

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

In the Matter of)		
)		
New England Cablevision of)	CUID No. MA0165 (Merrimac)	
Massachusetts, Inc.)		
)		
Petition for Reconsideration)		

ORDER ON RECONSIDERATION

Adopted: May 28, 1999

Released: June 4, 1999

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 95-1162 ("First Order"),¹ filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator") on June 30, 1995. 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.² On April 17, 1997, we released an order, DA 97-773 ("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, 1996.⁵ In this Order, we vacate our First Order and deny Operator's Petition 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.⁶ The

¹ In the Matter of New England Cablevision of Massachusetts, Inc., 10 FCC Rcd 9428 (1995).

² We determined, however, that the total overcharge per subscriber was *de minimis*, and it would not be in the public interest to order a refund.

³ See In the Matter of New England Cablevision of Massachusetts, Inc., 12 FCC Rcd 21289 (1997).

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

⁵ A valid complaint was filed against Operator's CPST rates in the above-referenced community on February 2, 1994. No additional complaints were filed with the Commission. In our First Order, we mistakenly identified the CUID No. for Merrimac as MA0162. The correct CUID No. is MA0165. Our Order, In the Matter of New England Cablevision of Massachusetts, Inc., DA 98-655, 13 FCC Rcd 7168 (1998), resolved all complaints against Operator for the CPST rates charged in Salisbury, MA, CUID No. MA0162.

⁶ 47 U.S.C. §543(c) (1996).

Cable Television Consumer Protection and 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 filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹ The Telecommunications Act of 1996 ("1996 Act"),¹⁰ and our rules implementing the legislation ("Interim Rules"),¹¹ require that a complaint against the CPST rate be filed with the Commission by a local franchising authority ("LFA") that has received more than one subscriber complaint.

3. In the 1996 Act, Congress 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."¹² The Commission's rules currently define one percent of all cable subscribers in the United States as equivalent to 617,000 subscribers.¹³ The Commission's rules also define an affiliated entity as one which "holds a 20 percent or greater equity interest, passive or active, in the operator or exercises *de jure* or *de facto* control over the operator."¹⁴ 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,¹⁵ to a small cable operator in any franchise area in which that operator services 50,000 or fewer subscribers.¹⁶

4. 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 a complaint 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."¹⁷ A review of Operator's CPST rates beginning May 15,

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

⁸ 47 C.F.R. §76.956.

⁹ 47 C.F.R. §76.957.

¹⁰ Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹¹ See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

¹² 47 U.S.C. §543(m)(2) (1996).

¹³ 47 C.F.R. §76.1403(b).

¹⁴ 47 C.F.R. §76.1403(c) (1996).

¹⁵ 47 U.S.C. §§543(a) - (c) (1996).

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

¹⁷ First Order at n. 1.

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 deny Operator's Petition, which has become moot.

5. 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 DENIED.

6. 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 New England Cablevision of Massachusetts, Inc., DA 95-1162, 10 FCC Rcd 9428 (1995) IS VACATED.

7. 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 rate charged by Operator in the community referenced above IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau