

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

In the Matter of:)
)
RCN TELECOM SERVICES OF OREGON, INC.)
)
Certification to Operate an)
Open Video System)

MEMORANDUM OPINION AND ORDER

Adopted: February 4, 2000

Released: February 7, 2000

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

I. INTRODUCTION

1. On January 28, 2000, RCN Telecom Services of Oregon, Inc. ("RCN Oregon") 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 RCN Oregon seeks to operate an open video system in certain communities in the Portland, Oregon area (the "Portland Area").² In accordance with our procedures,³ the Commission published notice of receipt of RCN Oregon's certification application⁴ and posted the application on the Internet.⁵ No parties filed comments in response to this application.

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

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

² The communities for which RCN Oregon seeks certification are the following: Aloha, Beaverton, Durham, Gladstone, Gresham, Hillsboro, King City, Lake Oswego, Milwaukie, Portland, River Grove, Tigard, and Tualatin, Oregon.

³ See *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").

⁴ See *Public Notice*, "RCN Telecom Services Of Oregon, Inc. Files An Application For Open Video System Certification," DA 00-0183 (CSB, rel. February 1, 2000).

⁵ RCN Oregon's application is available via the Internet at <http://www.fcc.gov/csb/ovs/csovsr.html>.

⁶ See 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)(I) of the Communications Act, 47 U.S.C. § 543(1)(I).

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 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. RCN Oregon has submitted an application on FCC Form 1275 for certification to operate an open video system in the Portland Area. We have reviewed the information contained in RCN Oregon's application. As required by Form 1275, RCN Oregon's 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. RCN Oregon also confirmed that it served its application upon the designated telecommunications officials in each of the communities involved. We find that RCN Oregon 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 RCN Oregon's certification filing proves to be materially false or materially

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, FCC 99-341 at 7 (rel. November 19, 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).

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).

inaccurate, the Commission retains the authority to revoke RCN Oregon's certification or impose such other penalties it deems appropriate, including forfeiture.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, that the application of RCN Telecom Services of Oregon, Inc. for certification to operate an open video system in the Portland Area¹² **IS GRANTED**.

6. 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.¹³

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein
Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹²See *supra* n.2, listing the communities included within the Portland Area.

¹³47 C.F.R. § 0.321.