

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

In the Matter of
Northland Cable Television, Inc.
Petition for Extension of Special Relief
CSR 6223-D

MEMORANDUM OPINION AND ORDER

Adopted: February 12, 2004

Released: February 18, 2004

By the Chief, Media Bureau:

I. INTRODUCTION

1. Northland Cable Television, Inc. ("Northland") has filed a Petition for Extension of Special Relief ("Petition") in which Northland seeks an extension of a waiver of the Commission's rules to enable it to continue to qualify for small system treatment for Northland's Greenwood, South Carolina, system in accordance with the Commission's small system cost-of-service methodology.

2. In the 1992 Cable Act, Congress directed the Commission to adopt rate regulations with reduced administrative burdens and compliance costs for cable systems with 1,000 or fewer subscribers. The Commission's benchmark and cost-of-service ratemaking methodologies generally applicable to cable operators include various measures aimed specifically at easing regulatory burdens for these smaller

1 The communities in the Greenwood, South Carolina, system and the related community unit identifiers ("CUIDs") are City of Greenwood (SC-0024 and SC-0427), Town of Ninety Six (SC-0084), Greenwood County (uninc.) (SC-0049), Laurens County (uninc.) (SC-0428), Town of Ware Shoals (SC-0325 and SC-0326), Town of Hodges (SC-0423), Abbeville County (uninc.) (SC-0366), Greenwood County (uninc.) (SC-0391, and Laurens County (uninc.) (SC-0444). The small system cost-of-service methodology was adopted in the Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) ("Small System Order").

2 See Northland Cable Television, Inc., 16 FCC Rcd 14427 (2001) ("Northland Order").

3 Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act"). See also 47 U.S.C. § 543(i).

systems.⁴ Subsequently, in the *Small System Order*, the Commission granted regulatory relief to additional systems.⁵ The *Small System Order* defined a small system as any system that serves 15,000 or fewer subscribers.⁶ 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.⁷ The magnitude of the differences between the two classes of systems as to these characteristics indicated that the 15,000 subscriber threshold was an appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.⁸ Most forms of rate relief provided under the *Small System Order* and the Commission's rules are available only to those small systems that are owned by a small cable company.⁹ A small cable company is defined as one which serves a total of 400,000 or fewer subscribers over all of its systems.¹⁰

3. In addition to adopting these 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.¹¹ In order to qualify for the regulatory relief afforded by the small system cost-of-service methodology, cable systems and companies must meet the size standards as of either the effective date of the *Small System Order* or, thereafter, on the filing date of the documents necessary to elect such relief.¹²

4. 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 systems to utilize the various forms of rate relief

⁴ See, e.g., *Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 (1993); *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119 (1994); *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking*, 9 FCC Rcd 5327 (1994); *Eighth Order on Reconsideration*, 10 FCC Rcd 5179 (1995).

⁵ *Small System Order*, 10 FCC Rcd at 7406.

⁶ *Small System Order*, 10 FCC Rcd at 7406. See 47 C.F.R. §§ 76.901(c); 76.934.

⁷ *Small System Order*, 10 FCC Rcd at 7408.

⁸ *Id.*

⁹ *Id.* at 7407. In 1996, 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, Pub. L. No. 104-104, 110 Stat. 56, 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 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. See 47 C.F.R. §§ 76.901(f), 76.990.

¹⁰ *Small System Order*, 10 FCC Rcd at 7407. 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 or exercises *de jure* control (such as through a general partnership or majority voting shareholder interest)." *Id.* at 7412-13, n.88. See 47 C.F.R. §§ 76.901(e), 76.934.

¹¹ *Small System Order*, 10 FCC Rcd at 7418-28.

¹² *Id.* at 7412-13.

available to small systems owned by small cable companies.¹³ The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems."¹⁴ Based on analysis of data available at the time, the Commission found that systems with fewer than 15,000 subscribers differ from systems with more than 15,000 subscribers with respect to the following characteristics:

- a) the average monthly regulated revenue per channel per subscriber is \$0.86 for systems with fewer than 15,000 subscribers and \$0.44 for systems with more than 15,000 subscribers;
- b) the average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers; and
- c) the average annual premium revenue per subscriber is \$41.00 for systems with fewer than 15,000 subscribers and \$73.13 for systems with more than 15,000 subscribers.¹⁵

Other potentially pertinent factors include "the degree by which the system fails to satisfy either or both definitions, whether the system recently has been the subject of an acquisition or other transaction that substantially reduced its size or that of its operator, and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator."¹⁶ 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."¹⁷ 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.¹⁸

II. THE PETITION

5. The Commission granted the original waiver in the *Northland Order* for a period of two years beginning July 22, 2001.¹⁹ Petitioner seeks an extension of that waiver and states that Northland's Greenwood, South Carolina, system continues to exhibit the characteristics for which the Commission established a special relief mechanism to extend application of small system rate relief.²⁰ Petitioner states that Northland has 202,362 subscribers, which qualifies Northland as a "small cable company" as defined

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 7408.

¹⁶ *Id.* at 7412-13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See n.3, *supra*.

²⁰ Petition at 2.

in the *Small System Order*.²¹ Petitioner states further that its Greenwood system serves 15,687 subscribers, which is 687 more than the 15,000 limit for a “small system.”²² Petitioner argues that its Greenwood system should qualify for special relief, in part because Northland easily meets the small cable company definition and the system only slightly exceeds the 15,000 small system subscriber cap, and also because the Greenwood system continues to exhibit other characteristics the Commission has recognized as relevant to the extension of small system eligibility.²³ Petitioner also states that the public policy goals underlying the *Small System Order*, as well as considerations of basic fairness, compel an extension of the waiver.²⁴

6. Petitioner provides information in support of its assertion that its Greenwood system shares relevant characteristics with qualifying small systems. First, Petitioner asserts the system has monthly regulated revenue per channel per subscriber which resembles that of a small system.²⁵ The system averages \$0.67 per channel per subscriber, which is between the average figures for small systems (\$0.86) and large systems (\$0.44). The Greenwood system’s current figure is nearly identical to the per channel per subscriber figure (\$0.63) found in the Greenwood system at the time Northland petitioned for the original waiver.²⁶

7. Second, Petitioner states that the Greenwood system’s average number of subscribers per mile resembles that of a small system.²⁷ The system has an average of just 27.7 subscribers per mile, which is considerably less than the average for small systems (35.3) and nowhere near the average for large systems (68.7). The current figure for subscribers per mile is even less than the figure for Northland at the time of the original petition.²⁸

8. Third, Petitioner states that the Greenwood system’s average annual premium revenue per subscriber resembles that of a small system.²⁹ The system has an average annual premium revenue of \$35.02. Again, this figure is less than the average premium revenue for small systems (\$41.00) and is nowhere near the figure for large systems (\$73.13). The current annual premium revenue remains close to the \$36.32 in premium revenue realized by the Greenwood system at the time Northland petitioned for the original waiver.³⁰

9. Petitioner further asserts that the subscriber count for the Greenwood system has actually decreased since the original petition filing and is likely to remain near the current figure. Finally, Petitioner argues that a grant of the requested rate relief would serve the public interest by protecting a

²¹ *Id.* This number of subscribers and other measurements submitted by Petitioner were as of June 30, 2003.

²² *Id.* at 2.

²³ *Id.* at 4.

²⁴ *Id.* at 2.

²⁵ *Id.* at 4.

²⁶ *Northland Order*, 16 FCC Rcd at 14430.

²⁷ *Petition* at 5.

²⁸ *Northland Order*, 16 FCC Rcd at 14431.

²⁹ *Petition* at 5.

³⁰ *Northland Order*, 16 FCC Rcd at 14431.

small cable operator from the substantial hardships of traditional rate regulation, thereby enabling it to continue to provide top quality service to consumers.³¹ Petitioner also states that it does its best to minimize costs, but it cannot achieve economies of scale comparable to larger systems in the areas of equipment purchasing, system maintenance, and program acquisition.³²

III. DISCUSSION

10. As noted above, Northland falls below the 400,000 subscriber threshold for small cable companies, but its Greenwood system slightly exceeds the 15,000 subscriber cap for small cable systems. Although the system only exceeds the cap by a small amount, the degree by which a system exceeds the cap is not the only factor to be considered in a special relief case.

11. Northland has demonstrated that its system shares relevant characteristics with other small cable systems. Petitioner states that the Greenwood system averages 27.7 subscribers per mile. This figure is significantly less than the 68.7 subscriber-per-mile average for systems with more than 15,000 subscribers, and is considerably less than the 35.3 subscriber-per-mile average for small systems. In addition, the Greenwood system's average annual premium revenue per subscriber is \$35.07, also below the small system average of \$41.00 per subscriber and far below the average premium revenue for a large system of \$73.13 per subscriber. Finally, Petitioner states that, at \$0.67, the Greenwood system's average monthly regulated revenue per channel per subscriber falls between that of small systems (\$0.86) and that of systems with more than 15,000 subscribers (\$0.44). Given the totality of the circumstances, we find that Northland has demonstrated that its Greenwood system resembles a small system according to most of the applicable criteria.

12. Under Section 76.7(c)(1) of the Commission's rules, a petition for special relief must state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the requested relief and to support a decision that such relief would serve the public interest.³³ Northland has adequately established the Greenwood system's need for the relief as required by Section 76.7(c)(1). In making this finding, we note that the Commission's decision to target relief to small systems owned by operators with fewer than 400,000 subscribers was 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.³⁴ In addition, the Commission acknowledged 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.³⁵ 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 1992 Cable Act.³⁶ Given that we have found that the Greenwood system is entitled to small system treatment, granting the Petition

³¹ Petition at 7.

³² *Id.*

³³ 47 C.F.R. § 76.7(c) (1).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 7407, citing the 1992 Cable Act.

will serve the congressional goals identified in the *Small System Order* and will thus be in the public interest.

IV. SCOPE OF THE WAIVER

13. The Greenwood system exceeds 15,000 subscribers and, although it has lost a few subscribers since 2001, we cannot presume that the system will not grow in the future. Therefore, we will place a limit on the duration of this waiver. In the absence of a limit on the waiver's duration, the system would enjoy small system status indefinitely, regardless of its eventual size. Such a result would be inconsistent with the goal of creating rate regulatory relief for systems that need such relief due to their relatively small subscriber base.

14. We conclude that the Greenwood waiver will terminate four years from the date of this order, unless extended further, subject to the conditions set forth below. We believe the four-year limit will afford Greenwood adequate regulatory certainty for the foreseeable future, while ensuring that the system is not permitted to charge rates indefinitely under a scheme designed for smaller systems. Previous orders granting small system waivers have generally granted those waivers for a two-year period.³⁷ We believe a longer waiver period is appropriate here. Very little change has occurred in the critical characteristics of the Greenwood system since we issued the original waiver. We see no reason to require Northland, or others similarly situated, to file petitions seeking special relief any more than necessary. If Greenwood's critical characteristics have undergone little further change at the expiration of the four-year period, Northland may seek another finding of continued eligibility for small system treatment by filing another petition for relief with the Commission.

15. In any franchise area where the system is currently subject to regulation, Greenwood may reestablish its maximum permitted rates by filing Form 1230 at any time in the next four years.³⁸ Where the system is not currently subject to regulation but, within the next four years, becomes subject to regulation, Greenwood may file Form 1230 within the usual response time.³⁹

16. After filing Form 1230 and providing the requisite 30 days' notice for rate increases, Greenwood may set its rate at any level that does not exceed the maximum rate generated by the form, subject to the standard rate review process. Subsequent increases (also not to exceed the maximum rate established by Form 1230) shall be permitted upon 30 days' notice, but are not subject to further regulatory review.⁴⁰ If Greenwood reaches the maximum rate established by Form 1230, and subsequently wishes to raise rates further, it must justify the rate increase in accordance with our standard benchmark or cost-of-service rules.

³⁷ See, e.g., *Northland Cable Television, Inc.*, 15 FCC Rcd 2076 (2000); *Mid-Hudson Cablevision*, 12 FCC Rcd 11,496 (1997); *Inter Mountain Cable, Inc.*, 11 FCC Rcd 7081 (1996). But see *Northland Cable Television, Inc. (Aiken System)*, 17 FCC Rcd 13,329 (2002), in which petitioner was granted a four-year waiver.

³⁸ Upon the filing of Form 1230, the Commission's rules permitting a certified local franchising authority to review the proposed rates, to request additional information, and to toll the effective date of the proposed rates, will then apply. See *Small System Order* at 7425; see also 47 C.F.R. Part 76, Subpart T (Notices); 47 U.S.C. § 552.

³⁹ See 47 C.F.R. § 76.934 (c)(3).

⁴⁰ *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, so long as the rate is no higher than the initial Form 1230's maximum permitted rate. *Id.*

V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that the Petition for Extension of Special Relief filed by Northland Cable Television, Inc., requesting an extension of a waiver of the Commission rules defining systems subject to small system rate relief, IS GRANTED, with respect to its Greenwood system for a period of four years.

18. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.⁴¹

FEDERAL COMMUNICATIONS COMMISSION

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⁴¹ 47 C.F.R. § 0.283.