

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

In the Matter of	)	
	)	
Northland Cable Television, Inc.	)	
	)	<b>CSR 5383-D</b>
Petition for Special Relief	)	
	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 31, 2000**

**Released: February 3, 2000**

By the Chief, Cable Services Bureau:

**I. INTRODUCTION**

1. Here we address a petition for special relief (“Petition”), in which Northland Cable Television, Inc. (“NCT”) seeks a waiver of the Commission’s rules to the extent necessary to permit NCT to establish regulated cable rates on behalf of its Aiken, South Carolina system, in accordance with the small system cost-of-service methodology adopted in the *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 and 93-215 (“*Small System Order*”).<sup>1</sup> We grant the Petition upon a finding that a waiver of the Commission’s rules is in the public interest.

2. Section 623(i) of the Communications Act of 1934, as amended (“Communications Act”), requires that the Commission design rate regulations that reduce the administrative burdens and the cost of regulatory compliance for cable systems with 1,000 or fewer subscribers.<sup>2</sup> Accordingly, in the course of establishing the standard benchmark and cost-of-service ratemaking methodologies generally available to cable operators, the Commission adopted various measures aimed specifically at easing regulatory burdens for these smaller systems.<sup>3</sup> In the *Small System Order*, the Commission further extended small system rate relief to certain systems that exceed the 1,000-subscriber criterion.<sup>4</sup> These systems were

<sup>1</sup> 10 FCC Rcd 7393 (1995).

<sup>2</sup> 47 U.S.C. § 543(i).

<sup>3</sup> See *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92-266, 8 FCC Rcd 5631 (1993); *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking* in MM Docket No. 92-266, 9 FCC Rcd 4119 (1994); *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket Nos. 93-215, 93-266, 9 FCC Rcd 5327 (1994); *Eighth Order on Reconsideration* in MM Docket Nos. 92-266, 93-215, 10 FCC Rcd 5179 (1995).

<sup>4</sup> *Small System Order*, 10 FCC Rcd at 7406.

deemed eligible for small system rate relief because they were found to face higher costs and other burdens disproportionate to their size.<sup>5</sup>

3. The *Small System Order* defines a small system as any system that serves 15,000 or fewer subscribers.<sup>6</sup> The Commission recognized that systems with no more than 15,000 subscribers were qualitatively different from larger systems with respect to a number of characteristics, including: (1) average monthly regulated revenues per channel per subscriber; (2) average number of subscribers per mile; and, (3) average annual premium revenues per subscriber.<sup>7</sup> The magnitude of the differences between the two classes of systems as to these characteristics indicated that the 15,000-subscriber threshold was the appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.<sup>8</sup>

4. Rate relief provided under the *Small Systems Order* is available to independent small systems as well as small systems affiliated with another cable company, as long as that cable company serves a total of 400,000 or fewer subscribers over all of its systems.<sup>9</sup> The Commission adopted this threshold because it roughly corresponds to \$100 million in annual regulated revenues, a standard the Commission has used in other contexts to identify smaller entities deserving of relaxed regulatory treatment.<sup>10</sup> The Commission found that cable companies exceeding this threshold would find it easier than smaller companies to attract the financing and investment necessary to maintain and improve service.<sup>11</sup> In addition, the Commission determined that cable companies that exceeded the small company definition “are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources.”<sup>12</sup>

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<sup>5</sup> *Id.* at 7407. More recently, Congress amended Section 623 of the Communications Act to allow greater deregulation for “small cable operators,” defined as operators that “directly or through an affiliate, [serve] in the aggregate fewer than 1 percent of all subscribers in the United States and [are] not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” Telecommunications Act of 1996 (“1996 Act”), Pub. L. No. 104-104, §301(c), 110 Stat. 5 (1996); Communications Act § 623(m), 47 U.S.C. § 543(m). Pursuant to this amendment, the rate regulation requirements of Sections 623(a), (b) and (c) do not apply to a small cable operator with respect to “(A) cable programming services, or (B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,” in areas where the operator serves 50,000 or fewer subscribers.” *Id.*

<sup>6</sup> *Small System Order*, 10 FCC Rcd at 7406.

<sup>7</sup> *Id.* at 7408.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* A small system is deemed affiliated with a larger cable company if the company “holds more than a 20 percent equity interest (active or passive) in the system and exercises *de jure* control (such as through a general partnership or majority voting shareholder interest.)” *Id.* at 7412-13, n. 88.

<sup>10</sup> *Id.* at 7409-11.

<sup>11</sup> *Id.* at 7411.

<sup>12</sup> *Id.* at 7409.

5. In addition to adopting the new categories of small systems and small cable companies, the *Small System Order* introduced a form of rate regulation known as the small system cost-of-service methodology.<sup>13</sup> This approach, which is available only to small systems owned by small cable companies, is more streamlined than the standard cost-of-service methodology available to cable operators generally. In addition, the small system rules include substantive differences from the standard cost-of-service rules to take account of the proportionately higher costs of providing service faced by small systems. Eligible systems establish their rates under this methodology by completing and filing FCC Form 1230. In order to qualify for the small system cost-of-service methodology, systems and companies must meet the new size standards as of either the effective date of the *Small System Order*, or on the date thereafter when they file the documents necessary to elect the relief they seek.<sup>14</sup>

6. Cable systems that fail to meet the numerical definition of a small system, or whose operators do not qualify as small cable companies, may submit petitions for special relief requesting that the Commission grant a waiver of its rules to enable the petitioning systems to utilize the various forms of rate relief available to small systems owned by small cable companies.<sup>15</sup> The Commission has stated that petitioners should demonstrate that they “share relevant characteristics with qualifying systems.”<sup>16</sup> Other potentially pertinent factors include the degree by which the system fails to satisfy either or both definitions and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator.<sup>17</sup> If the system fails to qualify for relief based on its affiliation with a larger cable company, the Commission will consider “the degree to which that affiliation exceeds our affiliation standards, and whether other attributes of the system warrant that it be treated as a small system notwithstanding the percentage ownership of the affiliate.”<sup>18</sup> The Commission also stated that “a qualifying system that seeks to obtain programming from a neighboring system by way of a fiber optic link, but that is concerned that interconnection of the two systems may jeopardize its status as a stand-alone small system, may file a petition for special relief to ask the Commission to find that it is eligible for small system relief.”<sup>19</sup> The Commission specifically stated that this list of relevant factors was not exclusive and invited petitioners to support their petitions with any other information and arguments they deemed relevant.<sup>20</sup>

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<sup>13</sup> *Id.* at 7418-28.

<sup>14</sup> *Id.* at 7413. The effective date of the *Small Systems Order* was August 21, 1995.

<sup>15</sup> *Id.* at 7412-13. See *Memorandum and Order In the Matter of Booth American Company Petition for Special Relief*, CSR 4637-D (released July 30, 1997); *Memorandum Opinion and Order and Order on Reconsideration In the Matter of Casco Cable Television, Inc. and Casco Cable Television of Bath, Maine, Inc. Petition for Special Relief and Petition for Reconsideration*, CSR 5140-D (released July 30, 1998).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 7413.

<sup>20</sup> *Id.*

## II. THE PETITION

7. With 267,844 subscribers, NCT easily qualifies as a “small cable operator” under our rules. As of December 31, 1998, however, NCT’s Aiken, South Carolina system had 15,613 subscribers, slightly more than the 15,000 cap for a “small system,” according to the *Small System Order*. According to the Petition, the Aiken system serves 14,848 “basic” subscribers, and an additional 765 “bulk” subscribers, including subscribers in hotels, apartment buildings and other multiple dwelling units.<sup>21</sup>

8. NCT provides the following information in support of its assertion that its Aiken system shares pertinent characteristics with small cable systems generally:

9. The Aiken system has monthly regulated revenues per channel per subscriber of \$0.64, which is between the average for small systems (\$0.86) and the average for large systems (\$0.44).<sup>22</sup>

10. The Aiken system has an average of 24.3 subscribers per mile, which is below the average for small systems (35.5) and the average for large systems (68.7).<sup>23</sup>

11. The Aiken system has an average annual premium revenue of \$32.58, which is below the average for small systems (\$41.00) and the average for large systems (\$73.13).<sup>24</sup>

12. While NCT anticipates some growth in its Aiken system in the future, it asserts that such growth will stem from line extension, rather than from an increase in market penetration. Thus, NCT asserts that it will not benefit from cost savings associated with the economies of scale possessed by large cable systems.<sup>25</sup>

## III. DISCUSSION

13. We agree with NCT that its Aiken system shares pertinent characteristics of small systems generally. First of all, the Aiken system serves a total of 15,613 subscribers, which is only slightly in excess of the 15,000 cap for small systems generally. The *Small System Order* recognizes that it would be arbitrary and unfair to exclude a cable system from the rate relief granted to small systems merely because the system varies marginally from the numerical criterion for a “small system,” provided the system otherwise fits economically into the small system category.<sup>26</sup> The Commission’s mechanism for granting petitions for special relief is designed to address such instances where strict application of the numerical criteria would be unfair.

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<sup>21</sup> Petition at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See *Small System Order*, 10 FCC Rcd at 7412.

14. We believe it would be arbitrary and unfair to withhold regulatory relief from NCT merely on the basis that its Aiken system exceeds the numerical criteria for a “small system” by 613 subscribers. It would be unfair in this case because the Aiken system shares pertinent characteristics with small systems generally, as discussed above.

15. A cable system’s average monthly regulated revenue per channel per subscriber, its density of subscribers per mile, its average annual revenue per subscriber, and its historical growth rate are all relevant factors in distinguishing a small system from a large system because these factors are accurate indicators of the system’s costs per subscriber in providing service in a particular geographical area. Regulatory relief is granted to small systems insofar as such systems generally face significantly higher costs per subscriber in providing cable service.<sup>27</sup> We note that with respect to these factors, NCT’s Aiken system resembles a small system according to most of the pertinent criteria.

16. Under Section 76.7(c)(1) of the Commission’s rules, a petition for special relief “shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.”<sup>28</sup> NCT has adequately established its “need for the relief requested” as required by Section 76.7(c)(1). In making this finding, we note the Commission’s decision in the *Small System Order* to target relief at small systems owned by operators with fewer than 400,000 subscribers, based on a recognition that the then-existing rate rules did not sufficiently take into account the higher costs of business faced by smaller companies.<sup>29</sup> In addition, the Commission found that qualifying systems and companies were in need of relief from the procedural burdens imposed upon such entities by the other forms of rate regulation.<sup>30</sup> The Commission found that alleviating the substantive and procedural burdens associated with the standard benchmark and cost-of-service methodologies “should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators’ ability to attract capital, thus enabling them to achieve the goals of Congress,” as set forth in the Cable Television Consumer Protection and Competition Act of 1992.<sup>31</sup>

17. We also find the grant of the Petition would serve the public interest. As indicated above, in the *Small System Order*, the Commission found that extending rate relief to those operators in need of it would further specific congressional goals set forth in the 1992 Cable Act.<sup>32</sup> Having concluded that NCT is likewise in need of that relief, we find that granting the Petition will serve the same congressional goals that were furthered by the adoption of the *Small System Order*, and thus is in the public interest.

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<sup>27</sup> “As we have observed previously, our relief for smaller cable entities is aimed at those that do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies.” *Small System Order*, 10 FCC Rcd at 7408, citing *Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119, 4173 n. 157 (1994).

<sup>28</sup> 47 CFR § 76.7(c)(1).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7407, citing the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) (“1992 Cable Act”).

<sup>32</sup> *See supra* at paragraph 16.

18. As a result of our grant of the Petition, NCT's Aiken system shall be deemed a small system for purposes of rate regulation. Accordingly, NCT may set rates prospectively for its Aiken system in accordance with the small system cost-of-service methodology.

#### IV. SCOPE OF THE WAIVER

19. We next must determine the duration of the waiver. In the *Small System Order*, after establishing the new small system and small cable company definitions, the Commission stated:

To qualify for any existing form of [small system] relief, systems and companies must meet the new size standards as of either the effective date of this order or on the date thereafter when they file whatever documentation is necessary to elect the relief they seek, at their election . . . A system that is eligible for small system relief on either of the dates described above shall remain eligible for so long as the system has 15,000 or fewer subscribers, regardless of a change in the status of the company that owns the system. Thus, a qualifying system will remain eligible for relief even if the company owning the system subsequently exceeds the 400,000 subscriber cap. Likewise, a system that qualifies shall remain eligible for relief even if it is subsequently acquired by a company that serves a total of more than 400,000 subscribers.<sup>33</sup>

20. The Commission adopted this grandfathering treatment for qualifying systems to enhance their value "in the eyes of operators and, more importantly, lenders and investors."<sup>34</sup> As the Commission stated: "The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses."<sup>35</sup>

21. Upon exceeding the 15,000-subscriber cap, a system that has established its rates in accordance with the small system cost-of-service methodology ". . . may maintain its then existing rates. However, any further adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with our benchmark or cost-of-service rules."<sup>36</sup>

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<sup>33</sup> *Small System Order*, 10 FCC Rcd at 7413. The quoted text is discussing a system's initial and continuing eligibility for "any existing form of relief," which did not include the small system cost-of-service methodology. However, later in the order, the Commission applied the same eligibility standards to that methodology as well. *Id.* at 7427-28.

<sup>34</sup> *Id.* at 7413.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 7427-28.

22. Since the Aiken system has already exceeded 15,000 subscribers, there is no obvious numerical limit to serve as a cutoff for its continued eligibility for small system treatment. We believe it is reasonable to presume that this system will continue to grow. Therefore, we must place some duration on the waiver, because the alternative would be to grant small system status indefinitely, regardless of the eventual size of the system. This latter alternative is clearly inconsistent with the Commission's decision to limit small system relief to systems that are in need of it due to their relatively small size.

23. Therefore, the NCT waiver will terminate two years from the date of this order, unless extended further, subject to the conditions set forth below. During the waiver period, NCT may file only one Form 1230 for each franchise area it serves. This should give NCT adequate regulatory certainty for the foreseeable future, while still ensuring that the system is not permitted to charge rates indefinitely under a scheme designed for smaller systems. Of course, NCT may seek continued eligibility for small system treatment by filing a petition for special relief at the end of the waiver period.

24. Limiting the waiver period to two years means that any Form 1230 to be filed by NCT must be submitted with the appropriate regulatory authorities within two years of the date of this order. In any franchise area where the system is currently subject to regulation, NCT may reestablish its maximum permitted rates by filing Form 1230 at any time in the next two years. Where the system is not currently subject to regulation but, within the next two years, becomes subject to regulation due to the certification of a local franchising authority or the filing of a rate complaint, NCT then may file Form 1230 within the normal response time. Where the system is not now subject to regulation, and does not become subject to regulation until more than two years from now, NCT will not be eligible for small system treatment under this waiver.

25. After filing its initial Form 1230 and giving the required notice, NCT may set its actual rates in the franchise area at any level that does not exceed the maximum rate, subject to the standard rate review process. Subsequent increases, not to exceed the maximum rate established by the Form 1230, shall be permitted, subject to the 30 days' notice requirement of the Commission's rules.<sup>37</sup> As noted, the maximum rate established by the initial Form 1230 shall be a cap on the system's rates during the waiver period. If the system reaches that cap and subsequently wishes to raise rates further, it will have to justify the rate increase in accordance with our standard benchmark or cost-of-service rules. Alternatively, the system can file another petition for special relief and seek continued treatment as a small system. Limiting NCT to a single Form 1230 filing for each franchise area provides further assurance that the system will not have grown too large to be establishing rates under the small system cost-of-service methodology.

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<sup>37</sup> *Small System Order*, 10 FCC Rcd at 7426. Under the small system rules, rate increases taken after the initial Form 1230 has been approved are not subject to further regulatory review, as long as the rate is no higher than that permitted by the previously filed form. *Id.*

**V. ORDERING CLAUSES**

26. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Northland Cable Television, Inc. requesting a waiver of the Commission rules defining systems subject to small system rate relief **IS GRANTED**, with respect to NCT's Aiken system.

27. These actions are taken pursuant to delegated authority under Section 0.321 of the Commission's rules.<sup>38</sup>

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen  
Chief, Cable Services Bureau

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<sup>38</sup> 47 C.F.R. § 0.321.



