



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 99-981

DOCKET FILE COPY ORIGINAL

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

PUBLIC NOTICE

Released: June 1, 1999

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

Armada Broadcasting Co., Inc. - Request for waiver of late payment penalty for the FY 1997 regulatory fees for WNO and WNNO-FM at Wisconsin Dells, WI. **Denied.** (September 29, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345 pp 34 (1994).]

Booth American Company (Booth) - Request for waiver of filing fee for Booth (Parent company of Boone System and Alpine System of North Carolina.) **Denied.** (September 15, 1998.) [See Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for FY 1994, 9 FCC Rcd 5333, 5368 (1994) and Small Systems Order 10 FCC Rcd 7398.]

Booth American Company (Booth) - Request for waiver of filing fee for Booth (Parent company of Birmingham System and Bloomfield System.) **Denied.** (September 14, 1998.) [See Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for FY 1994, 9 FCC Rcd 5333, 5368 (1994) and Small Systems Order 10 FCC Rcd 7398.]

CNI Wireless, Inc. - Request for an emergency waiver or deferral of filing fee for certification of completion of construction for beam bender facilities, Somerset, KY. **Dismissed.** (September 21, 1998.) [See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 961 (1989) and 5 FCC Rcd 3558, 3572-73 (1990).]

EMI Communications Corporation and Intermedia Communications, Inc. - Request for waiver of FY 1995 and FY 1996 regulatory fees. **Denied.** (September 15, 1998.)

Hammond Broadcasting, Inc (HBI) - Request for waiver of FY 1997 regulatory fee for WIOK-FM at Falmouth, KY. **Dismissed.** (September 29, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346, (1994), reconsideration granted, 10 FCC Rcd 12759 (1995); See also 10 FCC Rcd at 12761-2762.]

Hancock Broadcasting, Inc. - Request for waiver of FY 1997 regulatory fee and late payment penalty for WBSL at Bay St. Louis, MS. **Denied.** (September 29, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345 pp 34 (1994).]

KPYK - Request for waiver and refund of FY 1997 regulatory fee for Class D Radio Station, KPYK, at Terrell, TX. **Denied.** Request for waiver or reduction of FY 1997 regulatory fees for KPYK (September 15, 1998.) **Granted.** Request for waiver and refund of FY 1994 and FY 1995 regulatory fees for KPYK (September 15, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted 10 FCC Rcd 12759 (1995).]

Lakeshore Broadcasting, Inc. - Request for reconsideration and reinstatement of application nunc pro tunc. **Denied.** (September 22, 1998.)

Multimedia, Inc. - Request for reduction of FY 1997 regulatory fees assessed for KNAZ-TV at Flagstaff, AZ, and sixteen Broadcast Auxiliary stations. **Granted.** (September 29, 1998.)

Prairie Communications, Inc. - Request for waiver of FY 1997 regulatory fee and late payment penalty for KCGM-FM at Scobey, MT. **Denied.** (September 29, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345 pp 34 (1994).]

R&S Radio Marketing - Request for waiver of FY 1997 regulatory fees for WBLY-AM and WIZE-AM at Springfield, OH. **Dismissed.** (September 15, 1998.) [See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995).]

Rainey Radio, Inc. - Request for waiver of FY 1997 regulatory fee for WMYQ-AM at Newton, MS. **Denied.** (September 15, 1998.) [See Implementation of Section 9 of the Communications Act, FCC 95-257 pp 15 (June 22, 1995).]

Stauffer Communications, Inc. - Request for reconsideration of FY 1997 regulatory fee for WIBW-AM at Topeka, KS. **Granted.** (September 29, 1998.)

Walt Disney World Co. - Petition for Reconsideration of renewal of WNSS890. **Withdrawn.** (September 29, 1998.)

World Voice of Historic Adventism, Inc. - Request for waiver of FY 1996 and 1997 regulatory fees for WVHA. **Dismissed.** (September 15, 1998.) [See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759 (1995); and 9 FCC Rcd 5333, 5346 (1994), reconsideration granted, 10 FCC Rcd 12759 (1995). See also 10 FCC Rcd at 12761-2762.]

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE PRIDE, CREDIT & DEBT MANAGEMENT CENTER ON (202) 418-1995.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

September 29, 1998

OFFICE OF
MANAGING DIRECTOR

Ms. Teri Van Genderen
Armada Broadcasting Co., Inc.
P.O. Box 444
721 Superior Street
Wisconsin Dells, WI 53965

DOCKET FILE COPY ORIGINAL

Re: Request for Waiver of Late Payment
Penalty
Radio Stations WNNO and WNNO-FM
Fee Control # 9805268835112006
Fee Paid: \$ 2,000

Dear Ms. Van Genderen:

This is in response to your request for waiver of the late payment penalties for the regulatory fees for Radio Stations WNNO and WNNO-FM, Wisconsin Dells, Wisconsin. You assert that you did not pay the regulatory fees in a timely manner because you did not have the funds and could not secure a loan.

The waiver request is untimely. On August 1, 1997, the Commission issued a Public Notice, FY 1997 Mass Media Regulatory Fees, to all licensees, advising them of their Fiscal Year 1997 regulatory fee obligations. Licensees were notified that fee payments were to be received by the Commission by September 19, 1997 and they were advised of their right to request deferment of the fees by September 19, 1997. The Commission in establishing the regulatory fee program said that it would "accept petitions for waiver, reduction and deferments [of the regulatory fees] so long as they are filed no later than the date payment is due." Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5345 ¶ 34 (1994). On March 6, 1998, Armada Broadcasting Co. was advised by letter that the Commission had no record for the payment of its FY 1997 regulatory fee for WNNO and that the licensee was to either submit payment or proof of payment within 20 days. There is no record of a response to the March 6, 1998 letter. It was only after the Commission advised you in a further letter dated April 21, 1998 that payment of the fee and penalty were due, that you filed the \$600 regulatory fee for WNNO and the \$1400 regulatory fee for WNNO-FM, and requested a waiver of the late payment penalty.

A review of the Commission's records indicates that you have made no attempt to show why you could not have filed a request to defer payment in a timely manner. Your failure to comply with the Commission's filing rules, has added to the Commission's regulatory burden and you have not made a compelling showing of

Ms. Teri Van Genderen

2.

why the Commission should grant your untimely request for waiver of the late payment penalty. Thus, your request for waiver of the late payment penalty is denied.

Payment of the late payment penalty for the FY 1997 regulatory fee in the amount of \$150 for Radio Station WNN0 and \$350 for WNN0-FM are now due. The aggregate \$500 penalty should be filed together with a Form FCC 159 (copy enclosed) within 15 days from the date of this letter. You are cautioned, that the failure to submit payment as required, will result in the initiating of a proceeding to recover the penalty pursuant to the provisions of the Debt Collection Act.

If you have any questions concerning payment of the penalty, please call the Chief, Fee Section at (202) 418-1995.

Sincerely,


for Mark Reger,
Chief, Financial Officer

Enclosure



Jerry

9805268835112006

107

AM 900

ph: (608) 254-2546 fax: (608) 254-7583

May 20, 1998

Federal Communications Commission
Attention: Petitions
Post Office Box 358835
Pittsburgh, Pennsylvania 15251-5835

RECEIVED
JUN 2 3 04 PM '98
FCC
FEES SECTION

Dear Sir/Madam:

I am writing to request that the 25% penalty fine imposed upon my business for late payment of 1997 regulatory fees for WNNO and WNNO FM be waived. The regulatory fees were not paid on time because we did not have the money and our bank was not willing to lend it to us.

Our radio stations are located in an area which relies heavily on the summer tourist trade and it is only now that we are able to pay the fees. Even though our cash flow is better in the summer than in the rest of the year, we are experiencing many financial challenges due to the deficit from the "lean months".

I don't know whether or not I am following the correct procedure in filing this request. I have left messages for Claudette Pride, Chief of the Fee Section with the FCC at 1919 M Street, N.W. - Room 452, Washington, DC 20554, but have not heard back from her. I also spoke, yesterday, with Tori in that office, who was going to fax me information on the process. However, I never received the information, and Tori was not available today, so I am mailing my payment for the original regulatory fees today, to the attention of "Regulatory Fees", as I want to get it in by today's deadline as directed in a letter dated April 21, 1998.

Please let me know if I need to direct my request elsewhere. Thank you for your consideration.

Sincerely,

Teri Van Genderen

cc: Claudette Pride

Payment Transactions Detail Report

Date: 6/16/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9805268835112006	ARMADA BROADCASTING CO INC BOX 444 721 SUPERIOR STREET WISCONSIN DELLS WI 53965	XXXXXXXXXX	05/26/98

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$2,000.00	\$2,000.00	1	MGH7	1	WNN0AM	ARMADA BROADCASTING CO INC	53965		\$600.00	1	PMT
\$2,000.00	\$2,000.00	2	MGD7	1	WNN0FM	ARMADA BROADCASTING CO INC	53965		\$1,400.00	1	PMT
Total	2								\$2,000.00		

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

September 15, 1998

OFFICE OF
MANAGING DIRECTOR

Eric E. Breisach, Esquire
Christopher C. Cinnamon, Esquire
Howard & Howard
The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817

DOCKET FILE COPY ORIGINAL

Re: Booth American Company

Dear Messrs. Breisach & Cinnamon:

This will respond to your request for waiver of the filing fee submitted on behalf of Booth American Company ("Booth") in connection with its petition for special relief.

You have represented, and our records reflect, that Booth, parent company of the Boone system and the Alpine System of North Carolina, sought and was granted "small systems" status for the purpose of rate and related administrative relief under the Commission's *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 10 FCC Rcd 7393 (1995) ("*Small Systems Order*").

In the *Small Systems Order*, the Commission expanded the definition of small cable systems to include cable systems serving 15,000 or fewer subscribers that were owned by cable companies serving collectively 400,000 or fewer subscribers. See 47 C.F.R. §§ 76.901(c) and (e). The Commission expanded the definition of qualifying small cable systems and companies "to encompass the broader range of operators" in need of rate and other administrative relief, in recognition of the fact "that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition." 10 FCC Rcd at 7406.

In the *Small Systems Order*, the Commission stated that petitions for special relief would be entertained for cable systems and companies that exceed the subscriber caps, but nevertheless share the same relevant characteristics and thus would benefit from the same rate and administrative relief. 10 FCC Rcd at 7412-13. The Cable Bureau found that Boone system served approximately 11,200 subscribers; that Alpine system served approximately 8,300 subscribers, respectively; that after Booth's proposed headend consolidation, the combined entity, the High Country system, would serve approximately 19,600 subscribers; and that Booth collectively served about 142,000 subscribers, well below the 400,000 subscriber cap; that the High Country System and Booth shared the relevant characteristics of small companies, respectively; and thus that Booth thus would be afforded the same regulatory treatment. See *Memorandum Opinion and Order*, DA 97-1619 (August 1, 1997).

Messrs. Breisach and Cinnamon

2.

With respect to Booth's fee waiver request, the Commission did provide small cable systems and companies relief from section 9 regulatory fees, by establishing an assessment formula based upon the exact subscriber count, thereby relieving small cable systems and companies from "bearing a disproportionate burden of the aggregate cable service regulatory fee imposed upon the industry as a whole." *See Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 9 FCC Rcd 5333, 5368 (1994); *see also Small Systems Order*, 10 FCC Rcd at 7398. The Commission, however, did not declare a policy or adopt new rules that would nullify Booth's petition for special relief. *See* 47 C.F.R. § 1.1113(a)(4). In absence of such a declaration or adoption of such rules, the Commission may only waive the section 8 filing fee requirement upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. § 158(d)(2); *see also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Reconciliation Act of 1985*, 2 FCC Rcd 947, 961 (1987); 47 C.F.R. § 1.1117(a). In its petition for waiver of the \$910.00 section 8 filing fee, Booth represents that the payment of costly filing fee represents a considerable expense for, and undermines the *Small Systems Order*, which was intended to afford regulatory relief to, small cable companies.

It appears that Booth's waiver request, thus, is based on an assertion of compelling financial hardship. For financial hardship, a more detailed showing is required to establish good cause. For instance, Booth should submit information such as a balance sheet, profit and loss statement, and/or a cash flow projection. At this juncture, Booth has neither made a sufficient showing of good cause, nor has it shown that the public interest would be served by a waiver of the filing fee requirement.

Because section 1.1117(c) of the Commission's rules, 47 C.F.R. § 1.1117(c), requires that a request for waiver of the section 8 filing fee requirement be accompanied by the requisite fee, and Booth only submitted a single \$910.00 fee payment with its petition for special relief associated with its Birmingham and Bloomfield systems, Booth must submit an additional fee of \$910.00 for the High Country petition. Applicants are required to submit the applicable section 8 filing fees, irrespective of the subsequent disposition of the underlying application. *See* 47 C.F.R. § 1.1108; *see also* 47 C.F.R. § 1.1112(c)(2).

Accordingly, Booth's petition for waiver of the filing fee requirement is denied without prejudice, and Booth is required to remit a check of \$910.00, the then applicable fee for cable special relief, under 47 C.F.R. § 1.1106 (7), within thirty days of the date of this letter. If you have any questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

HOWARD & HOWARD

ATTORNEYS

Established 1869

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Kalamazoo, Michigan 49007-3950

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Lansing, Michigan 48933-1817

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MARLA G. ZWAS

WILLIAM G. HOWARD
(1846-1906)
HARRY C. HOWARD
(1871-1946)
WILLIAM J. HOWARD
(1904-1993)

ALL ATTORNEYS ADMITTED IN MICHIGAN OR
EXCEPT AS INDICATED

* ALSO ADMITTED IN DELAWARE
† ALSO ADMITTED IN DISTRICT OF COLUMBIA
- ALSO ADMITTED IN FLORIDA
- ALSO ADMITTED IN ILLINOIS
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• ONLY ADMITTED IN ILLINOIS
□ ADMITTED TO PRACTICE BEFORE THE
PATENT AND TRADEMARK OFFICE

Reply to: Lansing
Direct Dial: (517) 377-0611

November 27, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

RE: Booth American Company; Petition for Special Relief

Dear Mr. Caton:

Enclosed for filing are the original and 4 copies of the Petition for Special Relief filed on behalf of Booth American Company. We have also enclosed one copy of the document with a pre-addressed Federal Express envelope and request that it be file-stamped "Received" and returned to us.

The prompt dissemination of this information to the Commissioners and appropriate staff members is greatly appreciated.

Mr. William F. Caton
November 27, 1995
Page -2-

Also enclosed for filing is the original Certificate of Service regarding the enclosed documents.

If you have any questions or comments, please call us.

Very truly yours,

HOWARD & HOWARD



Christopher C. Cinnamon

Enclosures
cc w/enc:

(via Federal Express)

Meredith Jones
Gregory Vogt
John Nakahata
Lisa Smith
Maureen O'Connell
David Furth
Mary McManus
John Norton ✓
Thomas Power
Susan German

(via facsimile)

Eric E. Breisach

(via certified mail)

Town of Boone
N. Watauga County
Town of Blowing Rock
Ashe County
Caldwell County
Town of Banner Elk
Town of Elk Park
Village of Sugar Mountain
Town of Newland
Town of Beech Mountain
Town of Seven Devils
S. Watauga County
Avery County
Town of Crossnore
Carter County

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HOWARD & HOWARD
ATTORNEYS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	Ashe	NC 0934
	)	Avery County	NC 0638
Booth American Company	)	Banner Elk	NC 0122
	)	Beech Mountain	NC 0450
Waiver of Small System Size	)	Blowing Rock	NC 0511
Limitation	)	Boone	NC 0033
	)	Carter County	TN 0392
	)	Caldwell County	NC 0935
	)	Crossnore	NC 0639
	)	Elk Park	NC 0123
	)	N. Watauga County	NC 0144
	)	Newland	NC 0225
	)	S. Watauga County	NC 0637
	)	Seven Devils	NC 0636
	)	Sugar Mountain	NC 0157

PETITION FOR SPECIAL RELIEF

**Eric E. Breisach
Christopher C. Cinnamon**

**HOWARD & HOWARD
The Phoenix Building, Suite 500
Washington Square, N.
Lansing, Michigan 48933-1817**

**Attorneys for Booth American
Company**

Dated: November 27, 1995

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I. INTRODUCTION

Booth American Company ("Booth American"), a small cable company under the *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196 (released June 1, 1995) ("*Small System Order*"), files this Petition for Special Relief to obtain a waiver of the 15,000 subscriber limit for two systems where Booth American plans to consolidate headends. The two systems currently qualify as small systems. The single system that will result from the headend consolidation will exceed the 15,000 subscriber limit. To avoid losing the regulatory relief contained in *Small System Order*, Booth American seeks a waiver of the 15,000 subscriber limit before completing the headend consolidation.

II. COMPANY AND SYSTEM INFORMATION

A. The Company

Booth American is a family owned business. Three members of the Booth family hold all outstanding stock of the corporation. The company provides cable service to 47 communities in six states: California, Florida, Michigan, North Carolina, South Carolina and Virginia. As of November 1995, Booth American served less than 142,000 subscribers company-wide. Annualized 1995 company-wide revenue from regulated services totals \$38,768,000.

B. The Systems

This Petition addresses the Boone System and the Alpine System, two systems serving 15 small rural communities in northwestern North Carolina and a small portion of Tennessee.¹ Low population density and the rugged terrain of the Blue Ridge Mountains combine to make the systems especially costly to construct and to operate. Booth American plans to consolidate

¹See Exhibit 1.

headends for the two systems into the location of the current Boone headend. Under the *Small System Order*, the headend consolidation will result in one system for rate regulation purposes.² As described below, the Boone and Alpine systems are typical small systems serving rural areas.

1. The Boone System

The Boone System serves the following five local franchise authorities ("LFAs"):

<u>Community</u>	<u>CUID</u>	<u>Subscribers³</u>
Ashe	NC 0934	75
Blowing Rock	NC 0511	1,391
Caldwell County	NC 0935	39
N. Watauga County	NC 0144	4,651
Town of Boone	NC 0033	<u>5,091</u>
Total		11,247

The Boone System offers 14 channels on basic, 29 channels on expanded basic, 4 premium channels and 5 pay-per-view channels. Currently, the Town of Boone is certified by the Commission to regulate basic rates. The other LFAs have not chosen to regulate basic rates.

2. The Alpine System

The Alpine System serves the following 12 LFAs:

<u>Community</u>	<u>CUID</u>	<u>Subscribers⁴</u>
Avery County	NC 0638	3,256
Banner Elk	NC 0122	369
Beech Mountain	NC 0450	1,197
Carter County	TN 0392	987
Crossnore	NC 0639	98
Elk Park	NC 0123	204

²*Small System Order* at ¶ 35; 47 C.F.R. § 79.901(c).

³1995 average monthly subscribers.

⁴1995 average monthly subscribers.

Newland	NC 0225	336
Seven Devils	NC 0636	179
Sugar Mountain	NC 0157	7,478
S. Watauga County	NC 0637	<u>1,004</u>
Total		8,378

The Alpine System offers 14 channels on basic, 24 channels on expanded basic, 4 premium and 1 pay-per-view. With headend consolidation complete, the Alpine System subscribers will benefit from the increased programming currently offered on the Boone System. South Watauga County, Avery County, Beech Mountain, Elk Park, Banner Elk, Seven Devils, and Sugar Mountain are certified by the Commission to regulate basic rates. The remaining LFAs have not chosen to certify.

3. The combined system - the High Country System

Booth American refers to the result of the planned consolidation of the Boone and Alpine systems as the High Country System. Booth American seeks to consolidate headends to improve operating efficiency and service. Booth American expects that headend consolidation will reduce operating costs relating to real estate, utilities, insurance, repair and wages. Moreover, headend consolidation will permit centralization of technical service functions resulting in more productive implementation of equipment and personnel. Booth American also anticipates system-wide expansion of additional programming offerings because it will be able to purchase the necessary equipment for one site rather than two.

In short, the planned headend consolidation will result in improved customer service, expanded programming and improved operating efficiencies, all of which will benefit subscribers.

Key characteristics of the High Country System are:

Geography: Hilly to mountainous terrain, no major highways.

Total average subscribers:	19,625 ⁵
Average number of subscribers per mile:	27
Average monthly regulated revenue per subscriber per channel:	\$ 0.53
Average annual premium revenue per subscriber:	\$27.33

Viewed under the waiver standards established by the Commission, these characteristics and other factors show that grant of this Petition is appropriate.

III. STANDARDS APPLICABLE TO WAIVER OF SMALL SYSTEM SIZE LIMITS

A. The public interest.

The Commission may waive any provision of the rules relating to cable television systems on petition by a cable operator.⁶ Generally, the Commission will grant a petition for special relief when it determines that the public interest would be served.⁷ In the *Small System Order*, the Commission has provided more specific guidance on petitions to waive small system size limits.

B. Relevant factors for waiving small system size limit.

In *Small System Order*, the Commission stated: "[The Commission] will entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should

⁵1995 monthly average subscribers.

⁶47 C.F.R. § 76.7(a)(1).

⁷C.F.R. § 76.7(f). See also Insight Communications Company, L.P., *Memorandum Opinion and Order*, DA 95-2334, (released November 13, 1995) ("*Insight Communications*"), ¶¶ 4, 23, 25, and 33.

be entitled to the same regulatory treatment."⁸ The Commission has specified several relevant factors to consider in assessing petitions to waive the small system size limits. These factors include:

1. The degree by which the system varies from the standard.⁹
2. Evidence of increased costs faced by the operator.¹⁰
3. If segments of the integrated cable operation would be subject to different regulatory structures.¹¹
4. The degree by which the system shares defining characteristics of small systems including:
 - a. Average monthly regulated revenue;¹²
 - b. Subscriber density;¹³
 - c. Average annual premium revenue per subscriber per channel;¹⁴ and
 - d. Lack of access to purchasing discounts.¹⁵

The Commission has indicated that the above relevant factors do not constitute an exhaustive list; the Commission will consider other information and arguments as well.¹⁶ In addition, the

⁸*Small System Order* at ¶ 36.

⁹*Id.*; *Insight Communications* at ¶ 28.

¹⁰*Small System Order* at ¶ 36; *Insight Communications* at ¶ 28.

¹¹*Small System Order* at ¶ 35; *Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38 (released March 30, 1994) at ¶ 227.

¹²*Small System Order* at ¶ 27.

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at ¶ 37.

¹⁶*Id.*

Commission specifically addressed waivers of the system size limit in cases involving headend consolidation:

Likewise, a qualifying system that seeks to obtain programming from a neighboring system by way of a fiber optic link, but that is concerned that interconnection of the two system will jeopardize its status as a stand-alone small system, may file a petition for special relief to ask the Commission to find that it is eligible for small system relief.¹⁷

As shown below, Booth American and the High Country System fully satisfy the relevant standards with the exception of the 15,000 subscriber limit for the consolidated system. The grant of this Petition will serve the public interest by reducing unnecessary regulatory burdens on a small cable company and 15 small LFAs.

IV. ARGUMENT

A. Booth American satisfies the standards for a small cable company.

As a threshold issue, systems operated by Booth American may be entitled to small system relief because Booth American falls well within the standards of a small cable company. The company serves less than 142,000 subscribers company-wide, well below the 400,000 subscriber limit established in the *Small System Order*.¹⁸ Annualized 1995 revenue from regulated services totals \$38,768,000, far less than the \$100 million threshold referenced in the *Small System Order*.¹⁹ This case does not implicate affiliation issues because members of the Booth family hold all the stock in the corporation, and no larger cable company exercises *de jure*

¹⁷*Id.*

¹⁸*Id.* at ¶ 28.

¹⁹*Id.* at ¶ 29.

control over Booth American systems.²⁰ Consequently, Booth American qualifies for regulatory relief as a small cable company, and all of its cable systems serving 15,000 subscribers or less are automatically eligible for the relief specified in the *Small System Order*.

B. Both the Boone System and the Alpine System satisfy the standards for small cable systems.

Before headend consolidation, both the Boone System and the Alpine System are automatically eligible for the small system relief provided by the *Small System Order*. The systems serve 11,716 and 8,723 subscribers respectively. Moreover, each system shares the attributes of a typical small system that convinced the Commission to grant the relief contained in the *Small System Order* - rural subscriber base, low density, higher costs, and no affiliation with a larger entity.²¹ These characteristics will not change after headend consolidation.

C. The High Country System will continue to share the relevant characteristics of a small system.

After consolidation, the High Country System will continue to share key characteristics of a small system. These characteristics will include a higher proportion of revenue from regulated service, low subscriber density, higher costs, and the need for relief from administrative burdens and costs. While the High Country System will exceed 15,000 subscribers, the deviation closely aligns with that found acceptable by the Commission in *Insight Communications*.

²⁰*Small System Order* at ¶ 36, n. 88.

²¹*Id.* at ¶ 25-32 and 55-56.

1. Regulated and premium revenues.

Combining the current monthly regulated revenue for the Boone and High County Systems will result in average monthly regulated revenue per subscriber for the High Country System of \$0.53 per channel. This amount is midway between the average amounts for small and large system contained in the *Small System Order*.²² The Commission has already approved small system size waivers for three systems whose regulated revenue fell between the average revenues for small systems and larger systems.²³

An analysis of premium revenue provides additional support for this Petition. Average annual premium revenue per subscriber for the High Country System will total \$27.33, over 20% below the small system average and over 55% below the average for larger systems.²⁴ Consequently, from a revenue standpoint, the High Country System will reflect the small system characteristic of a larger portion of its revenue flowing from regulated services and much less revenue resulting from higher margin premium services.

More importantly, the High Country revenue data reflects lower overall revenues compared to an average small system. This is a consequence of the combination of unusually high system costs and rate regulation that did not accommodate such high cost systems. The rate relief provided in the *Small System Order* seeks to rectify this problem. The High Country System needs that relief.

²²*Id.* at ¶ 27 ("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").

²³*Insight Communications* at ¶ 32.

²⁴*Id.* ("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.")

2. Subscriber density.

The High Country System will continue to serve a sparsely populated rural area with the higher fixed and variable costs associated with serving fewer subscribers per mile. Average subscribers density for the High Country System will be 27 subscribers per mile. This remains less than the average density for small systems identified in the *Small System Order* and less than 40% of the average density for larger systems.²⁵ Geography further increases per subscriber costs due to the mountainous terrain and lack of major highways serving the region.

3. Higher costs.

Booth American's cost structure reflects that of a small cable company serving less than 142,000 subscribers. It does not benefit from programming discounts enjoyed by larger MSOs. In *Insight Communications*, the Commission granted small system size waivers even though Insight benefitted from programming discounts due to its affiliation with Continental Cablevision.²⁶ Booth American has fewer subscribers than Insight and does not benefit from any reduction in programming costs beyond that offered to a similar size company. Consequently, Booth American's cost structure is almost certainly higher than Insight's, particularly for the rural and mountainous High Country System.

²⁵*Id.* ("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").

²⁶*Insight Communications* at ¶¶ 21-22 ("We certainly do not deem the discounts on regulated programming to be so substantial, standing alone, as to justify withholding from Insight the rate relief that is available to operators that have as many as 240,000 more subscribers than Insight has").

4. Relief from administrative burdens and costs.

Booth American highlights one remaining relevant factor weighing in favor of the grant of this Petition. The High Country System will serve 15 franchise areas, eight of which have certified to regulate basic rates. In 1995, Booth American began upgrading both the Boone and Alpine systems with fiber and associated electronics that will accommodate 550 MHz. The capital investment associated with this rebuild combined with high operating costs would require Booth American to establish going forward rates under cost-of-service. As recognized by the Commission, however, the administrative costs and burdens of at least eight separate cost-of-service showings impose a significant economic disincentive on small cable companies like Booth American.²⁷ Moreover, the burdens on eight small LFAs, none of which has conducted a cable cost-of-service proceeding, would be significant as well. Consequently, a grant of this Petition will permit Booth American to establish cost-of-service rates for the High County System and will relieve eight small LFAs from conducting full-blown cost-of-service rate cases.

5. Deviation from standard.

Booth American estimates that the High Country system will serve 19,625 subscribers. Existing penetration of basic exceeds 65%. Population growth is not significant. Direct broadcast satellite services have begun to penetrate the region. Booth American does not predict significant near-term subscriber growth.

In *Insight Communications*, the Commission determined that a system serving nearly 18,000 subscribers across seven franchise areas "exceeds the 15,000 subscriber standard by only

²⁷*Small System Order* at ¶ 55.

a relatively small amount".²⁸ The High Country System will serve fewer than 2,000 more subscribers than Insight, spread across 16 rural franchises. When the only reason for exceeding the 15,000 subscriber standard is a headend consolidation, both the *Small System Order* and *Insight Communications* suggest that 19,625 remains a relatively minimal deviation.

D. The public interest will be served if the High Country System retains small system status.

The Commission provided the regulatory relief in the *Small System Order*, in part, "to expand the category of small systems and provide them rate and administrative relief [and] also ease burdens for local franchising authorities and the Commission, in furtherance of congressional intent."²⁹ Booth American and its Boone and Alpine Systems need and benefit from that relief. These are small systems serving high cost, rural areas and generating below average revenue even for small systems. None of these factors will change when the systems are consolidated into the High Country System. The High Country System will need rate relief at least as much as the Boone and Alpine Systems, which qualify automatically.

The Commission has determined that it is in the public interest to grant small system relief to systems that need that relief and that share the characteristics of small, even when such systems benefit from programming discounts.³⁰ Booth American and its High Country System meet all the key criteria, exceed the size standard by only a small amount, and need small system relief to establish reasonable rates. Similarly, the small LFAs that regulate basic rates

²⁸*Insight Communications* at ¶ 29.

²⁹*Small System Order* at ¶ 26.

³⁰*Insight Communications* at ¶ 33.

in the High Country system will also benefit from the reductions in administrative burdens offered by the Form 1230 rate regulation process. Consequently, it will serve the public interest to grant this Petition.

V. CONCLUSION AND REQUESTED RELIEF

For the reasons stated above, Booth American requests that the Commission grant small system status for the High Country System following the headend consolidation of the Boone System and the Alpine System.

BOOTH AMERICAN COMPANY

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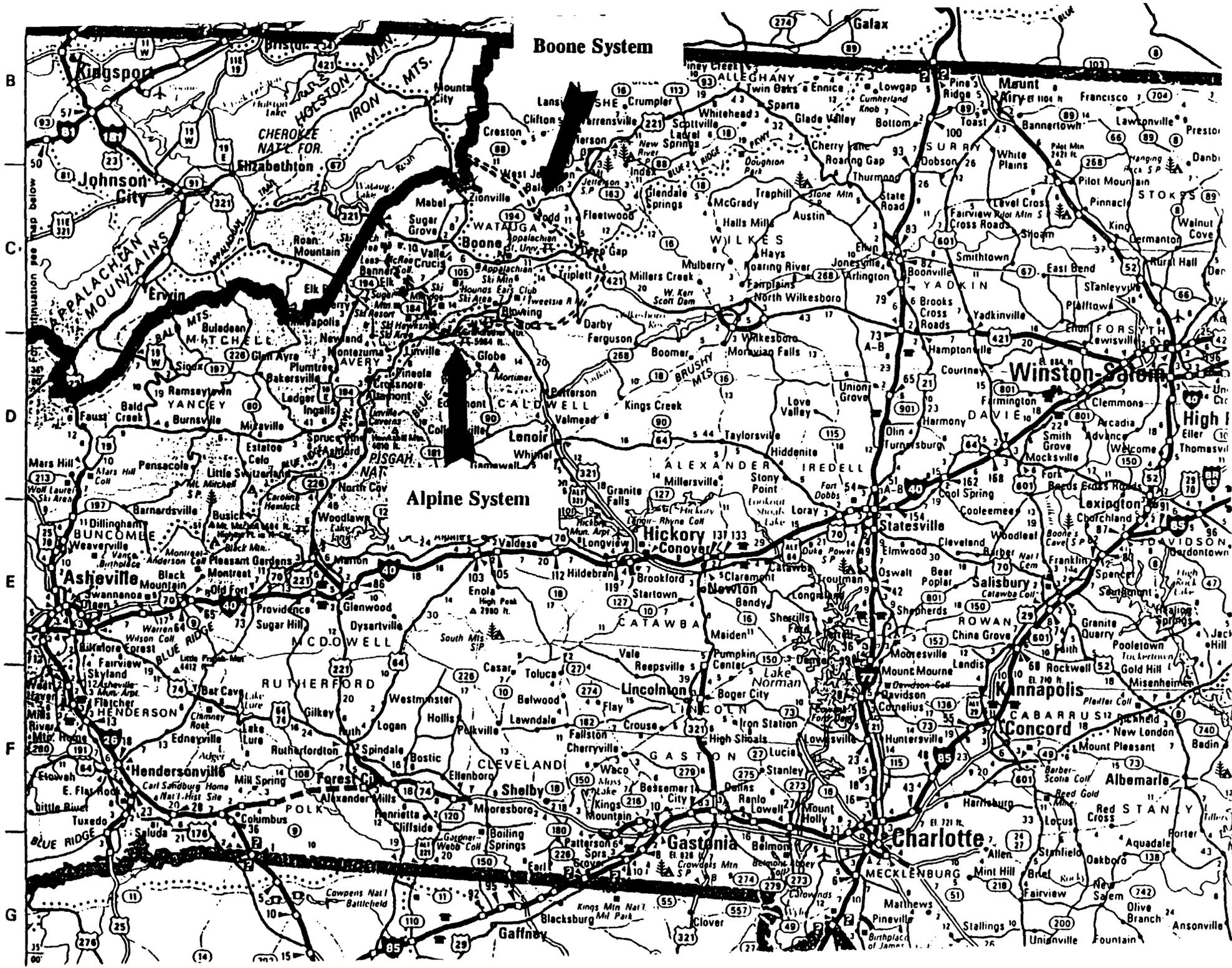
CERTIFICATION

I am Laura Petterle, Director of Operations for Booth American Company. I certify that I have read the attached Petition for Special Relief, that I am generally familiar with the matters contained and understand the purpose of the document, and that the factual statements set forth are correct to the best of my knowledge, information and belief.

Dated: 11/27/95

Laura Petterle
Laura Petterle

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Boone System

Alpine System

Asheville

Winston-Salem

Charlotte

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Continuation see map below

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