

CERTIFICATE OF SERVICE

I, Ida Buntin, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Booth American Company Petition for Special Relief was sent on the 27th day of November, 1995, by first class and certified mail, return receipt requested and postage prepaid, to the following:

Mr. Jeff Miller
Ashe County
PO Box 633
Jefferson NC 28640

Mr. Randall Fletcher
Avery County
PO Box 356
Newland NC 28657

Mr. Michael Brooks
Town of Banner Elk
PO Box 156
Banner Elk NC 28604

Mr. Seth Lawless
Town of Beech Mountain
403 Beech Mountain Pkwy
Beech Mountain NC 28604

Mr. Don Holycross
Town of Blowing Rock
PO Box 47
Blowing Rock NC 28605

Mr. Gregory Young
Town of Boone
PO Box 192
Boone NC 28607

Mr. Truman Clark
Carter County
801 Elk Ave
Elizabethon TN 37643

Mr. David Flaherly
Caldwell County
PO Box 2200
Lenoir NC 28645

Ms. Nell Aldridge
Town of Crossnore
PO Box 246
Crossnore NC 28616

Ms. Connie Guinn
Town of Elk Park
PO Box 276Elk Park NC 28622

Mr. James Ratchford
Watauga County
403 West King St
Boone NC 28607

Ms. Brenda Pittman
Town of Newland
PO Box 429
Newland NC 28657

Mr. James Ratchford
Watauga County
403 West King St
Boone NC 28607

Mr. Chess Hill
Town of Seven Devils
801 Skyland Dr
Seven Devils NC 28604

Mr. Robert Pattion
Village of Sugar Mountain
PO Box 1135
Banner Elk NC 28604

The undersigned further declares that on the 27th day of November 1995, the above-referred to document was sent via facsimile and Federal Express to:

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

and that in a second Federal Express envelope directed to Chairman Reed Hundt ten individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the November 27, 1995 letter directed to Mr. Caton. The ten envelopes were addressed as follows:

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Rachelle Chong
c/o David Furth
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Mr. Gregory Vogt
Deputy Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Susan Ness
c/o Mary McManus
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Chairman Reed Hundt
c/o Mr. John Nakahata
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Thomas Power
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

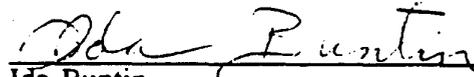
Commissioner Andrew Barrett
c/o Lisa Smith
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

John Norton
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner James Quello
c/o Maureen O'Connell
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Susan German
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

Dated: November 27, 1995



Ida Buntin

Drafted by:
HOWARD & HOWARD ATTORNEYS, P.C.
The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817

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HOWARD & HOWARD

ATTORNEYS
Established 1869

The Pinehurst Office Center, Suite 101
1400 North Woodward Avenue
Bloomfield Hills, Michigan 48304-2856

Telephone (810) 645-1483
Fax (810) 645-1568

The Kalamazoo Building, Suite 400
107 West Michigan Avenue
Kalamazoo, Michigan 49007-3956

Telephone (616) 382-1483
Fax (616) 382-1568

The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817

Telephone (517) 485-1483
Fax (517) 485-1568

The Creve Coeur Building, Suite 210
321 Liberty Street
Peoria, Illinois 61602-1405

Telephone (309) 672-1483
Fax (309) 672-1568

JOHN W. ALLEN ± **
KELLY A. ALLEN
GUSTAF R. ANDREASEN
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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
EXCEPT AS INDICATED

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PATENT AND TRADEMARK OFFICE

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

December 6, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
c/o Mellon Bank
Cable Services Bureau
P.O. Box 358205
Pittsburgh, PA 15251-5205

RE: Booth American Company, Petition by a Small Cable Company for Waiver of Filing Fee

Dear Mr. Caton:

Enclosed for filing are the original and 4 copies of the above-captioned document, Certificate of Service, Form 159, and our Check No. 61988 made payable to the Federal Communications Commission in the amount of \$910.00 in payment of the filing fee. We have also enclosed a copy with a pre-addressed, stamped envelope and request that a file-stamped copy be returned to us.

Mr. William F. Caton
December 6, 1995
Page -3-

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

Very truly yours,

HOWARD & HOWARD


Christopher C. Cinnamon

Enclosures

cc w/enc Meredith Jones
 Gregory Vogt
 John Nakahata
 Lisa Smith
 Maureen O'Connell
 David Furth
 Mary McManus
 Thomas Power ✓
 John Norton
 Sandy Parrish
 Booth American Company
 Eric E. Breisach

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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 BY A SMALL CABLE COMPANY
FOR WAIVER OF FILING FEE**

**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: December 6, 1995

**PETITION BY A SMALL CABLE COMPANY
FOR WAIVER OF FILING FEE**

Booth American Company ("Booth American") petitions the Commission under 47 C.F.R. § 1.1116(a) for waiver of the \$910 fee required under 47 C.F.R. § 1.1106 for filing the Petition for Special Relief that accompanies this Petition. For the reasons stated below, good cause exists for waiving this fee, and the waiver will promote the public interest.

I. BACKGROUND

On November 28, 1995, Booth American filed with the Commission a Petition for Special Relief (the "Petition," caption attached as Exhibit 1). Booth American did not include \$910 with the Petition.

On December 1, 1995, Ms. Sandy Parrish of the Cable Services Bureau informed Howard & Howard that she could not process the Petition without the filing fee. Surprised that the Commission would require small systems to pay nearly \$1,000 to seek a reduction in administrative burdens and costs, Howard & Howard consulted Mr. Tom Power, a Cable Services Bureau attorney closely involved with small system issues. A petition for waiver of filing fee was suggested.

II. ANALYSIS

Booth American is a small cable company as defined in *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*") at ¶ 28. In *Small System Order*, the Commission determined that small cable companies like Booth American were entitled to significant regulatory relief in setting rates for regulated cable services. The Commission extended such relief to small cable systems defined as those serving 15,000 subscribers or less, and owned by

small cable companies. The fundamental reason that the Commission granted this relief was to ease the administrative burdens and costs of rate regulation on small cable operators. *Small System Order* at ¶¶ 55-57.

The Commission also invited petitions for special relief from systems that exceed the numerical standard but share other small system characteristics and are in need of regulatory relief. The Commission also specifically encouraged petitions for special relief from "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 systems will jeopardize its status as a stand-alone small system . . ." *Small System Order* at ¶ 36. Based on this statement, Booth American filed the Petition in anticipation of consolidating headends for two small systems.

According to the Commission, small cable companies like Booth American are in need of relief from the administrative burdens and costs of rate regulation. It is inconsistent with the intent of the *Small System Order* to require a small cable company to pay nearly \$1000, in addition to substantial legal fees and expenses, to attempt to obtain small system relief. The basis for the Petition accentuates this inconsistency: the two systems already qualify automatically for small system relief. If the \$910 fee is not waived, then Booth American will be required to incur this additional administrative cost so as to not incur additional administrative costs. Surely the Commission did not intend this illogical result in inviting small system petitions for special relief.

Booth American, like most small cable companies, has struggled since 1992 with rate regulation that disproportionately burdened small cable. An additional \$910 to secure long-awaited relief only increases the cost to Booth American of the regulatory burdens that the Commission has sought to alleviate.

To improve operating efficiency and customer service, Booth American seeks to conclude the headend consolidation as soon as possible. Retention of small system relief for the combined system is a critical factor in determining whether to make the capital investment necessary to combine the two headends. Consequently, Booth American asked that the Commission consider the Petition expeditiously and not delay processing while this fee waiver request is pending.

III. CONCLUSION AND REQUESTED RELIEF

The Commission determined that reduction of administrative burdens and costs of rate regulation on small cable companies serves the public interest. Because the grant of this petition will immediately reduce the costs of rate regulation on Booth American by \$910, the grant of this petition will service the public interest. Consequently, Booth American requests that the Commission waive the \$910 filing fee. Booth American also requests that the Commission entertain and, if possible, rule on the Petition without any delay attributable to this fee waiver request.

As required by 47 C.F.R. § 1.1116(e), Booth American submits this waiver request with a check for \$910 and a Form 159.

Respectfully submitted,

BOOTH AMERICAN COMPANY

By: 

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

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

**Attorneys for Booth American
Company**

RECEIVED

NOV 28 1995

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In the Matter of)	Ashe	NC 0934
)	Avery County	NC 0638
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Waiver of Small System Size)	Blowing Rock	NC 0511
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		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

EXHIBIT 1

CERTIFICATE OF SERVICE

I, Ida Buntin, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Booth American Company Petition by a Small Cable Company for Waiver of Filing Fee was sent on the 6th day of December, 1995, by first class and certified mail to:

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
c/o Mellon Bank
Cable Services Bureau
P.O. Box 358205
Pittsburgh, PA 15251-5205

and that in a second envelope sent by first class and certified mail directed to Chairman Reed Hundt ten individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the December 6, 1995 letter directed to Mr. Caton. The ten envelopes were addressed as follows:

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner James Quello
c/o Maureen O'Connell
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Mr. Gregory Vogt
Deputy Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Rachelle Chong
c/o David Furth
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
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Chairman Reed Hundt
c/o Mr. John Nakahata
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Commissioner Susan Ness
c/o Mary McManus
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c/o Lisa Smith
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Thomas Power
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

John Norton
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Sandy Parrish
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

Dated: December 6, 1995

Drafted by:
HOWARD & HOWARD ATTORNEYS, P.C.
The Phoenix Building, Suite 500
222 Washington Square, North
Lansing, Michigan 48933-1817


Ida Buntin

ccc\cable\certificate.2dc

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

In the Matter of)	
)	
Booth American Company	)	CSR 4637-D
)	
Petition for Special Relief)	

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 1997

Released: August 1, 1997

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we address a petition for special relief ("Petition"), in which Booth American Company ("Booth") seeks a waiver of the Commission's rules to the extent necessary to permit Booth to establish regulated cable rates on behalf of a consolidated system of its Boone system and its Alpine system in North Carolina in accordance with the small system cost-of-service methodology adopted in the *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 92-266 and 93-215 ("*Small System Order*").¹ No oppositions were filed in this proceeding.

2. Section 623(i) of the Communications Act of 1934, as amended ("Communications Act"), requires that the Commission design rate regulations that reduce the administrative burdens and the cost of regulatory compliance for cable systems with 1,000 or fewer subscribers.² Accordingly, in the course of establishing the standard benchmark and cost-of-service ratemaking methodologies generally available to cable operators, the Commission adopted various measures aimed specifically at easing regulatory burdens for these smaller systems.³ In the *Small System Order*, the Commission further extended small system rate relief to certain systems that exceed the 1,000-subscriber standard.⁴ These systems were

¹ FCC 95-196, 10 FCC Rcd 7393 (1995). Booth also filed a petition seeking a waiver of the \$910 filing fee that it was required to submit under 47 C.F.R. § 1.1106. Because this issue falls within the purview of the Commission's Office of the Managing Director, we have forwarded this request to that office for resolution.

² 47 U.S.C. § 543(i).

³ See, e.g., *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993); *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking* in MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994); *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket Nos. 93-215 & 93-266, 9 FCC Rcd 5327 (1994); *Eighth Order on Reconsideration* in MM Docket Nos. 92-266 & 93-215, FCC 95-42, 10 FCC Rcd 5179 (1995).

⁴ *Small System Order*, 10 FCC Rcd at 7406.

deemed eligible for small system rate relief because they were found to face higher costs and other burdens disproportionate to their size.⁵

3. The *Small System Order* defines 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 the appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.⁸

4. Rate relief provided under the *Small System Order* and the Commission's rules is also available only to a small system that is affiliated with a small cable company, which is defined as a cable operator that serves a total of 400,000 or fewer subscribers over all of its systems.⁹ The Commission adopted this threshold because it roughly corresponds to \$100 million in annual regulated revenues, a standard the Commission has used in other contexts to identify smaller entities deserving of relaxed regulatory treatment.¹⁰ The Commission found that cable companies exceeding this threshold would find it easier than smaller companies to attract the financing and investment necessary to maintain and improve service.¹¹ In addition, the Commission determined that cable companies that exceeded the small company definition "are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources."¹²

⁵ *Id.* at 7407. More recently, 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 ("1996 Act"), Pub. L. No. 104-104, § 301(c), 110 Stat. 56, approved February 8, 1996; 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) cable programming services, or (B) 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. *Id.*

⁶ *Small System Order*, 10 FCC Rcd at 7406.

⁷ *Id.* at 7408.

⁸ *Id.*

⁹ *Id.* 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.

¹⁰ *Id.* at 7409-11.

¹¹ *Id.* at 7411.

¹² *Id.* at 7409.

5. In addition to adopting the new 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.¹³ This approach, which is available only to small systems owned by small cable companies, is more streamlined than the standard cost-of-service methodology available to cable operators generally. In addition, the small system rules include substantive differences from the standard cost-of-service rules to take account of the proportionately higher costs of providing service faced by small systems. Eligible systems establish their rates under this methodology by completing and filing FCC Form 1230. In order to qualify for the small system cost-of-service methodology, systems and companies must meet the new size standards as of either the effective date of the *Small System Order*, or on the date thereafter when they file the documents necessary to elect the relief they seek.¹⁴

6. 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 petitioning systems to utilize the various forms of rate relief available to small systems owned by small cable companies.¹⁵ The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems."¹⁶ Other potentially pertinent factors include the degree by which the system fails to satisfy either or both definitions and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator.¹⁷ 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."¹⁸ The Commission also stated that "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 systems may 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."¹⁹ 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.²⁰

II. THE PETITION

7. According to its Petition, Booth operates cable systems serving fewer than 142,000 subscribers across six states. Booth explains that consolidating the headends of two of its systems in

¹³ *Id.* at 7418-28.

¹⁴ *Id.* at 7413. The effective date of the *Small System Order* was August 21, 1995.

¹⁵ *Id.* at 7412-13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 7413.

²⁰ *Id.*

North Carolina – its Boone system and its Alpine system – into the headend for the Boone system will reduce operating costs and will enable centralized service functions. It will also lower the cost of purchasing equipment needed to expand program offerings.²¹ Prior to consolidation, the Boone system served approximately 11,200 subscribers and the Alpine system served approximately 8,300 subscribers.

8. Thus, standing alone, the Boone system and the Alpine system separately qualify for small system regulatory treatment. Each system serves fewer than 15,000 subscribers and is affiliated with a small cable company serving fewer than 400,000 subscribers. After headend consolidation, the combined entity – the High Country system – will serve a total of about 19,600 subscribers.²² Booth argues that, despite its subscriber total, the High Country system will still share the attributes of a typical small system, including "a higher proportion of revenue from regulated service, low subscriber density, higher costs, and the need for relief from administrative burdens and costs."²³ Booth asserts that the characteristics of the High Country system will closely resemble other systems entitled to small system treatment – the relevant characteristics being an average subscriber density of 27 subscribers per mile, an average monthly regulated revenue of \$0.53 per channel per subscriber, and an average annual premium revenue of \$27.33 per subscriber.²⁴ Furthermore, Booth claims that its cost structure reflects that of a small cable company, emphasizing that it does not benefit from programming discounts received by larger multiple system operators.²⁵ Moreover, Booth notes the relatively costly nature of operating the High Country system in a rural and mountainous area.²⁶ Booth also argues that relief from having to file multiple cost-of-service filings would significantly reduce the administrative burdens and costs for both the company and the relevant local franchising authorities.²⁷

9. In addition, Booth contends that the High Country system should be granted small system treatment because its subscriber total does not exceed the 15,000 subscriber limit by a significant amount. It notes that the Commission, in *Insight Communications Company, L.P. ("Insight")*,²⁸ granted small

²¹ Petition at 1-3.

²² *Id.* at 3-4. Booth filed its Petition prior to consolidation of the Boone and Alpine systems which, according to a letter subsequently filed by Booth, was completed in January 1997. Letter dated June 23, 1997 from Christopher C. Cinnamon, counsel for Booth, to Julie Buchanan, Cable Services Bureau, Federal Communications Commission. According to a recent letter filed by Booth, the consolidated system serves 19,454 subscribers and has an average subscriber density of 21 subscribers per mile, an average monthly regulated revenue per subscriber per channel of \$0.50, and an average annual premium revenue per subscriber of \$26.80. Letter dated June 12, 1997 from Christopher C. Cinnamon, counsel for Booth, to Julie Buchanan, Cable Services Bureau, Federal Communications Commission.

²³ *Id.* at 7.

²⁴ *Id.* at 8-9.

²⁵ *Id.* at 9.

²⁶ *Id.*

²⁷ *Id.* at 10.

²⁸ 11 FCC Rcd 1270 (Cable Serv. Bur. 1995).

system treatment to a system serving 18,000 subscribers over seven franchise areas. According to Booth, the High Country system exceeds the subscriber level of the *Insight* system by only 2,000 subscribers and serves subscribers across 16 rural franchises.²⁹

III. DISCUSSION

10. As discussed above, a cable system that is entitled to small system relief is a system serving 15,000 or fewer subscribers that is not owned by a cable company serving more than 400,000 subscribers over all of its systems.³⁰ Because Booth has approximately 142,000 subscribers, the High Country system is affiliated with a small cable company with a total subscribership of less than 400,000. However, the system serves approximately 19,600 subscribers. Thus, the issue in this case is whether the Commission should waive the 15,000 subscriber limit used to define a small system under its rules.

11. Our decision in *Insight* is instructive. In that decision, we granted small system status to three systems serving 16,348, 16,328 and 17,798 subscribers respectively.³¹ Even though those systems had subscriber totals in excess of the 15,000 ceiling, we determined that they were entitled to small system relief because they had many of the defining characteristics of small systems. For instance, the *Insight* systems generated between \$45 and \$52 per subscriber in annual premium revenues, a range closer to the small system average than the average for large systems.³² In addition, their subscriber density, ranging from 31 to 35 subscribers per mile, was close to the average density for small systems identified in the *Small System Order*.³³

12. Similarly, the High Country system possesses the same character as the typical small system described in the *Small System Order*. The average annual premium revenue per subscriber of \$27.33 falls well below the average of \$41 for small systems and also below the averages for the systems granted relief in *Insight*. Moreover, the average number of subscribers per mile served by the High Country system of 27 is less than the average density level of 35.3 identified for small systems in the *Small System Order* and also less than the density level of systems granted relief in the *Insight* case. Furthermore, the High Country system faces higher costs than a typical cable system due to the lack of programming discounts and the expense of operating in a rural and mountainous area. Although the average monthly regulated revenue of \$0.53 per channel per subscriber for the High Country system is closer to the average of \$0.44 for larger systems than the average of \$0.86 for small systems, we do not believe that this single variance is sufficient to disqualify it for small system relief. Thus, we agree with Booth's unopposed claim that the consolidation of the Boone and Alpine headends maintains the small system character of the individual systems prior to the consolidation.

²⁹ Petition at 11.

³⁰ *Small System Order*, 10 FCC Rcd. at 7406.

³¹ *Insight*, 11 FCC Rcd at 1274.

³² *Id.*

³³ *Id.*

13. In addition, we note that the degree to which a system fails to meet the technical definition of a small system is relevant to our determination that a waiver from the technical requirements is justified.³⁴ Although the High Country system exceeds the 15,000 ceiling by more than 4,000 subscribers, the margin above the ceiling is not significantly above the level of excess deemed acceptable in *Insight*. Finally, as we stated in *Inter Mountain Cable, Inc. ("Inter Mountain")*, the Commission seeks to encourage the interconnection of multiple small systems where subscribers will benefit.³⁵ According to Booth, the consolidation of the Boone and Alpine headends will provide benefits to subscribers by resulting in better customer service, expanded programming, and improved operating efficiencies.³⁶ Thus, as in *Inter Mountain*, granting small system regulatory relief will further the Commission's goal.³⁷ Therefore, for all of the above reasons, we will grant Booth's Petition.

IV. SCOPE OF THE WAIVER

14. As a result of our grant of the Petition, Booth's High Country system shall be deemed a small system for purposes of rate regulation. Accordingly, to the extent that High Country's BST and/or CPST offerings are subject to rate regulation,³⁸ rates for the High Country system may be set in accordance with the small system cost-of-service methodology.

15. We next must determine the duration of the waiver. In the *Small System Order*, after establishing the new small system and small cable company definitions, the Commission stated:

To qualify for any existing form of [small system] relief, systems and companies must meet the new size standards as of either the effective date of this order or on the date thereafter when they file whatever documentation is necessary to elect the relief they seek, at their election. . . . A system that is eligible for small system relief on either of the dates described above shall remain eligible for so long as the system has 15,000 or fewer subscribers, regardless of a change in the status of the company that owns the system. Thus, a qualifying system will remain

³⁴ *Small System Order*, 10 FCC Rcd at 7412.

³⁵ 11 FCC Rcd 7081, 7086 (Cable Serv. Bur. 1996).

³⁶ Petition at 3.

³⁷ See *Inter Mountain*, 11 FCC Rcd at 7086.

³⁸ As of the 1996 Act's enactment on February 8, 1996, rate regulation does not apply to a small cable operator with respect to CPSTs, or a BST that was the only service tier subject to regulation as of December 31, 1994. For purposes of this provision, a "small cable operator" is defined as one that, directly or through an affiliate, serves in the aggregate fewer than 615,000 subscribers and is not affiliated with any entity whose gross annual revenues exceed \$250,000,000. 47 U.S.C. § 543(m); *Order and Notice of Proposed Rulemaking* in CS Docket No. 96-85, 11 FCC Rcd 5937, 5947 (1996). As discussed above, small system relief under our rules is available only to systems that serve fewer than 15,000 subscribers and are not affiliated with a cable operator that serves more than 400,000 subscribers, absent a waiver. See *supra* paras. 3-4. Accordingly, a rate complaint that is filed concerning a cable system that is deemed a small system under our rules may not invoke rate regulation of the system's CPST, or of its BST if the BST was the only service tier subject to regulation as of December 31, 1994.

eligible for relief even if the company owning the system subsequently exceeds the 400,000 subscriber cap. Likewise, a system that qualifies shall remain eligible for relief even if it is subsequently acquired by a company that serves a total of more than 400,000 subscribers.³⁹

16. The Commission adopted this grandfathering treatment for qualifying systems to enhance their value "in the eyes of operators and, more importantly, lenders and investors."⁴⁰ As the Commission stated: "The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses."⁴¹

17. Upon exceeding the 15,000 subscriber threshold, a system that has established its rates in accordance with the small system cost-of-service methodology:

. . . may maintain its then existing rates. However, any further adjustments shall not reflect increases in external costs, inflation or channel additions until the system has re-established initial permitted rates in accordance with our benchmark or cost-of-service rules.⁴²

18. Since the High Country system exceeds 15,000 subscribers, there is no obvious numerical limit to serve as a cutoff for its continued eligibility for small system treatment. However, it is reasonable to presume that the system will continue to grow. Thus, we must place some duration on the waiver, since the alternative would be to grant small system status indefinitely, regardless of the eventual size of the system. This latter alternative is clearly inconsistent with the Commission's decision to limit small system relief to systems that are in need of it due to their relatively small size.

19. Therefore, as we have ordered in the context of a similar waiver situation, the Booth waiver will terminate two years from the date of this order, subject to the conditions set forth below.⁴³ During the waiver period, Booth may file only one Form 1230 for each franchise area it serves. This should afford Booth adequate regulatory certainty for the foreseeable future, while still ensuring that the system is not permitted to charge rates indefinitely under a scheme designed for smaller systems. Of course, Booth may seek continued eligibility for small system treatment by filing a petition for special relief at the end of the waiver period.

³⁹ *Small System Order*, 10 FCC Rcd at 7413. The quoted text was discussing a system's initial and continuing eligibility for "any existing form of relief," which did not include the small system cost-of-service methodology. However, later in the order the Commission applied the same eligibility standards to that methodology as well. *Id.* at 7427-28.

⁴⁰ *Id.* at 7413.

⁴¹ *Id.*

⁴² *Id.* at 7427-28.

⁴³ *See Insight*, 11 FCC Rcd at 1274-76.

20. Limiting the waiver period to two years means that any Form 1230 to be filed by Booth must be submitted with the appropriate regulatory authorities within two years of the date of this order. In any franchise area where the system is currently subject to regulation, Booth may reestablish its maximum permitted rates by filing Form 1230 at any time in the next two years. Where the system is not currently subject to regulation but becomes subject to regulation within the next two years, Booth then may file Form 1230 within the normal response time. Where the system is not now subject to regulation, and does not become subject to regulation until more than two years from now, Booth will not be eligible for small system treatment under this waiver.

21. After filing its initial Form 1230 and giving the required notice, Booth may set its actual rates in the franchise area at any level that does not exceed the maximum rate, subject to the standard rate review process. Subsequent increases, not to exceed the maximum rate established by the Form 1230, shall be permitted, subject to the 30 days' notice requirement of the Commission's rules.⁴⁴ As noted, the maximum rate established by the initial Form 1230 shall be a cap on the system's rates during the waiver period. If the system reaches that cap and subsequently wishes to raise rates further, it will have to justify the rate increase in accordance with our standard benchmark or cost-of-service rules. Alternatively, the system can file another petition for special relief and seek continued treatment as a small system. Limiting Booth to a single Form 1230 filing for each franchise area provides further assurance that the system will not have grown too large to be establishing rates under the small system cost-of-service methodology.

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Booth American Company with respect to the consolidation of its Alpine and Boone systems is hereby **GRANTED**.

23. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.⁴⁵

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

⁴⁴ *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, as long as the rate is no higher than that permitted by the previously-filed form. *Id.*

⁴⁵ 47 C.F.R. § 0.321.

Mr. William F. Caton
March 8, 1996
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If you have any questions, 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
Nancy Stevenson
(via first class mail)
Booth American Company
David Nims
Eric E. Breisach

(via certified mail)
Donald H. Gillis,
Attorney for the Birmingham Area
Cablecasting Board
Derk W. Beckerleg,
Attorney for the Bloomfield Cable
Communications Board, City of
Bloomfield Hills, Township of
Bloomfield
City of Birmingham
Village of Bingham Farms
Village of Franklin
Village of Beverly Hills

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HOWARD & HOWARD
ATTORNEYS

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SUMMARY

Booth American Company ("Booth American") replies to the two Oppositions filed against Booth American's Petition for Special Relief ("Petition"). With the Petition, Booth American, a small cable company, seeks a waiver of the 15,000 subscriber limit for two systems sharing a common headend. The two systems would automatically qualify for small system rate regulation but for the common headend. Franchise requirements for the two systems require collocation and linkage of headends.

The two local franchise authority consortia regulating the systems each filed an Opposition. Their arguments are identical in substance. The Oppositions' principal argument is that Booth American should be subject to large MSO rate regulation because under Form 1230 rate regulation "the Board's ability to establish the propriety or impropriety of [rate increase] will be adversely affected." Here, the Oppositions disagree with the Commission, not Booth American. The Commission has already settled this issue in the *Small System Order* and *Insight Communications*.

The Petition shows that the two linked systems share several key small system characteristics. These include: lower subscriber density, higher programming costs, higher costs relating to the operational and administrative separation of the system, and significant and costly differences in PEG access, local origination programming and I-Net requirements. Contrary to the *Small System Order*, the Oppositions argue that the Commission should ignore these factors. Surprisingly, one Opposition states that the local franchise authorities find "particular disturbing" that the Petition mentions higher programming costs as a key cost pressure warranting regulatory relief. Again, the Oppositions disagree with the Commission's conclusions in the *Small System Order* and *Insight Communications*.

These and other arguments in the Oppositions attempt to rationalize a regulatory anachronism: The local franchise authorities seek to *increase* the administrative burdens and costs of rate regulation on a small cable company. Congress and the Commission have already decided that this is *not* in the public interest.

The 1996 Telecommunications Act could also influence the Commission's analysis of the Petition. Booth American and the two linked systems at issue qualify for "greater deregulation" under Section 301(C) of 1996 Act. Federal law now defines a small cable system as one serving 50,000 subscribers or less in one franchise area. Over six franchise areas, the two linked systems serve less than half the subscribers specified by Congress for a single franchise. This could weigh in favor of granting Form 1230 relief in this case.

The Oppositions present no credible arguments justifying denial of the Petition. Booth American request that the Commission deny the Oppositions and grant the Petition.