

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

In the Matter of)	CUID Nos.	TX0190 (Brenham)
)		TX1412 (Washington County)
Northland Communications Corp.)		
)		
Motion for Reconsideration)		

RECONSIDERATION ORDER

Adopted: July 27, 2001

Released: August 1, 2001

By the Deputy Chief, Cable Services Bureau:

1. In this Order we reconsider on our own motion our Order, DA 95-972 ("First Order").¹ Our First Order resolved all pending complaints against the cable programming services tier ("CPST") rates charged by the above-referenced operator ("Operator") in the above-referenced communities through May 14, 1994, and found Operator's CPST rates to be unreasonable. Operator filed a petition for reconsideration ("Petition") of our First Order with the Federal Communications Commission ("Commission") on June 2, 1995. On March 22, 1996, we released an order, DA 96-328 ("Second Order")² which granted Operator's request for small system relief pursuant to the Small System Order³ and found Operators rates to be reasonable effective May 15, 1994. Subsequently, we issued an Order, DA 99-390, ("Third Order")⁴ in which we found that Operator is a small cable company pursuant to Section 623(m)(2) of the Communications Act.⁵ In this order we vacate our First Order and dismiss Operator's Petition as moot.

2. Under the Communications Act, at the time the referenced complaints were filed, the Commission was authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged were not unreasonable.⁶ The Cable Television Consumer Protection and

¹ In the Matter of Northland Cable Properties Seven Limited Partnership, DA 95-972, 10 FCC Rcd 9327 (1995).

² See In the Matter of Northland Communications Corp., DA 96-328, 11 FCC Rcd 3565 (1996).

³ Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 and 93-215, 10 FCC Rcd 7393 (1995).

⁴ In the Matter of Northland Cable Television, Inc., DA 99-390, 14 FCC Rcd 3446 (1999). The Third Order resolved complaints filed against CPST rates in the community of Moses Lake, WA. However, the finding that Operator qualifies as a small cable operator in that order, along with the finding in our Second Order that Operator qualifies for small system status in the above-referenced communities satisfies the requirements for a finding that Operator is also a small cable operator in the above-referenced communities.

⁵ Communications Act, Section 623(m)(2), *as amended*, 47 U.S.C. §543(m)(2) (1996).

⁶ 47 U.S.C. §543(c) (1996).

Competition Act of 1992 ("1992 Cable Act"),⁷ and our rules in effect at the time the complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The Telecommunications Act of 1996 ("1996 Act"),⁸ amended Section 623 of the Communications Act and redefined a small cable operator as one that "directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁹ In the 1996 Act, Congress determined that, effective February 8, 1996, the Commission shall not apply its CPST rate regulation rules, promulgated under Sections 623(a), (b) and (c) of the Communications Act,¹⁰ to a small cable operator in any franchise area in which that operator services 50,000 or fewer subscribers.¹¹

3. Normally, a finding that an operator qualifies as a small cable operator would not provide a basis to vacate a prior finding of liability. The instant case differs from the normal situation because Operator filed a timely appeal of our First Order. Because we have determined, prior to a resolution of that appeal, that Operator is a small cable operator and not subject to the CPST rate regulation rules, we will vacate our First Order. Because we are vacating our First Order, we will also dismiss Operator's Petition, which has become moot.

4. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that Operator's petition for reconsideration IS DISMISSED.

5. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that In the Matter of Northland Cable Properties Seven Limited Partnership, DA 95-972, 10 FCC Rcd 9327 (1995) IS VACATED.

6. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. §0.321, that the complaints referenced herein against the rates charged by Operator in the communities referenced above ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁹ 47 U.S.C. §543(m)(2) (1996).

¹⁰ 47 U.S.C. §§543(a) - (c) (1996).

¹¹ 47 U.S.C. §543(m)(1) (1996). *See also* 47 C.F.R. §76.1403(a) (1998).