

OPEN VIDEO
SYSTEM
CERTIFICATION
APPLICATION

ATTENTION:
MEDIA
BUREAU

May 28, 2003

Marlene H. Dortch Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

W. Kenneth Ferree, Media Bureau Chief
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: **Notice of Intent to Establish Open Video System**

Dear Ms. Dortch and Mr. Ferree:

Enclosed for re-filing pursuant to 47 C.F.R. Section 1502(f) is Lakedale Telephone Company's application for certification to operate an open video system for the community of Maple Lake, Minnesota pursuant to Section 653(a)(1) of the Communications Act of 1934 and the Commission's rules. The application consists of FCC Form 1275 and the following attachments:

- Statement of Ownership (with explanation regarding affiliated entities).
- Certificate of Service evidencing service of the filing on the above-referenced community, including a statement informing the community of the Commission's requirements set forth in 47 C.F.R. Section 76.1502(e) regarding opposition and comments.
- 3.5 inch disk with the application and attachments in electronic format.
- Statement addressing Comments of the of the Sherburne/Wright County Cable Communications Commission in Response to the Certification to Operate an Open Video System Filed by Lakedale Telephone Company, dated March 31, 2003 (Statement Addressing SWCCC Comments).

Please note that, except for the Statement Addressing SWCCC Comments, the application is substantially the same as that filed on March 25, 2003 in File No. DA 03-1096.

Please contact me if you have any questions regarding this filing.

Very truly yours,

Gene R. South, Sr.
CEO/General Manager

FCC FORM 1275 CERTIFICATION FOR OPEN VIDEO SYSTEMS

A. Company Information		
Company Name: Lakedale Telephone Company		
Contact Person: Gene R. South, Sr.		
Mailing Address: 9938 State Hwy 55 NW PO Box 340		
City: Annandale	State: MN	Zip Code: 55302
Phone Number: 320-274-8201	Fax Number: 320-274-3440	

B. Attach a statement of ownership, including all affiliated entities

C. Eligibility and Compliance Representations			
	Yes	No	N/A
1. If you are a cable operator applying for certification within your cable franchise area, are you qualified to operate an open video system under 47 C.F.R. § 76.1501?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Do you agree to comply and to remain in compliance with each of the Commission's regulations in 47 C.F.R. §§ 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you agree to comply with the Commission's notice and enrollment requirements for unaffiliated video programming providers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If applicable, do you agree to file changes to your cost allocation manual at least 60 days before the commencement of service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

D. System Information				
1. Provide a general description of the anticipated communities or areas to be served upon completion of the system. Areas of Maple Lake, Wright County, MN CUID MN0456				
2. Anticipated Digital Capacity:	0		3. Anticipated Analog Capacity:	0
4. If Switched Digital, Anticipated Number of Channel Input Ports:	300			

E. Verification Statement	
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE TITLE 18, SECTION 1001), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503)	
To the best of my knowledge and belief, the representations made herein are accurate according to the most recent information available.	
Name: Gene R. South, Sr.	Signature:
Title: CEO/General Manager	Date:

FCC Form 1275 Item B

STATEMENT OF OWNERSHIP AND AFFILIATED ENTITIES

Applicant, Lakedale Telephone Company, is a wholly-owned subsidiary of Bishop Communications, Inc. The following is a complete list of Lakedale Telephone Company's "affiliated entities" as defined by 47 CFR Section 76.1500:

Bishop Communications, Inc.

Lakedale Link, Inc.

Heart of the Lakes Cable, Inc.

Communications Sales and Leasing, Inc.

LPCS, Inc.

Lakedale Communications, LLC

Lakedale LINK, LLC

Cellular Mobile Systems of St. Cloud, LLC.

Wireless Cellular Ventures

TDO, LLC

EN-TEL, LLC

Broadband Visions, LLC

SHAL, Inc.

SHAL, LLC

Page-ALL, LLC

Direct Communications, LLC

Independent Emergency Systems, LLC

WH LINK, LLC

CERTIFICATE OF SERVICE

I, Gene R. South, Sr., hereby certify that I have caused copies of the foregoing FCC Form 1275 Certification for Open Video System of Lakedale Telephone Company, to be hand delivered on this 28th day of May 2003, on the following parties listed below:

Linda Hruby
City Clerk/Treasurer
10 Maple Avenue South
PO Box 757
Maple Lake, MN 55358

Gene R. South, Sr.
CEO/General Manager

STATEMENT ADDRESSING COMMENTS OF THE SHERBURNE/WRIGHT COUNTY CABLE
COMMUNICATIONS COMMISSION

I. INTRODUCTION

Lakedale Telephone Company (“Lakedale”) submits this Statement to address, rebut and refute allegations made by the Sherburne/Wright County Cable Communications Commission (“SWCCCC”), which the Commission identified in its Memorandum Opinion and Order in File No. DA-03-1096, *In the Matter of Lakedale Telephone Company, Certification to Operate An Open Video System*, adopted and released April 4, 2003 (“Order”).

Lakedale is a local exchange carrier providing telephone service in Annandale, Minnesota and surrounding areas. Lakedale seeks certification to operate an Open Video System (“OVS”) serving the community of Maple Lake, Minnesota. As explained in this Statement, the allegations made by the SWCCCC in an effort to prevent Lakedale from receiving OVS certification for Maple Lake are completely without foundation, merit or support. Most importantly, Lakedale is *not*, in fact, a “cable operator” as the SWCCCC has suggested.

II. PROCEDURAL BACKGROUND

On March 25, 2003, Lakedale submitted its original application for certification to operate an OVS system in Maple Lake, Minnesota. On or about April 1, 2003, the SWCCC submitted late-filed comments opposing the application (Comments of the Sherburne/Wright County Cable Communications Commission In Response to the Certification to Operate an Open Video System Filed by Lakedale Telephone Company, hereinafter “SWCCCC Comments”), together with a Motion to Accept Filing as Timely Filed. The SWCCCC harshly alleged that Lakedale had “falsely represented that it is not a cable operator.” (SWCCCC Comments at 2.) The SWCCCC Comments also seemed to suggest (albeit vaguely) that Lakedale’s original application did not contain a complete listing of affiliates. (SWCCCC Comments at 4.)

The Commission denied Lakedale’s application on the grounds that it was not possible to resolve the SWCCCC’s allegations within the 10-day time period for review of an OVS application, particularly because there was no opportunity for Lakedale to submit a reply. (Order ¶7.) As the Commission stated in its Order:

SWCCCC's allegations raise questions regarding Lakedale, but the evidence introduced fails to definitively indicate that Lakedale, or its affiliate [WH LINK], is a cable service provider in the community affected by its open video system certification application. A possible explanation for Lakedale having marked "N/A" on its Form 1275 is that Lakedale is not a cable operator and no further explanation was necessary. However, because the brief 10-day period for open video system certification does not permit a reply from Lakedale to assist in resolving these issues, we cannot assume that SWCCCC's assertions have no basis.

(Order ¶7.)

The Commission found that all other issues raised by the SWCCCC (*i.e.* issues relating to use public rights of way and local franchises) were "beyond the scope of the open video certification process." (Order ¶9.)

Lakedale has now re-filed its application, together with this Statement responding to the SWCCCC's Comments. As the Commission anticipated, the reason Lakedale has marked "N/A" on Section C(1) of Form 1275 is that Lakedale is *not* the operator of a cable system, much less the operator of a cable system in the community affected by this application, Maple Lake, Minnesota.

III. STATEMENT IN RESPONSE TO SWCCCC ALLEGATIONS

A. **Lakedale Is Not a Cable Operator.**

The Commission's Rules, set forth at 47 C.F.R. Section 76.1501, provide:

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1) except that an *operator of a cable system* may not obtain such certification *within its cable service area* unless it is subject to 'effective competition' as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a *local exchange carrier* that is also a cable operator that seeks open video system certification within its cable service area.

(Emphasis added.)

Lakedale does not presently have *any* operations in Maple Lake, much less a cable service operation. Lakedale's only video-related operations consist of another Open Video System in Fairhaven Township, Minnesota and the City of South Haven, Minnesota, for which this Commission has already granted certification. (*See* Memorandum Opinion and Order adopted March 21, 2003, released March 24, 2003, File No. DA-03-863, *In the Matter of Lakedale Telephone Company, Certification to Operate an Open Video System.*) As the operator of another Open Video System, Lakedale is not the operator of

“Cable System” at all. The Commission’s Rules specifically state that the term “Cable System” does not include “[a]n open video system that complies with Section 653 of the Communications Act.” 47 C.F.R. §76.5(a)(4). Further, because Lakedale has no operations in Maple Lake, Minnesota at all, Lakedale cannot possibly be considered the operator of a cable system in Maple Lake, which is the community affected by this application. In any event, as a local exchange carrier, Lakedale is entitled to OVS certification under 47 C.F.R. § 76.1501, as cited above, even if it were a cable operator in Maple Lake, which it is not. Accordingly, the Commission should grant Lakedale OVS certification for the community of Maple Lake, Minnesota.

B. None of Lakedale’s Affiliates are Cable Operators in the Community Affected by this Application, Maple Lake, Minnesota.

Lakedale properly listed all of its affiliates on the Form 1275 submitted with its original application. None of these affiliates operates any cable system in the community affected by this application, Maple Lake, Minnesota. Accordingly, there is no basis for the SWCCCC’s argument that Lakedale is somehow disqualified from obtaining an OVS certificate for Maple Lake because of the operations of its affiliates.

1. Lakedale Affiliate WH Link is Not a Cable Operator.

The SWCCCC asserts that a Lakedale affiliate, WH LINK, LLC, (“WH LINK”) is a cable operator because it has applied for cable franchises with local franchising authorities. (SWCCCC Comments at 3.) In fact, WH LINK has certification to operate an *open video* system in areas of Buffalo, Otsego, Plymouth, Medina and Rockford, Minnesota pursuant to the Memorandum Opinion and Order of the Commission in File No. DA 01-1146, adopted and released on May 3, 2001. As an OVS operator, WH LINK cannot be considered the operator of a cable system. (See 47 C.F.R. §76.5(a)(4), which excludes open video systems from the definition of “cable systems”.) Moreover, WH LINK has no operations of any kind in the community affected by this application, Maple Lake, Minnesota.¹ Thus,

¹ The SWCCCC also notes that WH LINK, Sherburne Telephone Company and Lakedale receive video signals from Lakedale affiliate Broadband Visions. (SWCCCC Comments at 4.) Although Lakedale does receive its video signal from Broadband Visions (and the video signal obviously has to come from somewhere), this does not in any way support SWCCCC’s allegation that Lakedale is a “cable operator,” much less a cable operator in Maple Lake.

even if the operations of WH LINK could somehow be attributed to Lakedale for purposes of 47 C.F.R. Section 76.1501 (a proposition for which SWCCCC can provide no support), Lakedale would not be barred from obtaining OVS certification, because Section 76.1501 only applies an additional requirement of proving effective competition if a cable operator is seeking OVS certification “within its *cable* service area.” Accordingly, the Commission should reject the SWCCCC’s Comments and approve Lakedale’s application.

2. Lakedale Properly Identified All of its Affiliates, None of Which Operates a Cable System in Maple Lake, Minnesota.

The SWCCCC Comments go on to state that Sherburne Telephone Company applied for a cable franchise in Big Lake, Minnesota, a community which is not even the subject of this application, as if this somehow proves that Lakedale is not entitled to OVS certification in Maple Lake, Minnesota. (SWCCCC Comments at 4.) Lakedale and Sherburne Telephone Company are not affiliates; they are not under common ownership or control. To the best of Lakedale's knowledge, Sherburne Telephone Company has no cable, OVS or any other operations in Maple Lake.² Accordingly, there is no basis to SWCCCC’s apparent argument that activities of Sherburne Telephone Company somehow prevent Lakedale from obtaining OVS certification for Maple Lake.

The SWCCCC Comments go on suggest without any basis that Lakedale should have listed "HutchTel" as an affiliate. (SWCCCC Comments at 4.) Lakedale assumes that SWCCCC is referring to Hutchinson Telephone Company ("Hutchinson Telephone"), a local exchange carrier based in Hutchinson, Minnesota. Lakedale and Hutchinson Telephone are not under common ownership or control. Accordingly, Hutchinson Telephone is not an affiliate of Lakedale, and there was no reason for Lakedale to list Hutchinson Telephone as an affiliate on its Form 1275.

Finally, in another unfounded allegation, the SWCCCC accuses Lakedale of not listing Heart of the Lakes Cable, Inc. (“Heart of the Lakes”) as an affiliate. (SWCCCC Comments at 4.) In fact, Lakedale *did* list Heart of the Lakes as an affiliate on the Statement of Ownership and Affiliated Entities filed with

² Sherburne Telephone Company’s status as a cable operator, OVS provider or otherwise, has no conceivable relevance here. However, it is worth noting that the mere act of applying for a local cable franchise does not make a company a “cable operator” under the Commission’s Rules, which the SWCCCC apparently has not bothered to consult.

its original application. Heart of the Lakes is not a cable operator in the community at issue in this application for OVS certification, Maple Lake, Minnesota. Rather, Heart of the Lakes is a cable operator in a different community, Annandale, Minnesota.³ Again, there is no basis to SWCCCC's apparent contention that Lakedale is not qualified to obtain an OVS certificate under the standards of 47 C.F.R. Section 76.1501, which provides an extra requirement of proving effective competition only if a cable operator is seeking OVS certification "within its cable service area." This is true even if Heart of the Lakes' cable operation were somehow attributable to Lakedale for purposes of 47 C.F.R. Section 76.1501, a legal argument for which SWCCCC provides no support.

CONCLUSION

Lakedale has demonstrated complete candor in its original application for a certificate to provide OVS service in Maple Lake Minnesota, and filed this Statement to rebut the SWCCCC's unfounded allegations. If anyone has demonstrated a cavalier approach in this proceeding, it is the SWCCCC, which apparently did not review the applicable Commission Rules before filing its Comments, falsely accused Lakedale of being a cable operator, and went so far as to accuse Lakedale of a "lack of candor" when in fact Lakedale's original application was completely forthright and accurate. Based on all of the above, Lakedale Telephone Company respectfully requests that the Commission approve its application for a certificate to provide an Open Video System in the community of Maple Lake, Minnesota.

³ Similarly, Lakedale Affiliate EN-TEL, LLC operates a cable system in Wilmar, Minnesota, not in the community which is the subject of this application, Maple Lake, Minnesota.

BRIGGS AND MORGAN, P.A.

By: _____

W. Patrick Judge
2200 First National Bank Building
Saint Paul, MN 55101
(651) 223-6600

Attorneys for Lakedale Telephone Company

Verification Statement

To the best of my knowledge and belief, the representations made herein are accurate according to the most recent information available.

Gene R. South, Sr.
CEO/General Manager
Lakedale Telephone Company