

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CABLE ONE, INC.	DOCKET NO. VCA-08-12
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ORDER REJECTING APPLICATION WITHOUT PREJUDICE

(Issued December 9, 2008)

On November 14, 2008, Cable One, Inc. (Cable One), filed with the Utilities Board (Board) an application for a certificate of franchise authority to provide cable and video service. Cable One indicates it seeks a certificate of franchise authority as an incumbent cable provider as defined in 199 IAC 44.2. Cable One states that it is subject to existing municipal franchises in Sioux City and Sergeant Bluff, Iowa. Its proposed service area includes the municipalities of Sioux City and Sergeant Bluff, Iowa, and neighboring unincorporated areas as depicted in maps attached to the application.

The Board finds two deficiencies in Cable One's application and will reject the application without prejudice. As background, the Board notes that the statute authorizing the Board to issue certificates of franchise authority, Iowa Code chapter 477A, provides that after July 1, 2007, a person shall not provide cable or video service in Iowa without a franchise. The franchise can be issued either by a municipality or the Board. Upon expiration of an existing municipal franchise, an existing provider can either renegotiate a franchise with the municipality or can apply

for a franchise from the Board. The statute gives incumbent cable providers¹ the ability to opt out of existing municipal franchises before they expire and apply for a Board-issued certificate of franchise authority, but only when a competitive service provider applies for a certificate from the Board to operate within the same municipality. Before providing service pursuant to a Board-issued certificate, a competitive cable or video service provider is required to give at least 30 days' notice to affected municipalities and to the incumbent cable provider in the competitive provider's certificated service area. (See Iowa Code § 477A.2, 199 IAC 44.2, 199 IAC 44.4, and 199 IAC 44.5.)

Cable One seeks certification as an incumbent cable operator, but fails to specify the date on which it received notice from a competitive cable or video service provider. In response to an inquiry from the Board, Cable One indicated it has not yet received notice from a competitive provider. Therefore, pursuant to the terms of the statute, Cable One is not yet able to opt out of its existing municipal franchises because it has not shown with its application that a competitor is offering service pursuant to a Board-issued certificate.

Also, Cable One's application fails to describe its service area with sufficient detail to enable the Board to ascertain the boundaries of Cable One's proposed service area as required by Board subrule 44.3(3). Cable One attached maps to its application with the boundaries of its proposed service area highlighted in yellow.

¹ Iowa Code § 477A.1(10) defines an "incumbent cable provider" as "the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007."

These maps appear to have been generated by a Google mapping function and do not have landmarks, mileage markers, or other identifying marks that would allow the Board to precisely determine the area Cable One proposes to serve pursuant to the requested certificate.

The Board will reject Cable One's application without prejudice. Cable One may file another application with a more detailed description of its proposed service area and with more information to substantiate that it is an incumbent cable provider and is eligible to opt out of its existing municipal franchises, including any evidence that a competitive service provider is providing service in Cable One's service areas pursuant to a Board-issued certificate without having provided 30 days' notice to Cable One.

IT IS THEREFORE ORDERED:

The application for a certificate of franchise authority to provide cable and video service filed by Cable One, Inc., on November 14, 2008, identified as Docket No. VCA-08-12, is rejected without prejudice as described in this order.

UTILITIES BOARD

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 9th day of December, 2008.