

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

In the Matter of)
) CUID No. NC0047 (Town of Kill Devil Hills)
Falcon Video Communications)
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: November 9, 2001

Released: November 14, 2001

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 97-1951 ("Prior Order"),¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator"). Our Prior Order resolved a complaint against Operator's CPST rates in the above-referenced community and found Operator's cable programming services tier ("CPST") rates to be unreasonable. Along with its Petition, Operator filed a refund plan. In this Order, we grant Operator's Petition in part, vacate our Prior Order and dismiss Operator's refund plan as moot.

2. Under the Communications Act, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable.² The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),³ and our rules in effect at the time the complaint was filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁴ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁵

3. In its Petition, Operator raises several issues, only one of which is addressed herein. Operator argues that the sole complaint filed against its CPST rates was invalid. Our review of the record reveals that a single complaint was filed against Operator's CPST rates in the above-referenced community. That complaint was filed against Operator's CPST rates in effect prior to September 1, 1993. The complainant did not file a complaint against Operator's restructured September 1, 1993 CPST rates. CPST

¹ In the Matter of Falcon Video Communications, DA 97-1951, 12 FCC Rcd 23833 (1997).

² 47 U.S.C. §543(c) (1996).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ 47 C.F.R. §76.956.

⁵ 47 C.F.R. §76.957.

rates were not regulated prior to September 1, 1993⁶ and therefore, the Commission is without jurisdiction to review those rates. Accordingly, we will vacate our Prior Order and dismiss Operator's refund plan as moot. Because our resolution of this issue disposes of Operator's refund liability, we decline to address any other issue raised by Operator in its Petition.

4. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's Petition for Reconsideration IS GRANTED TO THE EXTENT INDICATED HEREIN.

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 Falcon Video Communications, DA 97-1951, 12 FCC Rcd 23833 (1997) IS VACATED and Operator's refund plan IS DISMISSED AS MOOT.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

⁶ See *In The Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, MM Docket 92-266, FCC 93-372, 73 Rad. Reg. 2d (P & F) (1993).