

Bloomfield System and Birmingham System together."¹

However, the Board denies that an FCC denial of the Petition would cause separate systems to be "lumped together." Moreover, the Board denies that the grant of the Petition would result in "immediate and lasting benefits" for the Board's communities. Accordingly, the Board cannot support the Petition and instead is compelled to oppose it.

II. DISCUSSION

A. FCC Position

At the outset it is noted that on more than one occasion the Commission has addressed the issue of whether small system classification should be based on the number of subscribers in a franchise area or on the number of subscribers served by a principal headend. On each such occasion, after careful and express consideration of this issue, the Commission has opted for the headend test.²

It is true that the Commission has invited petitions for special relief from systems which fail to meet the test but which are able to demonstrate that they "...share relevant characteris-

¹Exhibit 1. Correspondence dated December 5, 1995, from Booth Communications to Kathryn Hagaman, Birmingham Area Cablecasting Board.

²Small System Order at ¶35.

tics with qualifying systems and therefore should be entitled to the same regulatory treatment."³ But the examples furnished by the Commission do not appear at all applicable to Booth's position in the present case. In addition, the Petition concedes that "an analysis of regulated and premium revenues for the Birmingham and Bloomfield Systems does not readily reflect small system attributes."⁴

B. Franchise Mandates

Booth emphasizes in its Petition that the headend which services the subscribers in both the Board's Communities and the Bloomfield Communities was mandated by the Bloomfield franchises. Implicit in this emphasis (but perhaps deliberately not stated) is the suggestion that if the Bloomfield Communities had not required the shared headend, there would not have been a shared headend. But Booth agreed to that mandate and, indeed, may well have welcomed it, since, as the Petition concedes, "...the common headend facilities saved certain capital costs..."⁵

C. Operations and Administration

The Petition emphasizes that the separate franchises require

³Id. at ¶36.

⁴Booth Petition, Section IV.C.5., p. 16.

⁵Booth Petition, Section II.B.3., p. 5.

separate administration and operation.⁶ Certain areas where this contention may possibly be justified are set forth in the Petition. But important areas where the contention is suspect or simply incorrect have been omitted. It is the Board's view that administration, in terms of management and staff, including engineering staff, customer service representatives, clerical personnel, etc., is substantially identical for both the Board's Communities and the Bloomfield Communities. Essentially the same people, at all levels, operate and administer the franchises for both the Board's Communities and the Bloomfield Communities.

Buttressing the Board's view on this matter is the fact that Booth requested and obtained the approval of the Board's Communities to the transfer of its franchises with those communities to a wholly-owned Booth subsidiary, Booth Communications of SE Michigan, Inc. ("Booth Communications"). That transfer was consummated November 30, 1995. Concurrently, Booth requested and obtained similar approval from the Bloomfield Communities and effected the transfer of its franchises with those communities to Booth Communications on or about the same time as the transfer to Booth Communications of the franchises with the Board's Communities.

It is clearly legitimate to infer that if Booth's franchises with the Board's Communities and with the Bloomfield Communities dealt with disparate systems to the extent claimed by Booth in the Petition, the transfers would have been to separate wholly-owned

⁶Booth Petition, Section II, B.3., p. 5; Section IV.C.3.d., p. 14.

subsidiaries of Booth rather than to a single entity.

D. Higher License Fees

The Petition emphasizes,⁷ and re-emphasizes,⁸ the higher license fee costs incurred by small systems attributable to the lack of program discounts available to larger MSOs. Booth's great emphasis on this point is particularly disturbing to the Board for the reasons set forth below.

When the original franchises for both groups of communities were granted, Booth was affiliated with Heritage Communications, Inc. ("Heritage"), an affiliate of TCI. That affiliation ended in 1993 when Heritage sold its interest in the franchises to Booth. In connection with soliciting the approval to such transfer (as required by the franchise agreements with the Board's Communities), members of the Board, as well as members of certain of the legislative bodies of the Board's Communities, pointedly and specifically asked Booth representatives whether the transfer would deprive Booth of programming discounts available to it as a result of Booth's connection with a TCI affiliate, and whether any such loss would result in increased costs to Booth's cable subscribers. The responses by Booth representatives to these pointed questions were unequivocally assuring in two respects: (1) any increases in programming costs would not have a materially adverse impact on

⁷Booth Petition, Section IV, C.2.b., page 10.

⁸Booth Petition, Section IV, C.3.e., p. 15.

Booth and (2) any such increase would not significantly and adversely impact subscribers.

Booth "...estimates that the total cost increase has exceeded \$750,000 over three years (Booth's emphasis) and that Booth has had to "...absorb those increased costs."⁹ These representations, if substantiated by Booth, conflict with the assurances furnished by Booth at the time of its acquisition from the TCI affiliate of the latter's interest in the franchises. Moreover, Booth has raised subscriber charges from time to time since its acquisition of the interest of the TCI affiliate in the franchises and has used, in at least partial justification for such increases, increases in programming costs. The Board has received no information from Booth which would support the \$750,000 figure set forth in the Petition nor any information establishing that none of those costs, which Booth has attributed to its small company status regarding program licensing fees, have been passed on to subscribers.

In short, Booth's reliance on its inability to obtain the kind of programming discounts available to larger MSOs in support of its Petition appears entirely inappropriate in light of its voluntary acquisition of the interest of the TCI affiliate in the franchises and in light of the representations and assurances furnished to the Board and the Board's Communities regarding that matter.

⁹Booth Petition, Section IV, C.2.b., p. 11.

E. Higher Costs Generally

The Petition recites a number of areas in which Booth claims higher costs. Some of those have been addressed above in this Response to the Petition. But it should be noted generally, and even assuming that Booth's higher cost representations are correct, that, with one exception, all of such costs have either already been incurred or will continue to be incurred even if the Petition is granted. The single exception is the cost of the rate regulation process attributable to Booth's lack of status as a small system operator with respect to the Board's Communities and the Bloomfield Communities.

But nowhere in the Petition has Booth quantified to the Commission the reduction in such regulatory cost which would result if the Petition were granted; nor has Booth quantified that reduction to the Board, despite persistent requests by the Board to Booth to do so. The Board therefore deems itself justified in surmising that any such regulatory cost reduction, by itself, will have no material beneficial impact on Booth's financial position, and that the chief thrust motivating the Petition is the rate increases which Booth believes may more readily flow (and which would have a materially beneficial impact on Booth's financial position) if the Board found itself less able to establish the impropriety of any such rate increases.

F. The Public Interest

Booth states that granting the Petition will serve the public interest.¹⁰ But to the extent the public interest should take account of the interests of local franchising authorities and their subscribers, the Board denies that the granting of the Petition in this case does serve the public interest.

In response to the Board's request that Booth delineate the "immediate and lasting benefits" which would accrue to its member communities, Booth could only recite some rather nightmarish scenarios of rate contests in unrelated franchises. In other words, the "immediate and lasting benefits" to the Board's Communities apparently consist entirely of a reduction in the alleged regulatory burden on the Board as the body charged with dealing with rate regulation matters on behalf of its member communities.

The Commission itself has cited, as one of the benefits of its "Small System Order," the reduction of administrative burdens on local franchising authorities.¹¹

But neither the Board nor its member communities desire to be relieved of the regulatory burdens involved in the rate regulation process. The Board has been given the resources to meet that

¹⁰Booth Petition, Section IV.D., p. 19

¹¹E.g. Small System Order at ¶3 and ¶26.

burden, and both the Board and its member communities desire that the Board continue to do so. Further, their position on this matter is neither arbitrary nor the result of any vendetta against Booth nor the result of any other unworthy motive.

The fact is that among the Board's Communities, as in many other communities nationally, rate increases have been the most fundamental and the most persistent and pervasive irritant regarding cable service. The Board believes the same is true of subscribers in the Bloomfield Communities. This has remained true despite the fact that the subscribers in all six Metropolitan Detroit "suburban"¹² communities are among the most affluent in the nation.

The Board is aware of the fact that if the Commission grants the Petition, the Board will not be deprived of a role in the regulatory process to the extent still permitted under current law. But if the Petition is granted, thus allowing Booth an abbreviated rate regulatory process and the benefit of a shift in the allocation of the burden of proof in that process, the Board's ability to establish the propriety or impropriety of such increases will be adversely affected, a result which the Board deems opposed to the interests of its member communities and their subscriber constituents.

¹²Booth's Petition refers (Section II.B., p.2.) to "six suburban and rural communities in southeastern Michigan." (Emphasis supplied.) If "rural" is used in anything remotely resembling its dictionary definition, the word, as applied to the six communities involved, would be a misnomer of epic dimension.

III. CONCLUSION

The Board disagrees with or denies a number of factors alleged by Booth in support of the Petition. As to certain other factors alleged by Booth in support of the Petition, the Board lacks relevant information and therefore cannot concede such matters.

Of greater importance is the Board's denial that granting the Petition will be in the interests of its member communities and the subscribers in such communities. The Board, as the entity duly mandated by its member communities to regulate rates, has no wish to be relieved of any rate regulation administrative burden and desires to continue to use the resources made available to it for such purpose to continue to meet such burdens to the maximum extent permitted by law. Therefore, the Board respectfully requests that Booth's Petition be denied.

Birmingham Area Cablecasting Board

By



D. H. Gillis, Attorney for the Board



December 5, 1995

Kathryn Hagaman
Birmingham Area Cablecasting Board
P.O.Box 165
Birmingham, MI 48012

Re: Petition for Special Relief

Dear Kathy,

You will receive shortly your copy of a Petition for Special Relief that we recently filed with the Federal Communications Commission. The Petition addresses some technical requirements of new federal rules governing small cable companies like Booth Communications. We take this opportunity to explain the petition, why we filed it, and what it can mean to your communities.

The Petition seeks a waiver of the 15,000 subscriber limit contained in the FCC's definition of a "small cable system." When the FCC established this limit last May, it also invited requests to waive the limit for systems that meet small system requirements except for a shared headend. Because the Birmingham System and Bloomfield System share a common headend, it was necessary to file the Petition to have the systems considered separately as small systems.

As you know, the Birmingham System and Bloomfield System are operationally and administratively entirely separate systems. The FCC's rules on how to treat such systems that share a common headend are not clear. Consequently, in the Petition, we ask the FCC to consider the systems as two distinct systems. The history, operations and administration of the systems support this. We are confident the FCC will agree. If the FCC disagrees, Booth American may be forced to treat the two systems as one in many respects. Worse yet, the combined systems will be subject to more substantial and costly regulations.

Obtaining "small system" status for the two systems offers immediate and lasting benefits for your communities and for Booth Communications. The fundamental point of the small system rules released last May was to relieve small cable companies and municipalities from the burdens and costs of complex cost-of-service rate regulations.

If you have any questions concerning the Petition, please contact us. Also, a letter in support of the Petition would help significantly. We believe that you share our interest in encouraging the FCC not to lump the Bloomfield System and Birmingham System together. We would be pleased to discuss this with you as well. If you have any questions please feel free to contact me at 540 6633 or Laura Petterle at (313) 202 3370.

Sincerely yours,

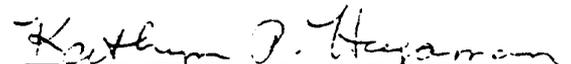


Hugh A. Jencks
General Manager

CERTIFICATION

I am Kathryn Hagaman, Administrator for the Birmingham Area Cablecasting Board. I certify that I have read the attached Response of the Board to Booth American Company's Petition for Special Relief, that I am generally familiar with the matters contained and understand the purpose of such Response, and that the factual statements set forth are correct to the best of my knowledge, information and belief.

Dated: February 28, 1996


Kathryn Hagaman

CERTIFICATE OF SERVICE

I, Mary E. Julien, Secretary to D. H. Gillis, hereby declare that the Birmingham Area Cablecasting Board's Response to Booth American Company Petition for Special Relief was sent on the 28th day of February, 1996, by facsimile and first class mail, postage prepaid, to the following:

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The undersigned further declares that on the 28th day of February, 1996, the above-referred to document was sent via 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 February 28, 1996 letter directed to Mr. Caton. The ten envelopes were addressed as follows:

Ms. Meredith Jones
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c/o Mr. John Nakahata
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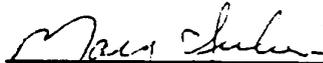
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Federal Communications Commission
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Washington DC 20554

I further declare that copies of the above-referred to document were also sent via first class mail, postage prepaid, to:

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Dated: February 28, 1996



Mary E. Julien

Drafted by:

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February 28, 1996

VIA OVERNIGHT FEDERAL EXPRESS

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
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CSX-4668-D
No Good
CABLE SERVICES BUREAU
96. 11. 96
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RE: Booth American Company's Petition for Special Relief and
Petition for Waiver of Filing Fee (Petitions)

Village of Beverly Hills MI 0662
City of Birmingham MI 0664
Village of Bingham Farms MI 0663
City of Bloomfield Hills MI 0928
Township of Bloomfield MI 0929
Village of Franklin MI 0665

Our File No. 8080 C54 and 5284 BLT

Dear Mr. Caton:

Please be advised that this office represents the Bloomfield Cable Communications Board, City of Bloomfield Hills and Bloomfield Township with respect to the above-referenced matter. In that context, please consider this letter as Bloomfield Cable Communication Board's, City of Bloomfield Hills' and Bloomfield Township's formal objection and response in opposition to Booth American Company's Petition for Special Relief and Petition for Waiver of Filing Fees which were filed with the FCC.

Booth American Company is the entity which filed the Petition for Special Relief with the FCC and it recently has transferred its interest in the cable franchises in Bloomfield Township and Bloomfield Hills to Booth Communications of Southeast Michigan, Inc., said Booth entities hereinafter collectively referred to as "Booth." Booth is the cable operator for the City of Bloomfield

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Hills and Bloomfield Township, which municipalities are represented by the Bloomfield Cable Communications Board, and the City of Birmingham and the Villages of Franklin, Bingham Farms and Beverly Hills, which are represented by the Birmingham Area Cable Casting Board. While the communities served by the Bloomfield Cable Communications Board and the communities served by the Birmingham Area Cable Casting Board, each number less than 15,000 subscribers, both cable communities are served by a single head end, and when considered together, the groups exceed 15,000 subscribers.

The Bloomfield Cable Communications Board, City of Bloomfield Hills and Bloomfield Township object to Booth's Petition for Special Relief on several grounds, including the fact that the FCC has already addressed the issue of whether a small system classification should be based on the number of subscribers in a franchise area or the number of subscribers served by a principal head end, and the Commission has adopted the head end test. In the instant case, Booth's situation does not fit into those examples for which the Commission would generally consider granting a Petition for Special Relief. Furthermore, it must be emphasized that the shared head end was agreed to by Booth and saved Booth certain capital costs.

Booth has represented both in its Petition, as well as in meetings with representatives of the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township, that granting its Petition would result in "immediate and lasting benefits" for the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township. The Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township deny that granting the Petition would result in immediate and lasting benefits to them, as it appears that one of the major impacts of granting the Petition would be a reduction in the regulatory ability of the Bloomfield Cable Communications Board as the body charged with dealing with rate regulation matters on behalf of its member communities. Neither the Bloomfield Cable Communications Board or its member communities desire to be relieved of any of their regulatory abilities involved in the rate regulation process. Furthermore, if the FCC determines that Booth is a small system, it is our understanding that it will become more difficult to obtain detailed information and records from them due to an abbreviated reporting procedure, and also that the Bloomfield Cable Communications Board would have the burden of proof of showing that certain rate increases by Booth are excessive. Presently, Booth, as a large system, has the burden of proof of showing that its rate increases are

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reasonable. It does not constitute an immediate and lasting benefit to and is not in the public interest for the Bloomfield Cable Communications Board, Bloomfield Hills, Bloomfield Township and/or Booth's subscribers for the burden of proof as described above to be shifted from Booth to the Bloomfield Cable Communications Board, and is also not in the public interest to make it more difficult to obtain detailed information, including financial information, from Booth.

In addition, the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township disagree with several items contained in Booth's Petition. Booth indicates in its Petition that the separate franchises require separate administration and operation. However, in reality the administration, management and staff are virtually the same for both the Bloomfield Cable Communications communities and the Birmingham Area Cable Communities. In addition, Booth claims in its Petition that it has incurred higher license fee costs due to the lack of program discounts available to it as a larger system. In fact, at the time Booth voluntarily acquired the interest of Heritage Communications, Inc., an affiliate of TCI, in the subject franchises, it represented to the Cable Casting Boards and communities that any increases in programming costs would not have a substantial impact on Booth, and any increase would not significantly and adversely impact subscribers. Therefore, Booth's inability to obtain certain types of programming discounts is not a reasonable objection based on Booth's voluntary and knowing acquisition of the interest of Heritage Communications in said cable franchises. Finally, Booth repeatedly recites in its Petition that it is currently subject to higher costs due to its present status, but nowhere in the Petition and/or during any of Booth's meetings with the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township has Booth in detail quantified exactly what those regulatory costs are.

Therefore, based on the above the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township formally object to and are opposed to Booth's Petitions and would respectfully request that the FCC deny Booth's Petitions.

It should be noted that the Birmingham Area Cable Casting Board is also filing a response in opposition to Booth's Petitions, and the Bloomfield Cable Communications Board, Bloomfield Hills and Bloomfield Township would concur in the

February 28, 1996
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Birmingham Area Cable Casting Board's response in opposition and would also agree with the objections and arguments to Booth's Petition which are contained in said response.

Very truly yours,

Derk W. Beckerleg

DWB/kme

cc: Booth American Company
c/o Christopher Cinnamon, Esq. (certified and regular
U.S. mail)
David Nims, Esq. (certified and regular U.S. mail)
Fred Korzon, Township Supervisor
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	Village of Beverly Hills	MI 0662
)	City of Birmingham	MI 0664
Booth American Company)	Village of Bingham Farms	MI 0663
)	City of Bloomfield Hills	MI 0928
Waiver of Small System Size)	Township of Bloomfield	MI 0929
Limitation)	Village of Franklin	MI 0665

PETITION FOR SPECIAL RELIEF

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

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**Attorneys for Booth American
Company**

Dated: December 1, 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 small system classification for two systems sharing a common headend. Operationally and administratively, Booth American has always treated the two systems as distinct and separate systems. In many respects, franchise requirements mandate this separation. Considered separately, the two systems fall well within the 15,000 subscriber limit. Considered together, the systems share several of the characteristics of small systems identified in *Small System Order*, particularly higher costs directly attributable to Booth American's small company size and low subscriber density. To obtain the needed regulatory relief contained in *Small System Order*, Booth American seeks classification of the systems as small systems.

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. All Booth American systems qualify as small cable systems except one in California and the two linked systems at issue here. As of November 1995, Booth American served fewer 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 Birmingham System and the Bloomfield System, two systems serving six suburban and rural communities in southeastern Michigan. Relatively low subscriber density and significantly different franchise requirements combine to make the systems more costly to operate than Booth American's other small systems. But for the headend linkage, the systems would automatically qualify for small system treatment.¹

1. The Birmingham System

The Birmingham System serves the following four local franchise authorities ("LFAs"):

<u>Community</u>	<u>CUID</u>	<u>Subscribers²</u>
Village of Beverly Hills	MI 0662	2,867
City of Birmingham	MI 0664	6,625
Village of Bingham Farms	MI 0663	393
Village of Franklin	MI 0665	<u>775</u>
Total		10,660

The Birmingham System franchise requires Booth American to provide three public, educational and government access channels, two local origination programming channels, one leased access channel and extensive facilities, equipment, personnel and funds to support this programming.³

The franchise further requires an extensive 42 channel institutional network ("I-Net") and

¹*Small System Order* at ¶ 35; 47 C.F.R. § 79.901(c).

²As of November 1995.

³Exhibit 1. Cable Communications Franchise Agreement Between The City of Birmingham, Michigan, And Booth Communications of Birmingham, April 12, 1982 ("Birmingham System Franchise"), Section 23 Public Access, Section 24 Local Origination Programming, Section 25 Access and Local Origination Personnel, Section 26 Leased Access, Exhibit B Program Offerings, Exhibit E Access Equipment, Exhibit F Local Origination Equipment.

associated equipment.⁴ The Birmingham System consortium certified to regulate basic rates in December 1993. Other characteristics of the Birmingham system include: Subscriber density - 46 subscribers/mile; average monthly regulated revenue per channel per subscriber - \$0.43; average annual premium revenue per subscriber - \$73.29.

2. The Bloomfield System

The Bloomfield System serves two LFAs:

<u>Community</u>	<u>CUID</u>	<u>Subscribers⁵</u>
City of Bloomfield Hills	MI 0928	1,343
Bloomfield Township	MI 0929	<u>12,292</u>
Total		13,635

The franchise for the Bloomfield System mandates 13 PEG access channels and at least 3 leased access channels.⁶ The franchise further requires an extensive institutional network and associated equipment.⁷ The two Bloomfield communities collaborate on cable regulation and jointly certified to regulate basic rates in November 1993. Other characteristics of the

⁴Exhibit 2. Birmingham System Franchise, Section 22 Institutional Network. Exhibit D Facilities to be served on the Institutional Network.

⁵As of November 1995.

⁶Exhibit 3, Agreement, August 29, 1983 ("Bloomfield System Franchise"), Section 5.5 Cablecasting Facilities, Section 6 Services and Programming, Section 7 Support for Local Cable Usage.

⁷Exhibit 4, Bloomfield System Franchise, Exhibit B.

Bloomfield System include: Subscriber density - 28 subscribers/mile; average monthly regulated revenue per channel per subscriber - \$0.48; average annual premium revenue per subscriber - \$91.66.

3. Primary reason for shared headend - franchise compliance.

A brief history of the development of the two systems and a review of key franchise obligations show additional factors relevant to granting small system status to the Birmingham and Bloomfield systems.

The Birmingham consortium granted Booth American a franchise to construct and operate a cable system in April 1982. The Birmingham System Franchise required that the headend be located within the City of Birmingham.⁸ Booth American fully complied with this obligation.

The Bloomfield consortium granted Booth American a franchise to construct and operate a cable system in August 1983. The Bloomfield System Franchise generally obligated Booth American to interconnect with systems in the Detroit metropolitan area at the request of the Grantor.⁹ More importantly, the franchise specifically obligated Booth American to interconnect with the Birmingham System and mandated money set aside for that purpose as a condition of the franchise.¹⁰ Moreover, the franchise mandated that the Bloomfield headend shall be located at Booth American's facility in the City of Birmingham.¹¹

The following consequences resulted from the obligations imposed by the two LFA consortia: First, Booth American had to construct its headend for the Birmingham System

⁸Exhibit 5, Birmingham System Franchise, Section 21(a).

⁹Exhibit 6, Bloomfield System Franchise, Section 5.7 Interconnection.

¹⁰Exhibit 6, Bloomfield System Franchise, Section 5.7 Interconnection.

¹¹Exhibit 7, Bloomfield System Franchise, Section 5.3. Satellite Earth Stations.