

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

In the Matter of:)
)
Urban Communications Transport Corporation)
Certification to Operate an)
Open Video System)

CONSOLIDATED ORDER

Adopted: December 30, 1996

Released: December 30, 1996

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. By this Order, we consolidate two proceedings into one and rule on the merits in each.¹ On December 20, 1996, Urban Communications Transport Corporation ("UCTC") filed an application for certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act and the Commission's rules in the City of New York, including the boroughs of Manhattan, Brooklyn, Queens, Staten Island, and the Bronx.² Also on December 20, 1996, UCTC filed an application for certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act and the Commission's rules in Westchester County, New York.³ As provided in its rules, the Commission published notice of receipt of the certification applications and posted the applications on the Internet.⁴ Comments on the certification applications were filed by the City of New York Department of Information

¹Urban Communications Transport Corporation filed separate FCC Form 1275s with regard to the provision of open video system service in the City of New York and Westchester County, New York. We have determined that the two proceedings raise sufficiently similar issues and involve related petitioners thereby supporting a joint resolution of all the issues in one consolidated proceeding.

²Communications Act of 1934, as amended, §653(a)(1), 47 U.S.C. §573(a)(1) ("Communications Act"); 47 C.F.R. §76.1502.

³Communications Act §653(a)(1), 47 U.S.C. §573(a)(1); 47 C.F.R. §76.1502.

⁴See In the Matter of 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 (June 5, 1996), FCC 96-249, released June 3, 1996 at ¶34 ("*Second Report and Order*"); Third Report and Order and Second Order on Reconsideration, CS Docket No. 96-46, 61 FR 43160 (August 21, 1996), FCC 96-334, released August 8, 1996 ("*Third Report and Order*"). The applications were placed on the Internet on December 24, 1996, and published in the Daily Digest on December 26, 1996.

Technology and Telecommunications ("DOITT") and Cablevision Systems Corporation ("Cablevision").

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 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, certification must be obtained prior to the commencement of service, allowing sufficient time to comply with the Commission's notification requirements to programming providers.⁷

3. Despite its streamlined nature, the Commission intended the certification process to provide purposeful representations regarding the responsibilities of the open video system operator, by requiring, *inter alia*, the submission of specified information and that certifications be verified.⁸ To obtain certification, a party 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 general description of the anticipated communities or areas to be served; (d) a statement on the anticipated type and amount of capacity that the system will provide.

4. We have reviewed the information contained in the Form 1275s filed by UCTC and the comments of DOITT and Cablevision. In its filings, UCTC provides, as requested by

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(l)(l) of the Communications Act, 47 U.S.C. § 543(l)(l).

⁶*Second Report and Order* at ¶ 28.

⁷*Second Report and Order* at ¶ 34; 47 C.F.R. § 76.1502 (a).

⁸*Second Report and Order* at ¶ 31.

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, with certain modifications. 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. *Third Report and Order* at ¶ 13.

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; application of the rules concerning sports exclusivity, network non-duplication, and syndicated exclusivity; and non-discriminatory treatment in presenting information to subscribers. *Id.*

Form 1275: company information including a separate statement of ownership, including affiliated entities; makes the required eligibility and compliance representations; and provides the required system information, system capacity and verification statements.

5. DOITT asserts that UCTC improperly served a copy of its New York Application on the clerk of the City of New York, and that the application should have properly been served on DOITT. DOITT states that by operation of the Charter of the City of New York, Chapter 48, DOITT has been designated to administer all telecommunications matters within the City. In addition, DOITT asserts that in 1993 UCTC received from the City of New York a franchise for local high-capacity telecommunications that required UCTC to "substantially complete the installation of the Initial Backbone" of its system within 9 months of the effective date of the franchise.¹¹ According to DOITT, UCTC has to date not commenced construction of any portion of its system. DOITT requests that the Commission either delay for 10 days, or in the alternative, deny UCTC's new York application.

6. Cablevision opposes UCTC's applications on three grounds. First, Cablevision asserts that the two FCC Form 1275s submitted by UCTC incomplete. According to Cablevision, although UCTC indicates the ownership of 65% of the interests in Urban Cable, UCTC fails to indicate the ownership identity of the remaining 35% interest in Urban Cable, and whether this interest consists of limited or general partnership interests. Second, Cablevision argues that certain actions by UCTC and its affiliated company, Urban Cable raise serious questions about the character of the applicants warranting denial of UCTC's applications. Finally, Cablevision asserts that UCTC provides no assurance that UCTC has served a copy of its applications upon all affected local communities.

II. DISCUSSION

7. UCTC has provided the requisite facts and representations concerning the open video systems 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). However, based on our review of the Form 1275 open video system applications and the comments, we find that UCTC, has failed to adequately serve copies of its applications on the clerk or designated official of all affected communities in which it intends to operate its open video systems. UCTC's New York Form 1275 indicates that it was served on the City Clerk, City of New York. However, DOITT is the designated telecommunications official within the City of New York and should have been served by UCTC.¹² In the case of Westchester County, UCTC served the clerk of Westchester County. However, Commission records indicate that there are numerous municipalities located within Westchester County that have been certified to regulate rates by the

¹¹DOITT Opposition at 2.

¹²Third Report and Order at ¶35.

Commission.¹³ UCTC should have served each local franchising authority as well as Westchester County with a copy of its application.

8. With regard to the issues raised by Cablevision, we remind that the open video system certification process was not intended to function as a "back-door" Section 214 requirement. Moreover, if the representations contained in the certification filings prove to be materially false or inaccurate, the Commission retains the authority to revoke an open video system operator's certification or to impose such other penalties it deems appropriate, including forfeiture.¹⁴

9. We note that denial of an open video system certification application does not preclude an applicant from filing a revised certification or from refileing its original submission with a statement addressing the issues in dispute.¹⁵ Such refileings must be served on any objecting party or parties and affected local communities.

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the certification of Urban Communications Transport Corporation to operate an open video system in New York City, including the boroughs of Manhattan, Brooklyn, Queens, Staten Island, and the Bronx, is **DENIED**.

11. **IT IS FURTHER ORDERED** that the certification of Urban Communications Transport Corporation to operate an open video system in Westchester County, New York is **DENIED**.

12. This action is taken by the Chief, Cable Services Bureau, pursuant to the authority delegated by Section 0.321 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

¹³Village of Larchmont, Village of Ossining, Town of Ossining, Town of New Castle, Town of Mount Pleasant, and the Village of Pleasantville.

¹⁴*Second Report and Order* at ¶36.

¹⁵47 C.F.R. §1502(d).

¹⁶47 C.F.R. §0.321.