

PENDING PETITION MEMO

Date: 5/17/2007

TO : OT
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FROM: CENTRAL OPERATIONS

UTILITY: EMPIRE VIDEO SERVICES CORPORATION

SUBJECT: 07-V-0573

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



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

May 16, 2007

VIA: FEDERAL EXPRESS

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

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

Dear Secretary Brilling:

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

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

Very truly yours,

HARTER SECREST & EMERY LLP

Kimberly Y. Fleming

DIRECT DIAL: 585-231-1247
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JTP:lgf

Enclosures

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

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

Application of Empire Video Services
Corporation for a Certificate of Confirmation
Approving a Franchise Agreement in the Town
of Montour 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
Montour 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 Montour ("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 3 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

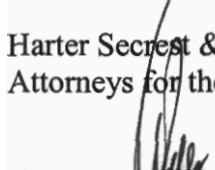
(iii) requiring EVSC to substitute its compliance with 16 NYCRR Section 895.5 with its obligation to make its cable service available to all of Empire's local service telephone customers, as the same may exist from time to time, so that EVSC is essentially complying with the ILEC line extension rules,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

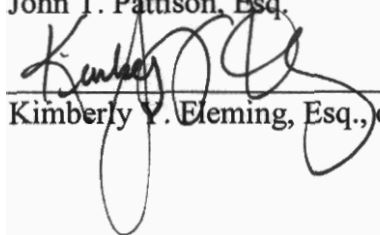
Regulations and the Rules of the Commission.

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

VERIFICATION

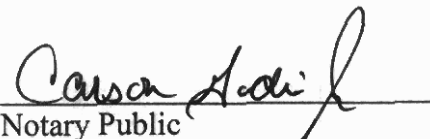
STATE OF NEW YORK)
) SS.:
COUNTY OF STEUBEN)

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

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


Brian J. Ketchum

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


Notary Public

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

Exhibit A

Franchise Agreement between EVSC and the Municipality

COPY

FRANCHISE AGREEMENT

Town of Montour

This AGREEMENT made this 9TH day of MARCH, 2007 between the Town of Montour, a municipal subdivision of the State of New York, situated in Schuyler County and Empire Video Services Corporation, a corporation organized and existing under the laws of the State of New York with its principal place of business located at 34 Main Street, Prattsburgh, NY 14873, hereinafter called "Empire Video."

WHEREAS, the Town of Montour desires to grant Empire Video a cable television franchise to provide video delivery service within the Town of Montour;

WHEREAS, the technical ability, financial condition and character of Empire Video and its principals have been considered and approved by the Town Council in the Town of Montour in full public proceeding affording due process; and

WHEREAS, this Agreement complies with the franchise standards required by the New York State Public Service Commission, the Federal Communications Commission, and the Federal Cable Communications Policy Act.

IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1 Grant

The Town of Montour hereby grants to Empire Video, its successors and assigns, the non-exclusive right and privilege to erect, place in the Town of Montour and to construct, maintain and operate in, over and under the present and future streets, sidewalks, alleys, public land and places and highways in or of the Town of Montour, towers, poles, lines, cables, necessary wiring and the other apparatus for the purpose of transmitting, receiving, amplifying and distributing television and other video and aural programming and other communications services within the Town of Montour and to the inhabitants thereof. The Town of Montour

reserves the right to award subsequent franchises to other parties. If the franchising authority enters into, renews, changes, or modifies a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than Empire Video to enter into the Town's streets and public ways for the purpose of constructing or operating a cable television system or providing cable television service to any part of the service area, Empire Video shall have the right to seek amendment to this agreement to ensure for itself equal protection under the law and due process and so that no party gains or is burdened by an unfair advantage. In the event that additional benefits are provided to another community served in Schuyler County by Empire Video, Empire Video shall offer the same or similar benefits to the franchising authority so long as the franchising authority agrees to the same or similar concessions, if any, provided to Empire Video by such other community or communities to secure such benefits.

Section 2 Term

The term of this Agreement and the franchise granted herein shall be for a period of fifteen (15) years commencing on the date this Agreement is approved by the New York State Public Service Commission. This Agreement may thereafter be renewed for a term of five (5) years in accordance with the rules and regulations of the New York State Public Service Commission and the Federal Cable Communications Policy Act of 1984, as amended (47U.S.C.546).

Section 3 Franchise Area

The franchise rights and obligations set forth in this Agreement shall be applicable to the Town of Montour. The area to be served shall include The "Primary Service Area" as described in Section 895.5 of the Rules and Regulations of the Public Service Commission, unless the Public Service Commission issues an order waiving or amending such requirements based on the local service telephone territory of Empire Telephone Corporation, an affiliate of the Empire

Video, within the municipality.. A map detailing the extent of the local service territory of Empire Telephone Corporation within the municipality is attached hereby as Attachment B and made a part hereof.

Section 4 Line Extension Policy

- 1) Primary service area shall include each of those areas described in Part 895.5(a) of the New York State Department of Public Service Rules or, if the Commission issues an order waiving or modifying such requirements.
- 2) Empire Video will offer services to any area within the franchised area which is not the primary service area pursuant to Part 895.5 of the New York State Department of Public Service rules regarding line extensions or with an order waiving or modifying such requirements.
- 3) Video delivery service will be provided to any subscriber who demands service and who is located within 250 feet of aerial feeder cable, and that the charge for the installation for any subscriber so situated will not be in excess of the installation charge specified in Attachment A.
- 4) Empire Video shall review line extensions in May of each year to reflect the number of subscribers per mile so that adjustments or rebates for line extension contribution in aid of construction may be established.

Section 5 Construction

(a) Empire Video shall construct, continue to operate and maintain acceptable service in a safe and reliable manner. The minimum channel capacity of the system shall not be less than 120 channels.

(b) Empire Video shall construct its video delivery system using materials of good and durable quality, and all work involved in construction, installation, maintenance, and repair of the video delivery system shall be performed in a safe, thorough, and reliable manner.

Section 6 Rates

Attachment A attached hereto sets forth Empire Video's current rates and charges for video delivery service. Empire Video shall file a new attachment with the Town of Montour Clerk upon any change in such rates and charges. The Town of Montour shall be entitled to regulate rates for the provision of "basic cable service" in accordance with federal law.

Section 7 Customer Service

(a) Empire Video shall maintain an office and toll free number for the purpose of receiving and responding to video subscriber complaints. In addition, a maintenance service staff will be available at this location. Customer calls will be answered 24 hours per day.

(b) All subscriber complaints or trouble calls shall receive investigative action on the same day such complaint or call is received at the local office, if possible; but in no case later than the following business day. Empire Video shall give credit for service outages in excess of four (4) continuous hours in accordance with Part 890.65 of the Rules and Regulations of the New York State Public Service Commission. Subscriber complaints and trouble calls shall be processed in compliance with the standards set forth in the Rules and Regulations of the New York State Public Service Commission.

(c) Empire Video provides notice to its subscribers of its billing practices, subscriber information, availability of parental control devices, the procedure for reporting and resolving subscriber billing and technical complaints, and equipment compatibility. (Such notice may be written or by such other means as the FCC or New York State Public Service Commission may from time-to-time approve.) Notice is given in writing to each subscriber at the time of initial

subscription, reconnection, semi-annually or annually and as required by the Rules and Regulations of the New York State Public Service Commission. Empire Video also provides subscriber Privacy Notices in accordance with the Federal Cable Communications Policy Act of 1984, as amended (47U.S.C.551).

(d) Empire Video will comply with Parts 890 and 896 of the Rules and Regulations of the New York State Public Service Commission regarding Customer Service Consumer Protection Standards.

Section 8 Prohibition of Abandonment

Empire Video shall not abandon any service area provided under this Agreement nor shall it abandon any portion of such service area without the prior written consent of the Town Council.

Section 9 Indemnification - Insurance

(a) Empire Video shall indemnify and save the Town of Montour harmless from all losses sustained by the Town of Montour account of any suit, judgment, execution, claim, damage, injury or demand resulting from the negligent acts of Empire Video occasioned by or arising out of the construction, erection, maintenance, repair or operation of Empire Video's video delivery system or the exercise by Empire Video of franchise rights granted herein. For this purpose, Empire Video shall obtain and carry a general comprehensive liability insurance policy (naming the Town of Montour as an additional insured), written by an insurance company or companies qualified to do business in the State of New York. The amounts of such insurance shall not be less than \$1,000,000 for liability due to damage to property, not less than \$1,000,000 for liability due to bodily injury or death of any person, and not less than \$2,000,000 for liability due to any one occurrence. The Town of Montour shall notify Empire Video within thirty (30)

days after the presentation of any claim or demand either by suit or otherwise made against the Town of Montour on account of any negligence or other conduct on the part of Empire Video.

(b) A certificate evidencing the insurance coverage required by paragraph (a) above shall be delivered by Empire Video to the Town of Montour Clerk within sixty (60) days of the date of this Agreement. Such Certificate shall state that the Town of Montour be given at least thirty (30) days prior written notice of any cancellation or material change in coverage.

(c) Empire Video shall carry Worker's Compensation insurance for its employees in such amounts as are 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 Empire Video or any of its affiliates, subsidiaries or assigns.

Section 10 Repair of Property

Any property of the Town of Montour damaged or destroyed by reason of any activity undertaken pursuant to this Agreement by Empire Video shall be promptly repaired or replaced by Empire Video and restored to serviceable condition.

Section 11 Municipal Approval of Sale or Transfer

Empire Video shall not sell or transfer this Agreement without prior approval by resolution of the Town Council of the Town of Montour, except that, Empire Video may transfer this Agreement to an entity under common control upon notice to the Town of Montour.

Section 12 Equal Employment

As required by law, Empire Video shall not refuse to hire or employ nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges or employment because of age, race, creed, color, national origin, sex, or handicap.

Section 13 Responsible Municipal Officer

The Supervisor of the Town of Montour shall be responsible for the continuing administration of this Agreement.

Section 14 Powers Reserved to the Town of Montour

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

Section 15 Severability

If any section, subsection, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any Court or regulatory agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 16 Approval and Amendment of Provisions

(a) The terms and provisions of this Agreement are subject to the approval of the New York State Public Service Commission to the extent provided by law.

(b) Should the Federal Communications Commission or the New York State Public Service Commission make such modifications of the provisions of its rules and regulations that would require the amendment of this agreement, such amendment is hereby agreed upon and such necessary amendments will be made within one (1) year or upon the expirations of this agreement, whichever comes first.

Section 17 Municipal Inspection

The Town of Montour shall have the right to inspect all pertinent records, maps, plans, and other like material of Empire Video pertaining to this Agreement upon reasonable notice and during normal business hours.

Section 18 Access to and Easements in New Subdivisions

(a) Empire Video shall locate its facilities underground in areas of the Town of Montour where all electric and telephone utilities are so located. In the event that it is not feasible for Empire Video to locate its facilities underground, it may petition the Town of Montour for permission to locate such facilities above ground.

(b) For the purpose of providing for the future growth and development of video and to afford future residents the comfort and convenience of video delivery service, the Town of Montour Planning Board shall require all future subdividers to grant Empire Video access to and necessary easements in new subdivisions for the purpose of installing video lines. Such access and easements shall be similar to those granted public utilities such as telephone and power companies.

Section 19 Free Service Props

Empire Video shall provide one outlet of basic and expanded video delivery service at no charge to outlets installed in any school (public, private or parochial) or any building owned by the Town of Montour situated in areas served as well as the Town Hall and Town Barn.

Section 20 Public, Education, and Government Access

Empire Video shall provide public, educational, and governmental access channels according to Part 895.4 the rules and regulations of the New York State Public Service Commission and/or rules of the Federal Communications Commission. The Municipality hereby

agrees that the PEG access channel (s) contemplated herein shall be shared among the municipalities now or hereafter served by Empire Video.

Section 21 Payment to the Municipality

Empire Video shall pay to the Town of Montour an annual franchise fee of five percent (5%) of gross revenues received directly from subscribers with the Town of Montour for any video delivery services purchased on a regular, recurring monthly basis.

Accordingly, "gross revenues" shall include revenues received for the provision of basic and expanded video tiers, and monthly equipment rental fees to subscribers within the Town of Montour, but shall not include any internet or telephone services fees, installation fees, advertising revenues, pay-per-view, or other revenues not received on a recurring monthly basis. In the event that any law, rule, or regulation shall require a different definition of "gross revenue", the Town of Montour and Empire Video agree to readjust the percentage payable to the Town of Montour so that the Town of Montour will receive approximately the same dollar amount as would have been paid under definition herein.

Gross revenues should be reduced by a credit in the aggregate of: (i) any taxes, fees or assessments of general applicability imposed on Empire Video or any Subscribers, or both, which are discriminatory against Empire Video or any Subscribers; (ii) any non-capital expenses incurred Empire Video 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"). Empire Video shall have the right to apply any franchise fee paid against special franchise assessments pursuant to Sec. 626 of the New York State Real Property Tax Law.

The foregoing payments to the Town of Montour shall be made on a quarterly basis and within sixty (60) days of the end of each calendar quarter.

Section 22 Operating Authority

Empire Video shall file requests for any necessary operating authorization with the New York State Public Service Commission and the Federal Communications Commission within sixty (60) days from the date the franchise is awarded by the Town of Montour.

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

Empire Video Services Corporation

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

Town of Montour

By David L. Scott
Town Supervisor

Attachment A

Rates

(TBD)

Attachment B

Map

Exhibit B

Certificate of Publication regarding the Notice of Public Hearing

LEGAL NOTICE

The Town of Montaur will hold a public hearing on April 11, 2006 at 7:00 p.m. for the purpose of: 1. A proposal by Empire Video Services Corporation for application for cable television franchise license. 2. Review of the Schuyler County Planning Commission's recommendations from the SEORA submitted to them in reference to a proposed zoning land amendment to Section 7 of the Town of Montaur Zoning Ordinance. Any and all interested parties are urged to attend. The regular scheduled Board Meeting will follow the Public Hearing. Deborah A. Filley, Town Clerk, Dated: March 30, 2006.

State of New York

County of Schuyler,

ss:

Patricia Pierce, Watkins Glen, N.Y., being
duly sworn, says she is the Billing Clerk
of the WATKINS EXPRESS, a newspaper published weekly in the Village
of Watkins Glen, Schuyler County, New York, and that the

LEGAL NOTICE

of which the annexed is a copy, has been regularly published in said
newspaper once a week for weeks, successively,
commencing on the day of April 2006
and ending on the day of April 2006
the day of the last publication thereof.

Subscribed and sworn to before me this

5th

20th

day of

April

2006

Notary Public, State of New York

No. 010V6117312

Expires Oct 25, 2006

Notary Public, State of New York

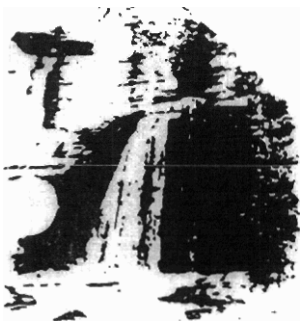
No. 010V6117312

Expires Oct 25, 2006

Notary Public.

Exhibit C

Resolutions adopted by the Municipality



EAGLE CLIFF FALLS
HAVANA GLEN

TOWN OF MONTOUR

P. O. Box 579 • MONTOUR FALLS, NY 14865
607-535-9476

Public Hearing and Regular Board Meeting May 11, 2006

RESOLUTION # 24

On motion of Councilman Switzer seconded by Councilman Besley the following resolution was
Adopted – Ayes 3 Councilman Switzer, Councilman Brown Supervisor Scott Nays 0

GRANTING OF A CABLE FRANCHISE TO EMPIRE VIDEO SERVICES CORPORATION

WHEREAS, pursuant to the Communications Act of 1934, as amended (the “Communications Act”), the Town Board of the Town of Montour has the authority to grant cable television franchises for and in the Town of Montour; 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 Montour on May 10, 2006 and posted in the Town Legal Paper (Watkins Review); and

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

FURTHER RESOLVED, that the Board approves the Franchise Agreement between the Town of Montour and EVSC substantially in the form presented at the Town Meeting on May 11, 2006, subject to modifications approved or required 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 Montour, his execution thereof constituting proof of the effectiveness of such Franchise Agreement.

Exhibit D

Certificate of Publication regarding the Notice of Filing of this Application

County of Schuyler,

Patricia R. Riche
 duly sworn, says she is the
 of the WATKINS EXPRESS, a newspaper published weekly in the Village
 of Watkins Glen, Schuyler County, New York, and that the

Patricia R. Riche
 of Watkins Glen, Schuyler County, New York, and that the

newspaper once a week for
 of which the annexed is a copy, has been regularly published in said

commencing on the day of
 and ending on the day of

the day of the last publication thereof.

Patricia R. Riche
 day of 2007

Diana M Overhiser
 Notary Public, State of New York
 No. 010V6117312
 Expires Oct 25, 2008

OF SCHUYLER - ABN AMRO
 MORTGAGE GROUP, INC., Plaintiff,
 AGAINST DALENE COVERT, AKA
 DALENE F. COVERT AKA/DALENE
 A. COVERT, ET. AL., Defendant(s).
 Pursuant to a judgment of foreclosure
 and sale duly dated 3/2/2007, I, the
 undersigned Referee will sell at
 public auction at the Back Entrance
 Of The Schuyler County Courthouse,
 910 N. Franklin Street, Village Of
 Watkins Glen, New York, on
 4/18/2007 at 11:00 A.M., premises
 known as 204 Macdowell Road,
 Odessa, NY 14869. All that certain
 plot piece or parcel of land, with the
 buildings and improvements thereon
 erected, situate, lying and being in
 the Village of Odessa, County of
 Schuyler and State of New York.
 Section, Black and Lot: 87-12-1-12.0
 Approximate amount of Judgment
 Provisions of filed Judgment Index
 #277/06 William M. Doolittle, Esq.
 Notice is hereby given that a public
 hearing will be held on the 2007-
 Budget and Propositions will
 be held in the Watkins Glen High
 School Board Room, 303 12th
 School Board Room, 303 12th

LEGAL NOTICE
WATKINS GLEN CENTRAL
SCHOOL DISTRICT
ANNUAL MEETING- BUDGET
VOTE AND ELECTION
 Notice is hereby given that a public
 hearing will be held on the 2007-
 Budget and Propositions will
 be held in the Watkins Glen High
 School Board Room, 303 12th
 School Board Room, 303 12th

LEGAL NOTICE
 The Town of Catharine Town Board
 hereby makes notice that the April
 Board meeting will be held on
 Tuesday, April 24, 2007 at 7:00
 p.m. This meeting will replace the
 regular monthly meeting originally
 scheduled for April 17, 2007. Dated:
 March 26, 2007, Carmella Hoffman,
 Town Clerk/ Tax Collector, Town of
 Catharine

LEGAL NOTICE
 The Town of Catharine Town Board
 hereby makes notice that the April
 Board meeting will be held on
 Tuesday, April 24, 2007 at 7:00
 p.m. This meeting will replace the
 regular monthly meeting originally
 scheduled for April 17, 2007. Dated:
 March 26, 2007, Carmella Hoffman,
 Town Clerk/ Tax Collector, Town of
 Catharine

LEGAL NOTICE
 The Village of
 Mount Transformer. Complete bid
 specifications are available at the
 Village Clerk's Office and may be
 obtained between 7 am and 4:30
 p.m. Monday through Friday. Bids
 must be submitted to the Village
 Clerk at 303 N. Franklin Street,
 Watkins Glen, NY 14891 on or before
 4:00 p.m. on Monday, April 16, 2007.
 All bids must contain a non-collusive
 bidding statement, and be clearly
 marked "Sealed Bid-Transformer."
 Bids will be opened and considered
 at the regular meeting of the Board
 at 7:00 p.m. on April 16, 2007.

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

LEGAL NOTICES
 subject to public inspection during
 regular office hours for fifteen days
 from the date of this notice. Suzanne
 Casselberry, Clerk-Treasurer. Dated:
 April 2, 2007

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 Montour, along the roads within the ILEC boundary of ETC, as described in the attached map.

Name of Applicant/Sponsor Empire Video Services Corporation

Address 34 Main Street

City / PO Prattsburgh State NY Zip Code 14873

Business Telephone (607) 522-3712

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

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

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

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

A. SITE DESCRIPTION

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

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

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

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

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

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

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

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

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

5. Approximate percentage of proposed project site with slopes:

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

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

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

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

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

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

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

According to:

N/A

Identify each species:

N/A

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

☐ Yes ☒ No

Describe:

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

☐ Yes ☒ No

If yes, explain:

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

15. Streams within or contiguous to project area:

N/A

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

N/A

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

N/A

b. Size (in acres):

N/A

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If YES, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If YES, will improvements be necessary to allow connection? ☐ Yes ☒ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No
20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☒ No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: _____ acres.
- b. Project acreage to be developed: _____ acres initially; _____ acres ultimately.
- c. Project acreage to remain undeveloped: _____ acres.
- d. Length of project, in miles: 24.67 (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. _____ %
- f. Number of off-street parking spaces existing _____; proposed _____
- g. Maximum vehicular trips generated per hour: _____ (upon completion of project)?
- h. If residential: Number and type of housing units:

	One Family	Two Family	Multiple Family	Condominium
Initially	_____	_____	_____	_____
Ultimately	_____	_____	_____	_____

- i. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; _____ length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? _____ ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? _____ 0 tons/cubic yards.

3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A

- a. If yes, for what intended purpose is the site being reclaimed?

- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No

- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No

4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? _____ 0 acres.

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

☐ Yes ☒ No

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

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

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

c. Approximate completion date of final phase: _____ month _____ year.

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

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

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

10. Number of jobs eliminated by this project 0

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

If yes, explain:

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

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

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

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

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

If yes, explain:

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

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

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

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

c. If yes, give name _____ ; location _____

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

e. If yes, explain:

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

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

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

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

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

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

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

If yes, indicate type(s)

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

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

23. Total anticipated water usage per day _____ 0 _____ gallons/day.

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

If yes, explain:

25. Approvals Required:

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

C. Zoning and Planning Information

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

If Yes, indicate decision required:

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

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

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

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

N/A

4. What is the proposed zoning of the site?

N/A

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

N/A

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

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

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

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

a. What is the minimum lot size proposed? _____

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

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

☐ Yes ☒ No

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

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

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

D. Informational Details

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

E. Verification

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

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

Signature 

Title Agent for Empire Video Services Corporation

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

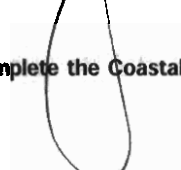


Exhibit F

Addendum to the Full Environmental Assessment Form

**ADDENDUM TO THE FULL ENVIRONMENTAL ASSESSMENT FORM
OF EMPIRE VIDEO SERVICES CORPORATION
RELATING TO A CABLE TELEVISION FRANCHISE IN THE
TOWN OF MONTOUR, 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 Montour ("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 Schuyler County. As of the 2000 Census, the Town had a population of 2,446 within a total area of approximately 18.6 square miles. 18.6 Square miles of it is land and less than 0.05% square miles of it is water.

The Town contains portions of agricultural districts, but is not substantially contiguous to a National Natural Landmark. While the Town does not contain any state registered historic sites, it does contain one (1) nationally registered historic site, the Lee School. The Town does not contain any critical environmental areas. EVSC's policy is to conform to all applicable laws and regulations in placing its facilities, including any special requirements that may be applicable to historic sites, districts, or landmarks.

A portion of the Town may be located above aquifers. The Town is not within a coastal area, but has one (1) 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 Schuyler County Agricultural Districts, attached hereto as Exhibit 1 and made a part hereof;
2. List of Critical Environmental areas in Schuyler County, showing that none are listed for the Town, attached hereto as Exhibit 2 and made a part hereof;
3. Unconsolidated Aquifers in Upstate New York – Finger Lakes Map, Record Number 87-4122, showing the location of the aquifers in the area, attached hereto as Exhibit 3 and made a part hereof;
4. Schedule of Freshwater Wetlands in the Town, attached hereto as Exhibit 4 and made a part hereof;
5. The flood plain maps, issued by the Federal Emergency Management Agency, for the Town, attached hereto as Exhibit 5 and made a part hereof; and
6. List of Nationally Registered Historic sites, attached hereto as Exhibit 6, and made a part hereof.

Description of Potential Construction Activities

If extension of the Facilities were to be under taken following award of the franchise, any construction in the Town's rights-of-way with respect to cable television services would only involve facilities that will also be used for Empire Telephone Corporation's services. Construction of the Facilities has been completed for approximately sixty-four percent (64 %) of the area in the Town.

When a household requests cable television services, drop wires will be run to the home only if that home did not already subscribe to Empire Telephone Corporation's services. Because a large number of customers already subscribe to Empire Telephone Corporation's service, the number of households that would require new facilities is nominal.¹ In terms of the potential environmental impact of drop placement activities, the fiber and copper drops do not differ in any significant respect from industry standard facilities that are commonly used by Empire Telephone Corporation.

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

Exhibit 1

List of Schuyler County Agricultural Districts

**Schuyler County
Agricultural Districts**

District Number	Towns Partially Included
1	Hector
2	Tyrone, Orage, Dix, Reading
3	Montour, Catharine, Cayuta

Exhibit 2

List of Critical Environmental areas in Schuyler County



Critical Environmental Areas in Schuyler County

More information from this division:

Division of Environmental Permits
SEQR

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

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

[Back to top of page](#)

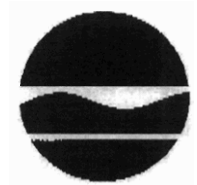
Exhibit 3

Unconsolidated Aquifers in Upstate New York

Exhibit 4

Schedule of Freshwater Wetlands in the Town

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



April 5, 2007

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

Dear Ms. Fleming,

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

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

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

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

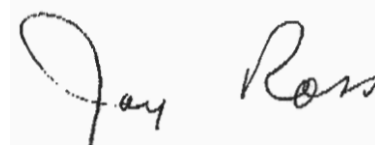
Village or Town

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

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

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

Sincerely,
Jay Ross

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

Fish and Wildlife Technician

WET ID
MF-1

Montour
CLASS
1

WETL
~~754.8~~
1

Exhibit 5

Flood Plain Maps

Exhibit 6

National Register

Index by State and City

National Register Information System

03/27/2007 15:21:26

No filter

Include filter in navigation ☐

Row	STATE ▾	COUNTY ▾	RESOURCE NAME ▾	ADDRESS ▾	CITY ▾	LISTED ▾	MULTIPLE ▾
1	NY	Schuyler	Lee School	NY 14	Montour	1998-05-20	

Page 1

First
PageNext
Page

Refresh

Export

Exhibit G

Limited Power of Attorney

LIMITED POWER OF ATTORNEY

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

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

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

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

[signature page follows]

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

Empire Video Service Corporation

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

Signed in the presence of:
Witness

Witness

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

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

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

[signature page to the Limited Power of Attorney]

Exhibit H

Map of Montour

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