

**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: April 20, 2001

Released: April 20, 2001

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

I. INTRODUCTION

1. On April 12, 2001, 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.¹ BroadbandConnect seeks to operate an open video system in various communities in St. Louis, Missouri (the "Service Areas").² In accordance with our

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

²The Service Areas for which BroadbandConnect seeks certification in St. Louis, Missouri are: St. Louis (CUID 0063, 0276, 0316, 0319, 0362, 0384, 0437, 0596, and 1000); Florissant (CUID 0079 and 0360); Hazelwood (CUID 0080, 1033, and 1055); Creve Coeur (CUID 0207); Crystal Lake Park (CUID 0208); Des Peres (CUID 0209); Eureka (CUID 0210); Fenton (CUID 0211 and 0868); Frontenac (CUID 0212); Ladue (CUID 0213); Town and Country (CUID 0214 and 0978); Huntleigh (CUID 0215); Rock Hill (CUID 0217); Shrewsbury (CUID 0218); Kirkwood (CUID 0219); Glendale (CUID 0220); Webster Groves (CUID 0221); Bridgeton (CUID 0222); Oakland (CUID 0223); Crestwood (CUID 0224); Westwood (CUID 0225); Richmond Heights (CUID 0226); Valley Park (CUID 0227); Country Life Acres (CUID 0228); Ballwin (CUID 0230 and 0889); Ellisville (CUID 0231); Manchester (CUID 0232); Winchester (CUID 0233); Brentwood (CUID 0238); Olivette (CUID 0239); Grantwood Village (CUID 0240); Twin Oaks (CUID 0241); Sunset Hills (CUID 0242); Warson Woods (CUID 0243 and 0287); St. John (CUID 0244); Vinita Park (CUID 0245); Sycamore Hills (CUID 0246); Hanley Hills (CUID 0247); Charlack (CUID 0248); Woodson Terrace (CUID 0255); Bellerive (CUID 0296); Bel Nor (CUID 0297); Bel Ridge (CUID 0298); Berkeley (CUID 0299); Calverton Park (CUID 0300); Cool Valley (CUID 0301); Dellwood (CUID 0302); Ferguson (CUID 0303); Glenn Echo Park (CUID 0304); Greendale (CUID 0305); Hilldale (CUID 0306); Normandy (CUID 0307); Norwood Court (CUID 0308); Pagedale (CUID 0309); Pasadena Hills (CUID 0310); Pasadena Park (CUID 0311); Uplands Park (CUID 0312); Velda Village (CUID 0313); Velda Village Hill (CUID 0314); Vinita Terrace (CUID 0315); Marlborough (CUID 0317); Bridgeton Terrace (CUID 0318); Lakeshire (CUID 0326); St. George (CUID 0327); St. Ann (CUID 0338); Edmundson (CUID 0339); Jennings (CUID 0340); Bellefontaine Neighborhood (CUID 0341); Country Club Hills (CUID 0342); Flordell Hills (CUID 0343); Moline Acres (CUID 0344); Riverview (CUID 0345); Northwoods (CUID 0346); Pine Lawn (CUID 0347); Beverly Hills (CUID 0365); Wilbur Park (CUID 0366); Territory Park (CUID 0367); University City (CUID 0370); Overland (CUID 0371); Breckenridge Hills (CUID 0372); Clayton (CUID 0373); Brentwood (CUID 0374); Maplewood (CUID 0404); Mackenzie (CUID 0472); Times Beach (CUID 0473); Bella Villa (CUID 0474); Tempo Apartments (CUID 0487); Spanish Trace Apartments (CUID 0488); Charter Oak Apartments (CUID 0489); Drexel (CUID

procedures,³ the Commission published notice of receipt of the BroadbandConnect 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 Communications Act;¹¹ (c) a list of the names of the communities the applicant intends to serve; (d) a

0545); Maryland Heights (CUID 0586 and 1056); Kinloch (CUID 0719); Wellston (CUID 0720); Brandy Station Apartments (CUID 0724); Clarkson Valley (CUID 0731); Wedgefield Apartments (CUID 0739); Chesterfield (CUID 0888 and 0913); Blackjack (CUID 1002); Peerless Park (CUID 1029); Greenpark (CUID 1034); Wildwood (CUID 1035); Margona Village (CUID 1038).

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*, "BroadbandConnect, Inc. Files An Application For Open Video System Certification," DA 01-953 (CSB, rel. April 16, 2001).

⁵The BroadbandConnect 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(l)(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).

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-

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. 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 the communities involved.

5. 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.

III. ORDERING CLAUSES

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

7. 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 Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

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.

