

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)
)
BroadbandConnect, Inc.)
)
Certification to Operate an)
Open Video System)

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 2000

Released: September 22, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. On September 12, 2000,¹ BroadbandConnect, Inc. ("BroadbandConnect") filed an application for certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act of 1934 ("Communications Act") and the Commission's rules.² BroadbandConnect seeks to operate an open video system in various communities in Prince George's County, Maryland (the "Service Areas").³ In accordance with our procedures,⁴ the Commission published notice of receipt of the BroadbandConnect certification application⁵ and posted the application on the Internet.⁶ The City of Bowie, ("Bowie"), Town of University Park ("University Park"), City of College Park ("College Park"), Prince George's County Government ("Prince George's County"), and Town of Upper Marlboro ("Upper Marlboro") filed comments.

¹September 12, 2000 is the date the Commission received BroadbandConnect's certification application. Any comments filed in connection with a previous BroadbandConnect certification filing that was incorrectly filed with the Commission are incorporated and considered here.

²47 U.S.C. § 573(a)(1); 47 C.F.R. § 76.1502.

³The Service Areas for which BroadbandConnect seeks certification in Maryland are: Berwyn Heights; Bladensburg; Bowie; Brentwood; Capital Heights; Cheverly; College Park; Colmar Manor; Cottage City; District Heights; Edmonston; Fairmont Heights; Forest Heights; Glenarden; Greenbelt; Hyattsville; Landover Hills; Laurel; Morningside; Mount Rainier; New Carrollton; North Brentwood; North Laurel; Riverdale; Seat Pleasant; Takoma Park; University Park; Upper Marlboro.

⁴See *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Second Report and Order*, 11 FCC Rcd 18223, 18247 (1996) ("*Second Report and Order*").

⁵See *Public Notice*, "BroadbandConnect, Inc. Files An Application For Open Video System Certification," DA 00-2101 (CSB, rel. September 14, 2000).

⁶The BroadbandConnect application is available *via* the Internet at <http://www.fcc.gov/csb/ovs/csovsr.html>.

2. Pursuant to Section 653(a)(1) of the Communications Act, any entity meeting the requirements may obtain certification to operate an open video system.⁷ In light of the brief period (ten days) for Commission review of certification filings, the Commission concluded that Congress intended there to be a streamlined certification process.⁸ Open video system operators may apply for certification at any point prior to the commencement of service. Open video system operators must obtain certification prior to the commencement of service, allowing sufficient time to comply with the Commission's requirements regarding notifications that applicants must provide to potential programming providers.⁹

3. As part of the certification process, the applicant must acknowledge and accept the obligations associated with operation of an open video system and must provide certain information regarding its proposed system.¹⁰ To obtain certification, an applicant must file FCC Form 1275, which requires, among other things: (a) a statement of ownership, including a list of all affiliated entities;¹¹ (b) a representation that the applicant will comply with the Commission's regulations under Section 653(b) of the Communications Act;¹² (c) a list of the names of the communities the applicant intends to serve; (d) a statement of the anticipated type and amount of capacity that the system will provide; and (e) a statement as to whether the applicant is a cable operator applying for certification within its cable franchise area.

⁷See 47 U.S.C. § 573(a)(1); 47 C.F.R. § 76.1501. However, an operator of a cable system generally may not obtain such certification within its service area unless it is subject to "effective competition" as defined in Section 623(1)(l) of the Communications Act, 47 U.S.C. § 543(l)(l).

⁸*Second Report and Order*, 11 FCC Rcd at 18243.

⁹*Id.* at 18247; 47 C.F.R. § 76.1502(a). See also *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, Order on Remand, 14 FCC Rcd 19700, 19705 (1999)(deleting the pre-construction certification requirement from Section 76.1502(a) of our rules).

¹⁰*Second Report and Order*, 11 FCC Rcd at 18245-46.

¹¹We note that for purposes of determining whether a party is an affiliate, we have adopted the definitions contained in the notes to Section 76.501 of our rules, 47 C.F.R. § 76.501, with certain modifications. 47 C.F.R. § 1500(g). Generally, we will consider an entity to be an open video system operator's "affiliate" if the open video system operator holds 5% or more of the entity's stock, whether voting or non-voting. *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Third Report and Order and Second Order on Reconsideration*, 11 FCC Rcd 20227, 20235 (1996) ("*Third Report and Order*"); 47 C.F.R. § 1500(g).

¹²47 U.S.C. § 573(b). This provision sets forth the Commission's requirements regarding non-discriminatory carriage; just and reasonable rates, terms and conditions; a one-third capacity limit on the amount of activated channel capacity on which an open video system operator may distribute programming when demand for carriage exceeds system capacity; channel sharing; sports exclusivity, network non-duplication and syndicated exclusivity; and non-discriminatory treatment in presenting information to subscribers. See also 47 C.F.R. § 1502(a).

II. COMMENTS

4. Bowie, University Park, and College Park indicate that, while interested in the prospect of competition for cable services, little information has been provided about BroadbandConnect, its plans for bringing service to their communities, or its financial profile and no assurances have been given that the health and safety of residents will not be compromised by BroadbandConnect during any construction operations.¹³ Moreover, commenters express concern regarding potential fees to be paid to their cities and Broadband's compliance with public, educational and governmental ("PEG") access requirements, pursuant to Sections 76.1511 and 76.1505 of the Commission's rules, respectively.¹⁴ Upper Marlboro states that it opposes granting the certification application until representatives of BroadbandConnect meet with town officials, as it has had no prior notice on the specifics of BroadbandConnect's plans to establish an open video system in Upper Marlboro.¹⁵ Finally, the comments of Prince George's County relate to the use of its public rights-of-way.¹⁶ It urges the Commission to make clear that the county retains discretion and oversight to determine the use of its public rights-of-way.¹⁷

III. DISCUSSION

5. BroadbandConnect has submitted an application on FCC Form 1275 for certification to operate an open video system in the Service Areas. We have reviewed the information contained in BroadbandConnect's application. As required by Form 1275, the BroadbandConnect application provides the following: company information and a separate statement of ownership listing affiliated entities; eligibility and compliance representations; and system information and verification statements. BroadbandConnect also confirmed that it served its application upon the designated telecommunications officials in each of the communities involved.

6. The ten day statutorily mandated review period for open video system certification applications requires us to confine our review to issues concerning BroadbandConnect's FCC Form 1275 and its related attachments.¹⁸ The purpose of the open video system certification process is to determine whether BroadbandConnect's application complies with Congress' mandate and our regulations.¹⁹ The comments received relate to the fact that BroadbandConnect provided limited information about its open video system plans for the various communities it proposes to serve in Maryland and that community officials were not given the opportunity to discuss the service endeavor and the potential effect on residents and the community. With regard to these commenter's concerns, we note that they do not relate to the adequacy and accuracy of BroadbandConnect's application and therefore are beyond the scope of the open video system certification process.²⁰ However, we encourage BroadbandConnect to respond to the concerns expressed by the commenters, and meet with town officials regarding its plans to initiate and operate an open video system in the communities. In addition, by submitting a completed Form 1275,

¹³Comments of Bowie, University Park, and College Park at 1-2. In submitting their opposition, commenters state that their objective is not to discourage BroadbandConnect's application but to meet with company representatives to learn more about the company and its plans.

¹⁴*Id.* See 47 C.F.R. § 76.1511; 47 C.F.R. § 76.1505.

¹⁵Upper Marlboro Comments at 1.

¹⁶Prince George's County Comments at 1-2.

¹⁷*Id.*

¹⁸See *RCN Telecom Services of California, Inc. d/b/a RCN of California*, 13 FCC Rcd 12009 (1998).

¹⁹*Id.*

²⁰*Id.*

BroadbandConnect has certified that it will comply with all of the Commission's rules for open video systems, including Section 76.1505 and 76.1511. In regard to use and management of public rights-of-way, this issue also relates to matters beyond the adequacy and accuracy of BroadbandConnect's application. Nevertheless, we note that the Commission has stated that "[m]anagement of the rights-of-way is a traditional local government function. Local governments should be able to manage the rights-of-way in their usual fashions without the imposition of unique requirements for open video systems."²¹

7. We find that BroadbandConnect has provided the requisite facts and representations concerning the open video system it intends to operate and has certified that it "agrees to comply and remain in compliance with each of the Commission's regulations" under Section 653(b) of the Communications Act. We note that if any representation in the BroadbandConnect certification filing proves to be materially false or materially inaccurate, the Commission retains the authority to revoke BroadbandConnect's certification or impose such other penalties it deems appropriate, including forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the application of BroadbandConnect, Inc. for certification to operate an open video system in the Service Areas²² **IS GRANTED**.

9. This action is taken by the Chief, Consumer Protection and Competition Division, Cable Services Bureau, pursuant to the authority delegated by Section 0.321 of the Commission's Rules.²³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief,
Cable Services Bureau

²¹*Third Report and Order*, 11 FCC Rcd at 20311.

²²*See supra* n. 2, listing the communities contained within the Service Areas.

²³47 C.F.R. § 0.321.