

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

In the Matter of:)
)
GST Telecom New Mexico, Inc.)
)
)
)
Certification to Operate an)
Open Video System)
)
)

MEMORANDUM OPINION AND ORDER

Adopted: November 25, 1997

Released: November 26, 1997

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On November 17, 1997, GST Telecom New Mexico, Inc. ("GST") 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 GST seeks to operate an open video system in the Cities of Albuquerque and Rio Rancho and in the Village of Corrales City, New Mexico. In accordance with our procedures,² the Commission published notice of receipt of GST's certification application and posted the application on the Internet.³ No comments were filed regarding GST's certification application.⁴

2. Pursuant to Section 653(a)(1) of the Communications Act, any person may obtain certification to operate an open video system.⁵ In light of the brief period (ten days) for Commission

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

²See *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, Second Report and Order*, CS Docket No. 96-46, 61 FR 28698 (6/5/96), FCC 96-249, released June 3, 1996 at ¶ 34 ("*Second Report and Order*").

³See *Public Notice, "GST Telecom New Mexico, Inc. Files An Application For Open Video System Certification,"* DA 97-2415 (Cab. Serv. Bur., rel. Nov. 17, 1997).

⁴Comments and oppositions must be filed within five days of the Commission's receipt of an open video system certification application. 47 C.F.R. § 76.1502(e).

⁵47 C.F.R. § 76.1501. An operator of a cable system, however, generally may not obtain such certification within its cable 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).

review of certification filings, the Commission concluded that Congress intended a streamlined certification process.⁶ Open video system operators may apply for certification at any point prior to the commencement of service, subject to two conditions. If construction of new physical plant is required, the applicant must obtain Commission approval of its certification prior to the commencement of construction. If no new construction is required, the applicant must obtain certification prior to the commencement of service, allowing itself sufficient time to comply with the Commission's requirements regarding notifications that must be provided to potential programming providers.⁷

3. Despite the streamlined nature of the certification process, the Commission intended it to provide purposeful representations regarding the responsibilities of the open video system operator by requiring that applicants verify their certifications and provide specified information.⁸ 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;⁹ (b) a representation that the applicant will comply with the Commission's regulations under Section 653(b);¹⁰ (c) a list of the names of the communities the applicant anticipates it will serve; (d) a statement of the anticipated type and amount of capacity that the system will provide; and (e) a representation as to whether the applicant is a cable operator applying for certification within its cable franchise area.

II. DISCUSSION

4. We have reviewed the information contained in GST's FCC Form 1275. GST has applied to become a certified open video system operator in the Cities of Albuquerque and Rio Rancho and in the Village of Corrales City, New Mexico. As required by Form 1275, GST's certification application provides: company information and a separate statement of ownership, including all affiliated entities; eligibility and compliance representations; and system information, system capacity and verification statements. GST indicates that it has served the Cable Authority of Albuquerque, the City Attorney of Rio Rancho, and the City Attorney of Corrales City, which are the designated telecommunications officials

⁶*Second Report and Order*, 11 FCC Rcd at 18243.

⁷*Id.* at 18247; 47 C.F.R. § 76.1502(a).

⁸*Second Report and Order*, 11 FCC Rcd at 18245-46.

⁹We 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*, CS Docket No. 96-46, 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).

¹⁰Communications Act § 653(b), 47 U.S.C. § 573 (b). Under this section the applicant agrees to comply with 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 select 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. *Id.* See 47 C.F.R. § 1502(a).

of those respective communities. Accordingly, we conclude that GST 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 GST's certification filing proves to be materially false or materially inaccurate, the Commission retains the authority to revoke GST's certification or impose such other penalties it deems appropriate, including forfeiture.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, that the certification of GST Telecom New Mexico, Inc. to operate an open video system in the Cities of Albuquerque and Rio Rancho and in the Village of Corrales City, New Mexico **IS APPROVED**.

6. This action is taken by the Chief, Cable Services Bureau, pursuant to the authority delegated by Section 0.321 of the Commission's Rules, 47 C.F.R. § 0.321.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau