

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

In the Matter of)
)
Kingwood Cablevision, Inc.) CUID No. TX0229 (Kingwood)
)
Petition for Reconsideration)

ORDER ON RECONSIDERATION

Adopted: March 7, 2001

Released: March 9, 2001

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 95-545 ("First Order"),¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator"). On April 24, 1995, Operator filed an application for review of our First Order. On November 3, 2000, Operator requested that the Cable Services Bureau process the application for review as a petition for reconsideration ("Petition").² Our First Order resolved all pending complaints against Operator's CPST rates in the above-referenced community through May 14, 1994, and found Operator's cable programming services tier ("CPST") rates to be unreasonable. On April 16, 1997, we released an order, DA 97-768 ("Second Order")³ which found that Operator is a small cable company pursuant to Section 623(m)(2) of the Communications Act⁴ and dismissed all complaints against Operator filed with the Commission between September 1, 1993 and February 7, 1996. 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.⁵ The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁶ 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"),⁷ amended Section 623 of the Communications Act and

¹ In the Matter of Kingwood Cablevision, Inc., 10 FCC Rcd 5446 (1995).

² See letter dated November 3, 2000 from Frederick W. Giroux, counsel for Operator.

³ See In the Matter of Moffat Communications, Ltd., 12 FCC Rcd 24365 (1997).

⁴ Communications Act, Section 623(m)(2), *as amended*, 47 U.S.C. §543(m)(2) (1996).

⁵ 47 U.S.C. §543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁷ Pub. L. No. 104-104, 110 Stat. 56 (1996).

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."⁸ 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,⁹ to a small cable operator in any franchise area in which that operator services 50,000 or fewer subscribers.¹⁰

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. It would only function to dismiss that portion of a complaint that had not yet been resolved. For example, our First Order resolved complaints through May 14, 1994. As we stated in our First Order, our findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."¹¹ A review of Operator's CPST rates beginning May 15, 1994 was still pending when the Second Order was released. Because our Second Order found that Operator qualifies as a small cable operator and dismissed the complaint, we would not complete the pending review of Operator's CPST rates beginning May 15, 1994. We would, however, enforce any prior orders. 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 1.106 of the Commission's rules, 47 C.F.R. §1.106, 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 Kingwood Cablevision, Inc., DA 95-545, 10 FCC Rcd 5446 (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 community referenced above ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁸ 47 U.S.C. §543(m)(2) (1996).

⁹ 47 U.S.C. §§543(a) - (c) (1996).

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

¹¹ First Order at n. 1.