDUM TO THE FULL ENVIRONMENTAL ASSESSMENT FORM
OF EMPIRE VIDEO SERVICES CORPORATION
RELATING TO A CABLE TELEVISION FRANCHISE IN THE
TOWN OF ALABAMA, 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 Alabama ("Town").

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

Setting

The Town is located in Genesee County. As of the 2000 Census, the Town had a population of 1,881 within a total area of approximately 42.8 square miles. 42.5 square miles of it is land and 0.2 square miles (0.49%) of it is water.

The Town contains portions of agricultural districts and portions of a National Natural Landmark, Oak Orchard Creek Marsh (a.k.a. Iroquois National Wildlife Refuge). However, it does not contain any national or state registered historic sites. The Town does not contain any critical environmental areas. EVSC's policy is to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

A nominal portion of the Town may be located above aquifers. The Town is not within a coastal area, but has twenty-five (25) designated wetland areas and a designated 100-year flood plains. EVSC's extensions and drop wires are and will be placed only to serve existing or future residences and businesses and will be consistent with physical arrangements for the provision of non-video communications services (voice, data), and other types of utility service, to such areas. As previously stated video programming will be delivered over the existing distribution routes and supporting structures of Empire Telephone Corporation. Thus, EVSC's construction activities would not impact otherwise undeveloped areas, Cable service is already provided within the franchise area by the incumbent, Time Warner Cable.

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

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

Description of Potential Construction Activities

If extension of the Facilities were to be under taken following award of the franchise, any construction in the Town's rights-of-way with respect to cable television services would only involve facilities that will also be used for Empire Telephone Corporation's services. Construction of the Facilities has been completed for approximately thirteen percent (13 %) 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 Genesee County Agricultural Districts

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

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

Exhibit 2

List of Critical Environmental areas in Genesee County



Critical Environmental Areas in Genesee County

More information from this division:

Division of Environmental Permits
SEQR

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

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

[Back to top of page](#)

Exhibit 3

Unconsolidated Aquifers in Upstate New York



POTENTIAL YIELD OF WATER FROM WELLS THAT WOULD INDICATE ADEQUATE

CONTAINS MINERAL, I DO KNOW THAT THE GALLONS FOR MINUTE--and

ANALYSIS OF STAINING TECHNIQUES—Grains of sand or silt and gravel for which there is no well data are so fine as to escape being recognized. Similar grains, uncolored below, indicate the type of deposit.

Q Now, those various sources, or utilization--based and growth of medium businesses or agriculture, field potential to greater where stimulus can present.

U Unfilled cavity—a space of loose deposits or still possible deposition by wind and gravel particles. Depth and extension of this cavity can vary.

1 **FOIA b 7 - DRAFTS AND PRELIMINARY MATERIAL** - Highly preliminary material that is being sent to a source of direct supply or major public supply system. Some indigenous news of major concern may be included and report made in list of references. Supply and usage cited in the list of references describe these supplies in detail.

<u>Reference</u> <u>number</u>	<u>Similar area</u>	<u>Reference</u> <u>number</u>	<u>Similar area</u>
16	Midwestville	4	Redington
15	Guth		Johns Bay
18	Chesapeake	1	Delmar
22	Crescent	11	Irondale

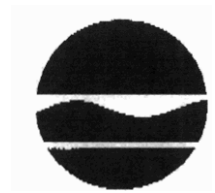
18	Orlando-Orange	21	Orange
	Florida	22	Orangeburg
19	Florida-Brevard- My Place		

By

Exhibit 4

Schedule of Freshwater Wetlands in the Town

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



April 5, 2007

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

Dear Ms. Fleming,

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

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

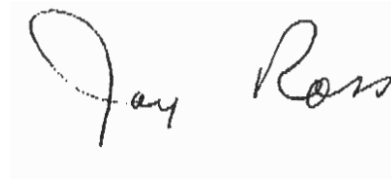
Also note that a figure for UPL (upland inclusions) shows at the bottom of some lists. This is not another wetland for your number count.

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

<u>Village or Town</u>	<u>Number of New York State Freshwater Wetlands</u>
Village of Burdett	none
Village of Lodi	none
Village of Odessa	2 (MF-4 and MF-3, both class 3)
Town of Pultney	9
Town of Catherine	8
Town of Alabama	25
Town of Alexander	29
Town of Batavia	46
Town of Cayuta	1
Town of Hector	10
Town of Italy	6
Town of Jerusalem	10
Town of Lodi	2

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

Sincerely,
Jay Ross .

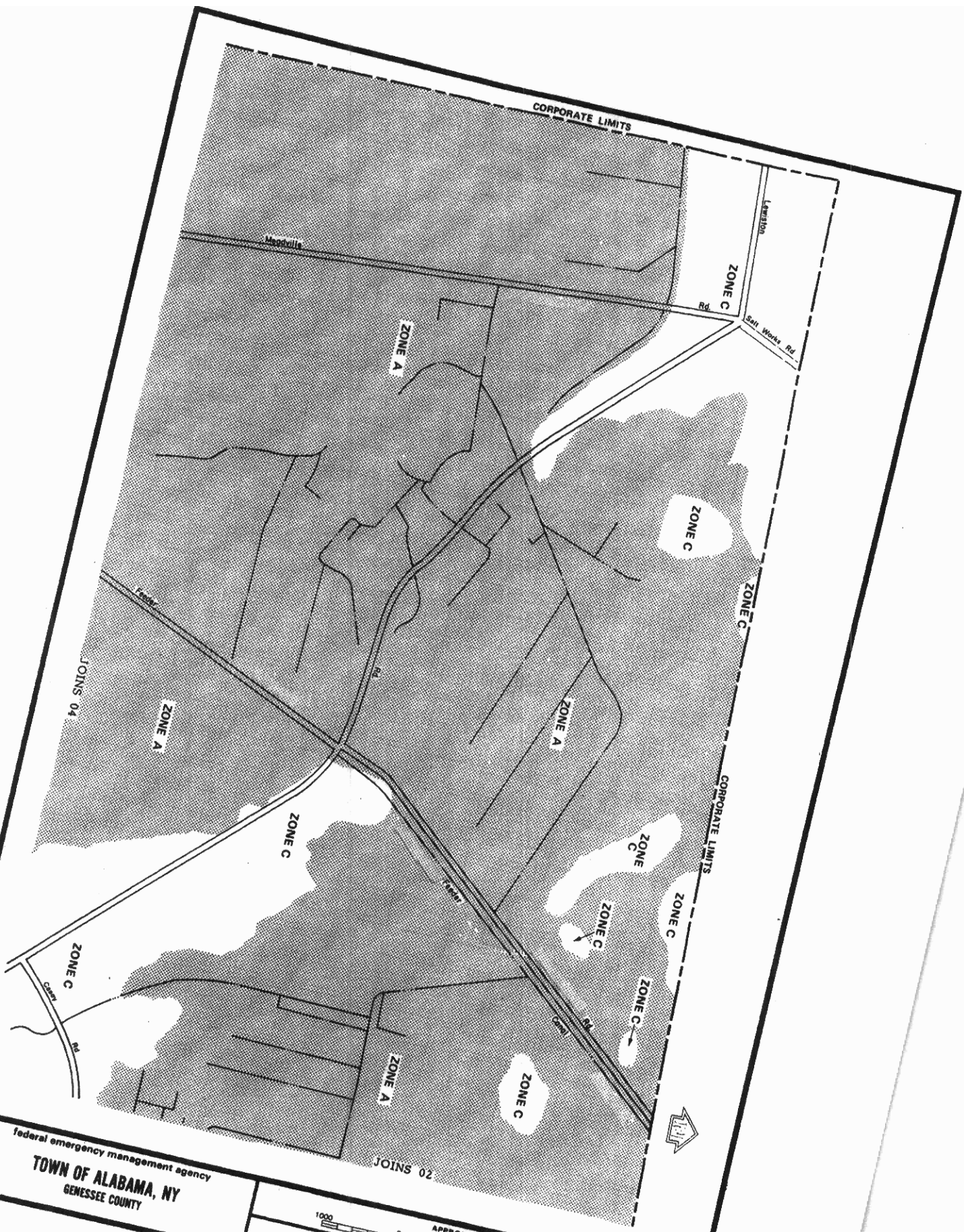
A handwritten signature in black ink that reads "Jay Ross". The signature is written in a cursive, flowing style. The first name "Jay" is written with a large, looped 'J' and a small 'ay'. The last name "Ross" is written with a large 'R' and a series of loops for the 'o', 's', and 's'.

Fish and Wildlife Technician

Alabama			
WET ID	CLASS	SIZE	WETL
AK-4	2	179.4	179.4
AK-7	3	35.6	35.6
OK-8	3	23	23
AK-6	2	22.9	22.9
OK-7	3	29.4	29.4
OK-16	3	19.2	19.2
OK-5	2	18	18
OK-4	3	25.4	25.4
OK-19	3	34.2	34.2
OK-9	3	32.1	32.1
MA-1	2	364.9	364.9
AK-5	1	1632.4	1632.1
AK-1	1	1362.7	1362.7
AK-2	2	62.4	62.4
AK-1	2	124.5	122
AK-3	2	404.7	404.7
AK-4	2	193.4	193.4
OK-3	2	45.4	45.4
OK-2	2	77.4	77.4
OK-6	2	63.3	63.3
OK-17	3	31.2	31.2
OK-18	3	36.8	36.8
MA-2	2	58.5	58.5
OK-1	1	5246.7	5246.7
AX-8	3	47.8	47.8
AK-5	0	1632.4	0.3
UPL			
AK-1	0	124.5	2.5
UPL			

Exhibit 5

Flood Plain Maps

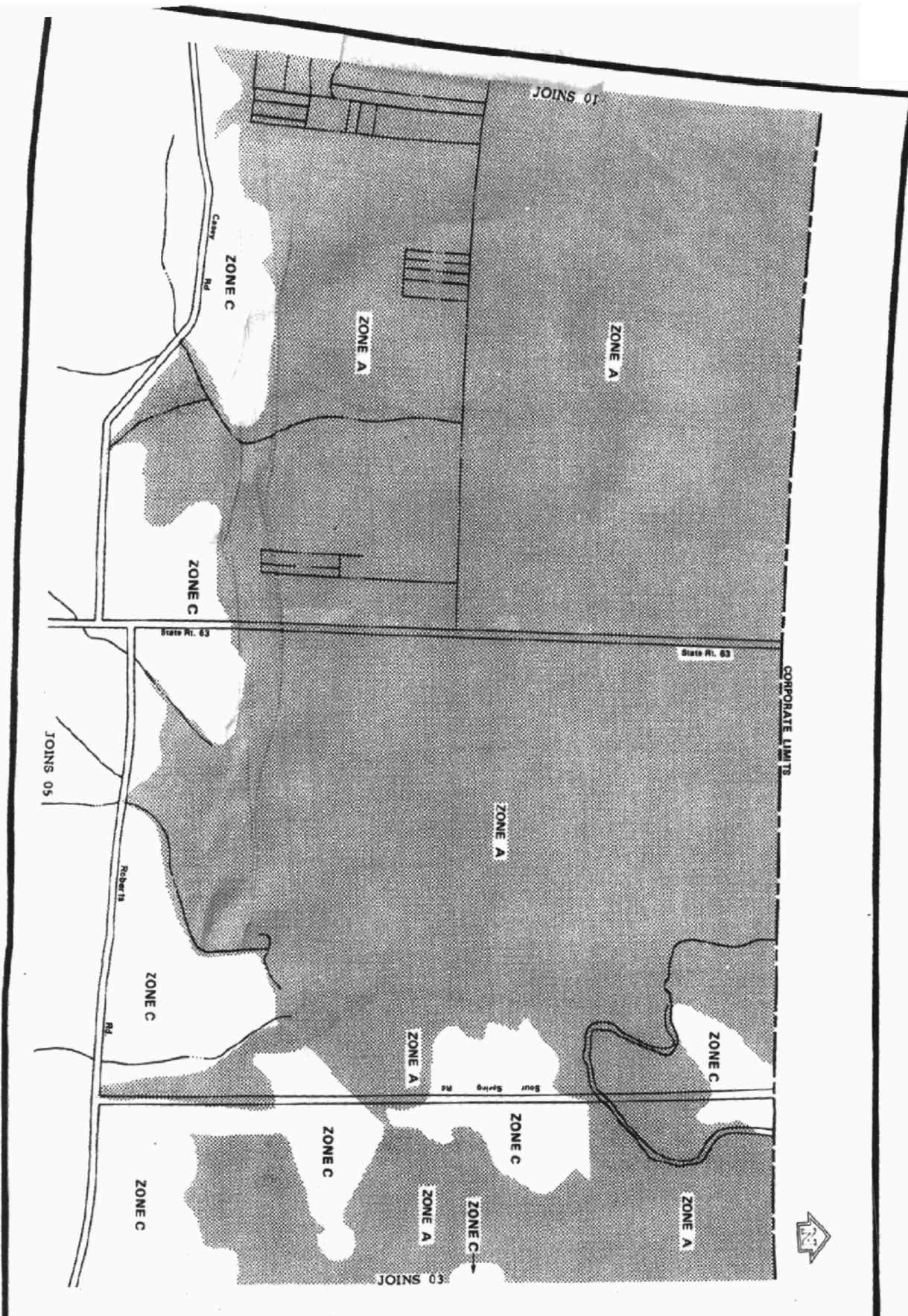


federal emergency management agency
TOWN OF ALABAMA, NY
GENESSEE COUNTY



FLOOD INSURANCE RATE MAP
COMMUNITY NUMBER 361067 C

EFFECTIVE DATE
NOVEMBER 18, 1983



MAP 02

federal emergency management agency

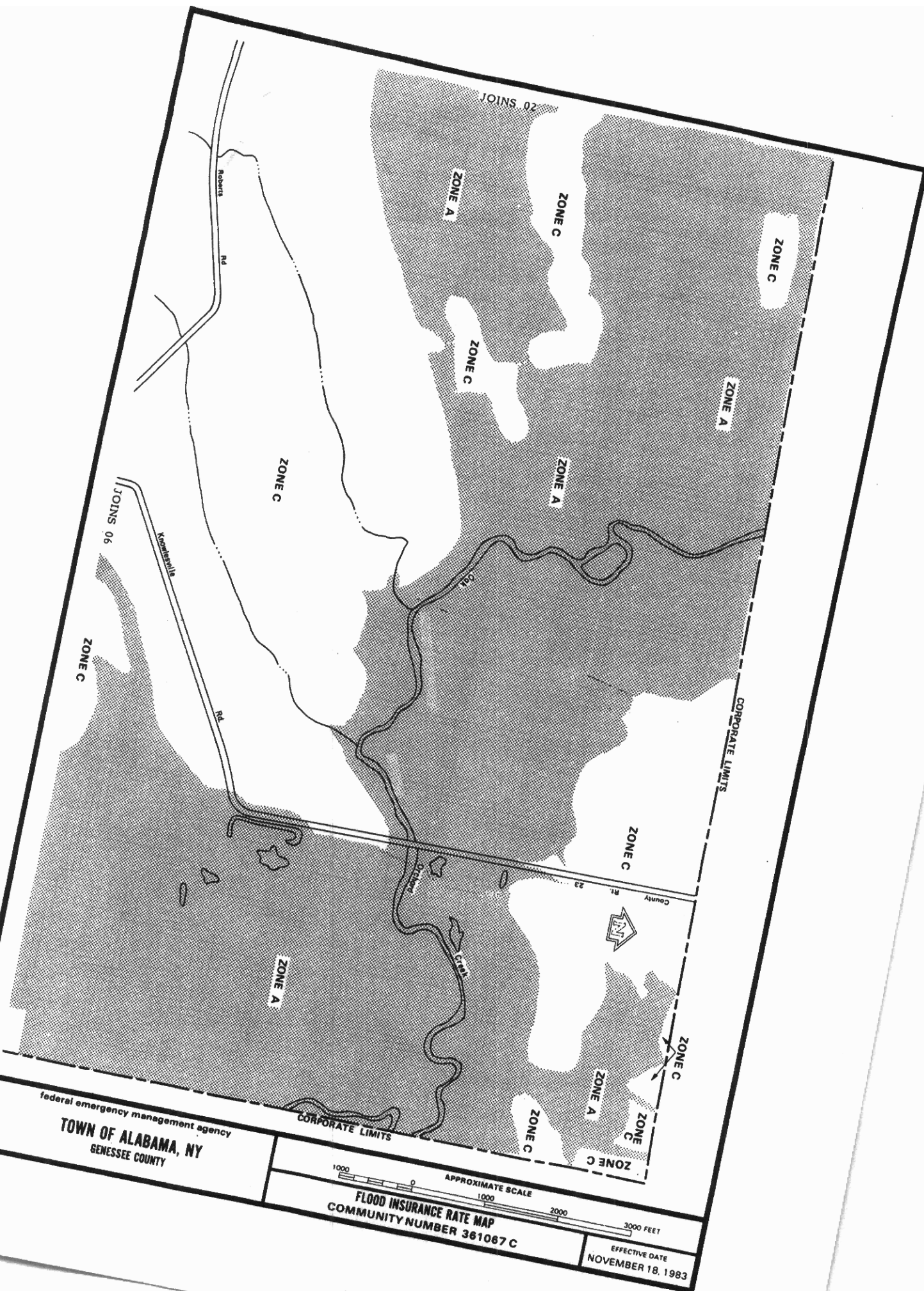
TOWN OF ALABAMA, NY
GENESSEE COUNTY

APPROXIMATE SCALE



FLOOD INSURANCE RATE MAP
COMMUNITY NUMBER 361067 C

EFFECTIVE DATE
NOVEMBER 18, 1983



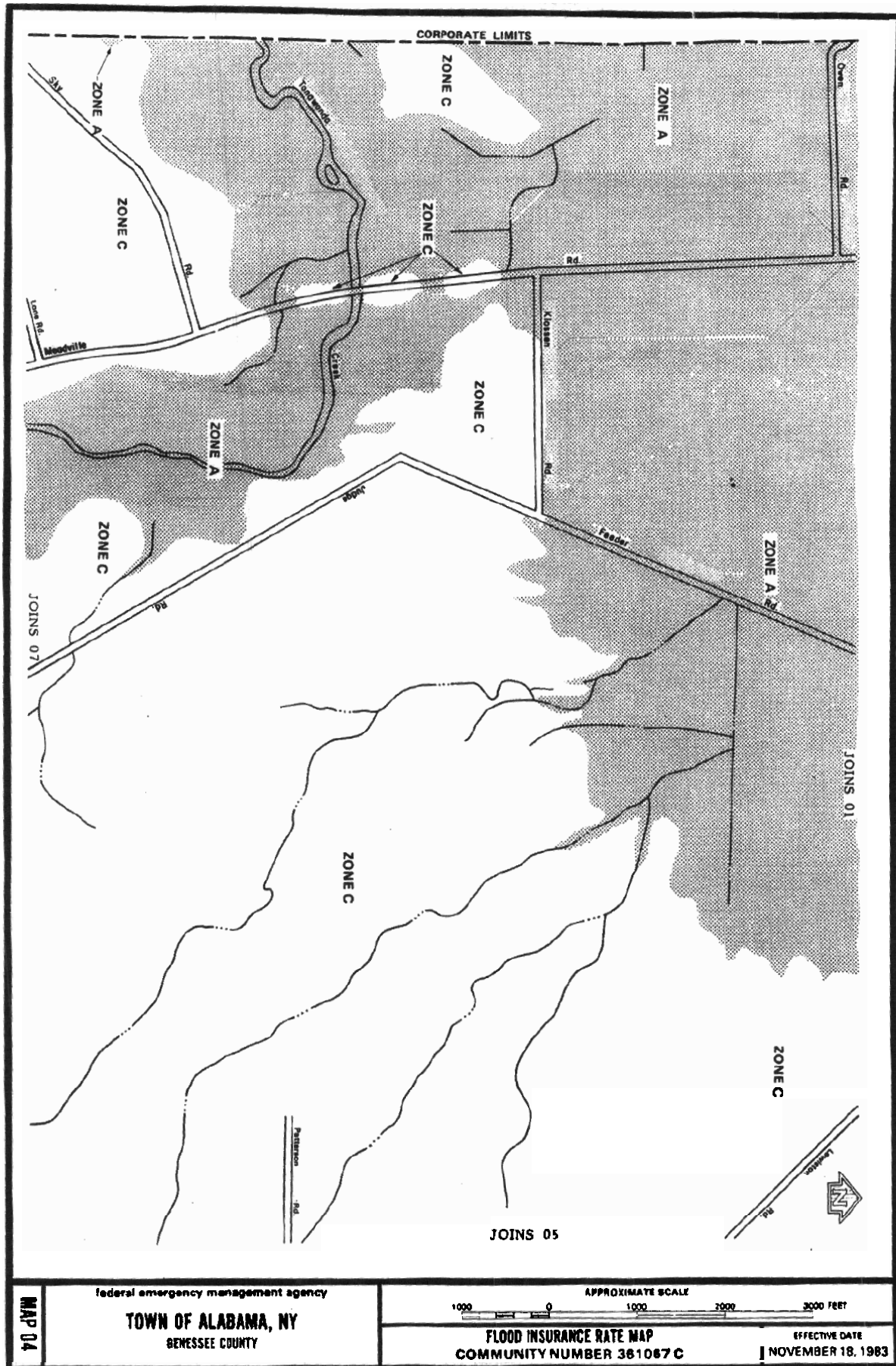


Exhibit G

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



Brian R. Wagner, Executive Vice President

Signed in the presence of:
Witness

Witness

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



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 Alabama

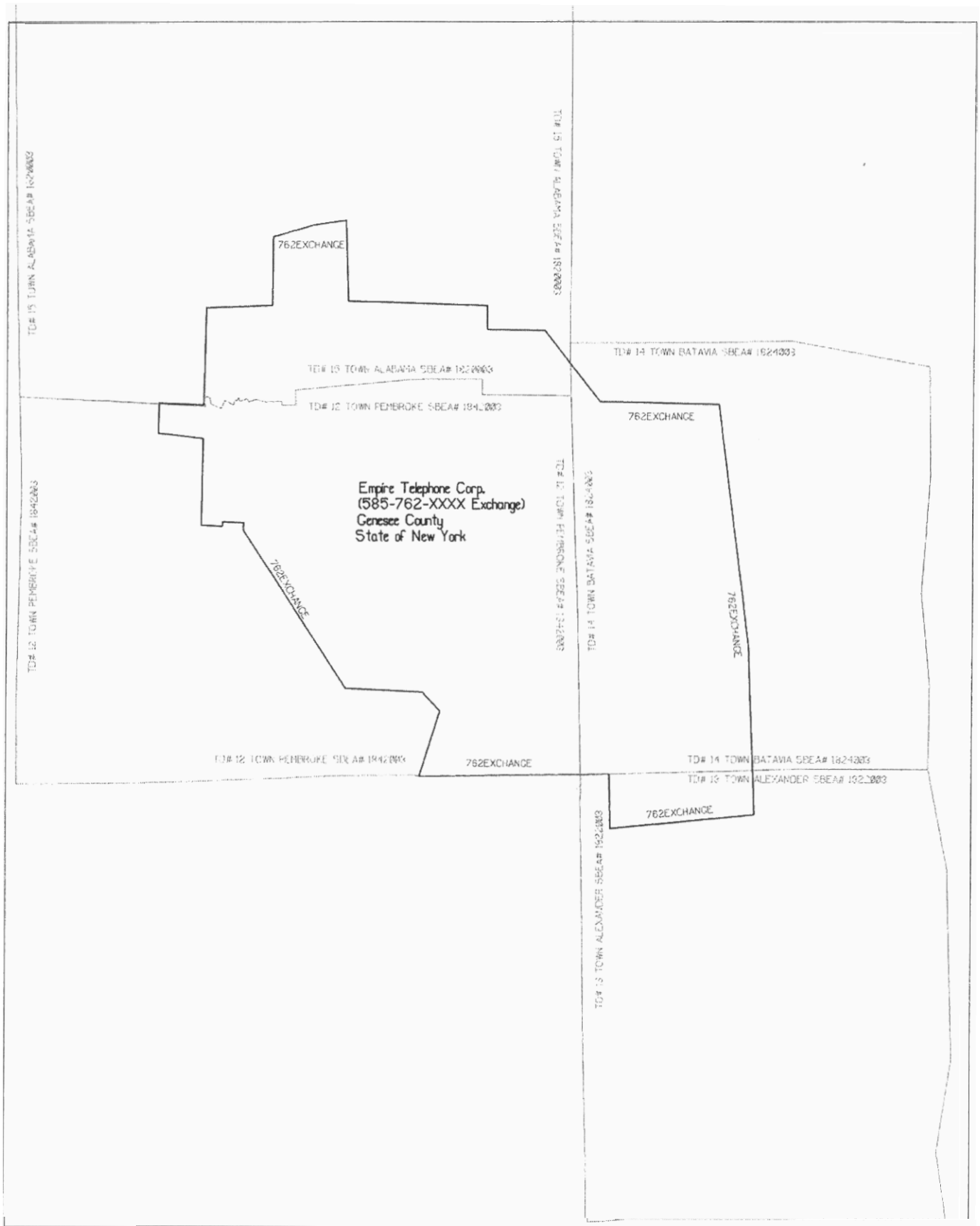


Exhibit I

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



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

STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

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

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

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

BY THE BOARD:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: March 6, 2002

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CAROL J. MURPHY
COMMISSIONER

(signed)

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)

HENRY M. OGDEN
ACTING BOARD SECRETARY