

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

In the Matter of:
INFINITY BROADBAND INC.
Certification to Operate an
Open Video System

MEMORANDUM OPINION AND ORDER

Adopted: July 5, 2000

Released: July 6, 2000

By the Acting Chief, Consumer Protection and Competition Division, Cable Services Bureau:

I. INTRODUCTION

1. On June 26, 2000, Infinity Broadband Inc. ("Infinity") 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.1 Infinity seeks to operate an open video system in various communities in Florida (the "Service Areas").2 In accordance with our procedures,3 the

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

2The Service Areas for which Infinity seeks certification are: Broward County, Fort Lauderdale, Sunrise, Davie, Plantation, Dania Beach, Hallandale, Hollywood, Miramar, Pembroke Pines, Pompano Beach, Lauderhill, Tamarac, Lauderdale Lakes, North Lauderdale, Margate, Coconut Creek, Coral Springs, Deerfield Beach, Cooper City, Light House Point, Oakland Park, Parkland, Pembroke Park, Sea Ranch Lakes, Wilton Manors, Miami/Dade County, Coral Gables, Kendall, Hialeah, Miami Beach, North Miami Beach, North Miami, Miami Lakes, Opa Locka, Aventura, Biscayne Park, El Portal, Florida City, Key Biscayne, Hialeah Gardens, Homestead, Indian Creek Village, Medley, Miami, Miami Shores Village, Miami Springs, Pinecrest, Sweetwater, Virginia Gardens, West Miami, Palm Beach County, Boca Raton, Delray Beach, Boynton Beach, Lake Worth, West Palm Beach, Palm Beach, Riviera Beach, North Palm Beach, Palm Beach Gardens, Juno Beach, Jupiter, Atlantis, Belle Glade, Briny Breezes, Cloud Lake, Glen Ridge, Golf, Greenacres, Gulf Stream, Haverhill, Highland Beach, Jupiter Inlet, Lake Clarke Shores, Lake Park, Lantana, Manalapan, Mangonia Park, Ocean Ridge, Pahokee, Palm Beach Shores, Palm Springs, Royal Palm Beach, South Bay, South Palm Beach, Tequesta, Duval County, Atlantic Beach, Baldwin, Jacksonville, Jacksonville Beach, Neptune Beach, Hillsborough County, Bears Plaza, Brandon, Carrollwood, Mango, Northdale, Sydney, Tampa, Valrico, Lee County, Alva, Boca Grande, Bokeelia, Bonita Springs, Cape Coral, Estero, Fort Myers, Fort Myers Beach, Lehigh, Lehigh Acres, Matlacha, North Fort Myers, Pineland, Saint James City, Survey Creek, Tice, Orange County, Alafaya, Aloma, Apopka, Azalea Park, Clarcona, Eatonville, Edgewood, Fairvilla, Gotha, Hiawassee, Hunt Club, Killarney, Lake Buena Vista, Lockart, Oakland, Ocoee, Orlando, Orlo Vista, Pine Castle, Pine Hills, Plymouth, Sand Lake, South Creek, Tangerine, Union Park, Ventura, Windermere, Winter Park, Osceola County, Buena Ventura Lakes, Celebration, Intercession City, Kissimmee, (continued...)

Commission published notice of receipt of Infinity's certification application⁴ and posted the application on the Internet.⁵ No comments were received.

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.⁶ 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.⁷ 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.⁸

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.⁹ 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;¹⁰ (b) a representation that the applicant will comply with the Commission's regulations under Section 653(b) of the

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Saint Cloud, Pinellas County, Bay Pines, Belleair, Belleair Beach, Belleair Bluffs, Clearwater, Crystal Beach, Dunedin, Gulfport, Indian Shores, Kenneth City, Largo, Madeira Beach, North Redington Beach, Oldsmar, Ozona, Palm Harbor, Pinellas Park, Redington Beach, Safety Harbor, Saint Pete Beach, Saint Petersburg, Seminole, Sunset Point, Tarpon Springs, Treasure Island, Sarasota County, Crescent Beach, Forest Lakes, Fruitville, North Port, Pinecraft, Sarasota, Siesta Key, Seminole County, Casselberry, Fern Park, Goldenrod, Heathrow, Lake Mary, Longwood, Oviedo, Sanford, Springs Plaza, Tuskawilla, and Winter Springs.

³See *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*").

⁴See *Public Notice*, "Infinity Broadband Inc. Files An Application For Open Video System Certification," DA 00-1442 (CSB, rel. June 28, 2000).

⁵The Infinity application is available *via* the Internet at <http://www.fcc.gov/csb/ovs/csovsr.html>.

⁶See 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(1)(l).

⁷*Second Report and Order*, 11 FCC Rcd at 18243.

⁸*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).

⁹*Second Report and Order*, 11 FCC Rcd at 18245-46.

¹⁰We 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).

Communications Act;¹¹ (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.

II. DISCUSSION

4. Infinity 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 Infinity's application. As required by Form 1275, the Infinity 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. Infinity also confirmed that it served its application upon the designated telecommunications officials in each of the communities involved.

5. We find that Infinity 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 Infinity certification filing proves to be materially false or materially inaccurate, the Commission retains the authority to revoke Infinity's certification or impose such other penalties it deems appropriate, including forfeiture.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, that the application of Infinity Broadband Inc. for certification to operate an open video system in the Service Areas¹² **IS GRANTED**.

7. This action is taken by the Acting Chief, Consumer Protection and Competition Division, Cable Services Bureau, pursuant to the authority delegated by Section 0.321 of the Commission's Rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Acting Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹¹47 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).

¹²*See supra* n. 2 listing the communities contained within the Service Areas.

¹³47 C.F.R. § 0.321.