Facilities for Grantee and Public Access Use	Quantity	Total Costs
Local Origination Studio	1	$102,529
Playback Center	1	22,204
Editing Center	1	22,490
Equipment Interface Pool:*		
- 19" color television set	100	
- Bretford carts	100	
- Modulators and demodulators	15	
- Stereo processors for WBFH	1	
- Character generators with remote keyboards	3	
TOTAL		$111,998
Mobile Production Van*		78,364
		$337,585

Facilities Exclusively for Public and Access Use	Quantity	Total Cost
Access Mini-Studio Facility	1	$ 44,997
Porta-Pak Equipment Packages	10	24,846
Suitcase Studio Equipment Package	1	26,499
Municipal Communications Command Centers	2	9,965
Library Equipment	Set	27,700
		$134,007

* Priority use: Grantor and Access users shall have first priority on all use of the listed equipment.

Grantee shall provide, at a minimum, Four Hundred Thousand Dollars ($400,000) in Year 7 and Six Hundred Fifty Thousand Dollars ($650,000) in Year 12 of this franchise to replace worn out and/or obsolete equipment.

The monies set forth in this section as facilities exclusively for public and access use have been allocated pursuant to the proposals set forth in Grantee's franchise application. Grantor reserves the right to reallocate all such monies [estimated cost of One Hundred Thirty Four Thousand Seven Dollars ($134,007)] in any manner or among any facility, user or service as it, in its sole determination, chooses. Grantor agrees to notify Grantee, within ninety (90) days of execution of this Agreement, of the manner in which it wishes to reallocate said monies. Grantor may request a reasonable extension of the time in which it must notify Grantee of such reallocation, which extension shall not be unreasonably withheld. Grantor acknowledges that Grantee shall retain title to all such equipment.

5.6 Cablecasting Studio Location. Grantor shall have the option to require Grantee to negotiate the location of Grantee's cablecasting studio facilities at a suitable site which may be publicly owned, at a purchase or lease cost competitive with commercial rates.

5.7 Interconnection. Upon Grantor request, Grantee shall negotiate in good faith to interconnect the cable television system with neighboring cable systems in the future in accordance with Article IV, Section 17 of Ordinance 184. Within six (6) months of a Grantor request, Grantee shall report

to Grantor the results of the negotiations. Notwithstanding the above, Grantee is committed to, and shall, interconnect the cable system with all cable systems operated by Grantee or its affiliates in the Detroit metropolitan area. Grantee shall notify Grantor within ninety (90) days of execution of this Agreement of its progress with respect to providing such interconnection. In addition, Grantee has budgeted Eighty-Eight Thousand Dollars ($88,000) for the implementation of regional interconnection. These funds shall be budgeted as follows:

Year of Franchise	System Interconnected	Budget
1	Birmingham	$13,000
2	Pontiac	25,000
3	Eastern Oakland Consortium and West Bloomfield	50,000
		$88,000

Notwithstanding the reference to budgeting certain sums for implementation, Grantee is obligated to interconnect in accordance with Ordinance 184 subject only to obtaining permission from the neighboring communities. The above interconnections shall permit two-way video, voice and data communications between governmental and educational institutions in Bloomfield Hills and at least the following institutions:

Oakland County Intermediate School
Administration Building - Pontiac
Oakland County Government Center - Pontiac
Oakland University - Rochester

5.8 Emergency Alert Capability. Grantee shall provide the system capability to transmit an emergency alert signal to all participating subscribers. Grantee shall also provide an

emergency audio override capability to permit Grantor to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency.

5.9 Standby Power. Grantee shall provide standby power generating capacity at the cable communications system control center and at all hubs. Grantee shall maintain standby power system supplies throughout the distribution networks.

5.10 Parental Control Lock. Grantee shall provide subscribers, upon request, at no charge, with a parental control locking device or digital code that permits inhibiting the viewing of premium channels.

5.11 Status Monitoring. Grantee shall provide an automatic status monitoring system as an integral part of both the residential and the institutional cable networks.

5.12 Technical Standards. The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), shall apply. However, because of the recent development of interactive and other innovative services, modifications of FCC standards, as presented in the specifications below, are considered as necessary to meet system service objectives.

Applicable Technical Standards

(1) Forward Signals -- Class I Channels. The system shall be capable of carrying sixty (60) Class I Television Channels and the full FM broadcast band. The capacity of the system will be increased to one hundred twenty (120)

Class I Channels in accordance with the procedures set forth in Article VI, Section 3 of Ordinance 184. The combined forward trunk and distribution system shall deliver signals to each subscriber's TV receiver that will meet or exceed the following specifications at the mean system temperature ± 70°F. This shall include the effects of drop cables, interior splits and any terminal equipment such as descramblers and set-top converters.

A.	Carrier to Noise	46 dB minimum
B.	Cross Modulation	-54 dB minimum
C.	Gain vs. Frequency	
	- Single channel	± 2 dB
	- System	N/10+1 (N=Cascade)
D.	Second Order Distribution Product	-60 dB
E.	Hum Modulation	40 dB minimum supression*
F.	Carrier to Triple Beat	-53 dB minimum*
G.	System Leakage	Kept below FCC requirements
H.	Subscriber Isolation	28 dB
I.	Envelope Delay	200 nsec.
J.	Design Temperature	-40° to 140°F
K.	System Level Stability	±5 dB
L.	ASG/AGC	Every amplifier
M.	Trunk Cascade	14 amplifiers maximum
N.	Maximum Number of Line Extenders	2
O.	Forward Amplifier Spacing	19 dB maximum
P.	Minimum Signal (drop)	+2 dB mV
Q.	Aural Carrier Level	-15-17 dB below video
R.	Visual Carrier Frequency	±25 KHz
S.	Aural Carrier Frequency	± 1 KHz
T.	Satellite Carrier-Carrier to Noise	51 dB minimum
U.	Off-air Carrier to Noise	52 dB minimum
V.	Ghost to Echo	Per Mertz Curve

(2) Reverse Signals -- The reverse channels shall have the capability of providing return signals from any subscriber tap to the extreme end of any area without noticeable signal degradation or interference.

* Includes 6 dB HRC improvement.

A. The system capability shall include transmission of color video, black and white video, and both low and high speed data, whether analog or digital.

B. If necessary to prevent the build-up of noise and distortion products, the area shall be divided into sections, and sub-trunks run to a central hub within the area. Equivalent alternatives such as addressable taps or switches may be utilized.

C. No more than + 54 dBmV output level shall be required out of any customer interface device to meet the system specifications.

D. Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward transmission.

E. For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend, processed and retransmitted down a forward channel, shall meet the Technical Standards of the FCC regulations, Part 76, Subpart K.

CABLE COMMUNICATIONS FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BIRMINGHAM, MICHIGAN

AND

BOOTH COMMUNICATIONS OF BIRMINGHAM

building or premises. The permit fee shall be remitted by the Franchisee to the City in accordance with Chapter 60 of the City Code but the fee may be imposed upon and collected from the owner of the building or premises.

Section 21. CUSTOMER SERVICE STANDARDS

(a) The Franchisee shall maintain all operational facilities including its head end, tower, studios, earth station and office in the City. Its office shall be open during all usual business hours and shall be staffed so as to receive payments on the accounts of its subscribers.

(b) The Franchisee shall comply with all customer service standards set forth in Title II, Chapter 20 of the Birmingham City Code and in addition shall provide the following services to monitor and correct system malfunctions:

(1) All malfunctions affecting at least one City block in the system will be listed on the local origination channel.

(2) The system will be equipped with area signal monitoring devices to monitor the signal status on each major system extremity, automatically and continuously, transmitting equipment malfunctioning conditions to the Franchisee, which will dispatch service trucks to the area of difficulty before receipt of the first service call.

(c) The Franchisee shall provide the City with quarterly reports summarizing its subscriber service record.

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 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 1, 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.

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, which are 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. At this invitation, Booth American files the accompanying petition.

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 completely 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. Booth American, like most small cable companies, has struggled since 1992 with

rate regulation that disproportionately burdened small cable. An additional $910 to attempt to obtain long-awaited relief only increases the cost to Booth American of the regulatory burdens that the Commission has sought to alleviate.

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.

As required by 47 C.F.R. § 1.1116(e), Booth American attaches 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

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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
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Waiver of Small System Size	)	Township of Bloomfield	MI 0929
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Lansing, Michigan 48933-1817

Attorneys for Booth American Company

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

In the Matter of	)	
	)	
Booth American Company	)	CSR 4668-D
	)	
Petition for Special Relief	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 1997 **Released: September 18, 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 system in southeastern Michigan 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] The Birmingham Area Cablecasting Board ("Birmingham") filed an opposition to the petition on behalf of the City of Birmingham, the Village of Beverly Hills, the Village of Bingham Farms, and the Village of Franklin. The Bloomfield Cable Communications Board ("Bloomfield") filed an opposition to the petition on behalf of the City of Bloomfield Hills and the Bloomfield Township.

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

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[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).

system rate relief to certain systems that exceed the 1,000-subscriber standard.[4] These systems were 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

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

[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.

definition "are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources."[12]

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]

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[12] *Id.* at 7409.

[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.*

II. ARGUMENTS OF THE PARTIES

7. Booth's system in southeastern Michigan serves six franchise areas.[21] Birmingham is the franchising authority for four of the franchise areas and Bloomfield is the franchising authority for the other two franchise areas.[22] Booth claims that it has always treated the system as two separate and distinct systems -- the Birmingham system and the Bloomfield system.[23] Booth contends that the two systems share a common headend because Bloomfield required Booth to construct the Bloomfield headend at the site of the Birmingham headend.[24] Booth argues that, despite the mandated headend linkage, the two systems are operationally and administratively distinct.[25] According to Booth's Petition, the Birmingham system serves 10,660 subscribers and the Bloomfield system serves 13,635 subscribers.[26] Given that Booth operates cable systems serving a total of less than 142,000 subscribers, Booth argues that each of these systems automatically qualifies for small system relief when considered individually.[27] Booth acknowledges that the Commission defines a small system by the number of subscribers served by its principal headend rather than by the number of subscribers in a franchise area.[28] It contends, however, that it is not seeking to define its systems by franchise area because both the Birmingham and Bloomfield systems serve multiple franchise areas.[29]

8. Booth claims that, even when considered together, the two systems possess key small system characteristics sufficient to warrant relief.[30] For instance, Booth asserts that the average subscriber density of the Birmingham system is 46 subscribers per mile and the average subscriber density of the Bloomfield system is 28 subscribers per mile.[31] When the two systems are considered together, the average subscriber density is 31 subscribers per mile.[32] In addition, Booth explains that it lost its programming discounts when it acquired the interest of its partner, an affiliate of Tele-Communications,

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21 Booth Petition at 2.

22 *Id.* at 2-3.

23 *Id.* at 1.

24 *Id.* at 4-5.

25 *Id.* at 5, 8.

26 *Id.* at 2-3, 8.

27 *Id.* at 1-2.

28 *Id.* at 15-16.

29 *Id.*

30 *Id.* at 5.

31 *Id.* at 9.

32 *Id.*

Inc. ("TCI").[33] It claims that it has been forced to absorb approximately $750,000 in programming cost increases.[34] Further, Booth argues that the systems are operationally and administratively distinct because they had different construction schedules, they are required to submit system-specific annual reports, and they are subject to different franchise requirements regarding public, educational and governmental access, local origination programming, and institutional networks.[35]

9. Booth states that the Birmingham system has an average monthly regulated revenue per channel per subscriber of $0.43 and an average annual premium revenue per subscriber of $73.29.[36] It further states that the Bloomfield system has an average monthly regulated revenue per channel per subscriber of $0.48 and an average annual premium revenue per subscriber of $91.66.[37] Booth argues that, although the levels of its premium revenues are more like those of larger systems, its higher revenues do not equate to higher profits and have, in fact, been steadily declining since 1990.[38] Booth claims that failure to grant small system relief will create a significant economic disincentive and will hinder its ability to compete.[39] In addition, Booth argues that relief will benefit the local franchising authorities by reducing their administrative burdens.[40]

10. In opposition to Booth's petition, Birmingham and Bloomfield both note that the Commission decided that small system relief should be based on the number of subscribers served by a system's principal headend, not on the number of subscribers in a franchise area.[41] They claim that Booth agreed to the shared headend, which Booth concedes saved certain capital costs.[42] In response to Booth's argument that the two systems are operationally and administratively distinct, the franchising authorities contend that all six communities are served by virtually the same personnel, including management, engineering staff, customer service representatives, and clerical staff.[43] They are particularly disturbed by Booth's reliance on the fact that it lost its programming discounts once the system was no longer

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[33] *Id.* at 9-11, 15. The system was initially operated by a partnership between Booth and Heritage Communications, a TCI affiliate. Heritage Communications sold its interest in the system to Booth in January 1993. *Id.* at 10.

[34] *Id.* at 10-11.

[35] *Id.* at 11-15.

[36] *Id.* at 3, 16.

[37] *Id.* at 3-4, 16.

[38] *Id.* at 16-17.

[39] *Id.* at 17-18.

[40] *Id.* at 19.

[41] Birmingham Opposition at 2; Bloomfield Opposition at 2.

[42] Birmingham Opposition at 2; Bloomfield Opposition at 2. *See also* Booth Petition at 5.

[43] Birmingham Opposition at 3-4; Bloomfield Opposition at 3.

associated with a TCI affiliate.[44] The franchising authorities assert that when Booth sought their approval to acquire its partner's interest in the system, it assured them that any resulting increases in programming costs would not have a materially adverse impact on either Booth or its subscribers.[45] They also complain that Booth has not quantified the higher costs it claims to have.[46] Finally, they contend that Booth's argument that small system relief will reduce the administrative burdens on the franchising authorities is misplaced because neither Birmingham nor Bloomfield wishes to have its regulatory authority limited and subscribers will not benefit from the resulting rate increases.[47]

11. In its reply to the franchising authorities' oppositions, Booth first points out that the Telecommunications Act of 1996 contains a broader definition of a small cable company which, although not controlling, reflects greater regulatory flexibility on small system issues.[48] Booth reiterates its argument that the Commission's principal headend standard should not apply in this case given that the headend linkage was mandated by franchise agreement.[49] Booth also continues to maintain that low subscriber density, higher programming costs, higher costs relating to the operational and administrative separation of the systems, and costly franchise requirements demonstrate that the Birmingham and Bloomfield systems share key small system characteristics.[50] Booth argues, therefore, that the Commission should discount the fact that its average revenues for regulated and premium services differ from small system averages.[51]

12. In response to the franchising authorities' argument that Booth uses the same staff for the entire system, Booth asserts that the costs are still substantial because the staff must meet with two franchising authorities and must comply with different franchise requirements.[52] In addition, Booth argues that its lack of programming discounts is a relevant factor in determining small system relief regardless of its assurances to the franchising authorities that the acquisition of its partner's interest would not create a material adverse impact.[53] Booth's response to the franchising authorities' argument that small system

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[44] Birmingham Opposition at 5-6; Bloomfield Opposition at 3.

[45] Birmingham Opposition at 5-6; Bloomfield Opposition at 3.

[46] Birmingham Opposition at 7; Bloomfield Opposition at 3.

[47] Birmingham Opposition at 8-9; Bloomfield Opposition at 2-3.

[48] Booth Reply at 3.

[49] *Id.* at 4-5.

[50] *Id.* at 5-6.

[51] *Id.* at 6-7.

[52] *Id.* at 7-8.

[53] *Id.* at 8-9. Booth also argues that it has other higher costs but that it is not necessary to respond to the franchising authorities' complaint that Booth has not quantified these higher costs because the Commission has already determined that the costs of large system rate regulation are overly burdensome for small cable companies. *Id.* at 9-10.

relief will curtail their regulatory authority and lead to higher rates is that the Commission has recognized that small system relief may result in rate increases.[54]

13. Finally, Birmingham and Bloomfield jointly filed a letter disputing Booth's claim that the shared headend was mandated by franchise agreement.[55] They contend that Booth specifically proposed using the same headend to serve both Birmingham and Bloomfield.[56] They argue that the franchising authorities merely agreed to Booth's proposal.[57]

III. DISCUSSION

14. 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.[58] Because Booth has approximately 142,000 subscribers, the system at issue here is affiliated with a small cable company with a total subscribership of less than 400,000. However, the system serves 24,295 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.

15. We first address Booth's argument that the system is actually two different systems that both automatically qualify for small system relief because, if viewed separately, each serves fewer than 15,000 subscribers. We will not grant relief on this basis because the definition of a small system is based on the number of subscribers served by the system's principal headend.[59] In the *Small System Order*, the Commission explicitly rejected a definition based on the number of subscribers in a franchise area.[60] The Commission stated that "determining small system size based on a system's principal headend best harmonizes our small system rate rules with most of our existing regulations on cable system size. . . . To use a franchise area definition would result in some segments of a single integrated cable operation being subject to a different regulatory structure than other segments of the same operation."[61] Although Booth is not measuring its subscribership according to each of the six franchise areas served by the system, it is basing its calculations on the number of subscribers represented by each of the two franchising authorities.[62] Similarly, Booth emphasizes that the system comprises two operationally and

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[54] *Id.* at 10-11.

[55] Birmingham and Bloomfield Letter at 1-2.

[56] *Id.*

[57] *Id.*

[58] *Small System Order*, 10 FCC Rcd at 7406.

[59] *Id.* at 7411-12.

[60] *Id.*

[61] *Id.*

[62] Although the system serves six communities, the four Birmingham communities are jointly regulated by one cable board and the two Bloomfield communities are jointly regulated by one cable board.

administratively distinct systems because it must comply with different franchise requirements. This argument is not persuasive because many cable systems serve multiple franchise areas, each with specific obligations and commitments. We also find Birmingham and Bloomfield's position that the system is administered as one system to be credible and not refuted by Booth. Again, Booth disregards the Commission's principal headend test, which requires an evaluation of the system as a whole.

16. Although we reject Booth's suggestion that the system should be viewed as two separate systems that automatically qualify as small systems, Booth's position must be considered when evaluating whether the system, as a whole, should be granted relief. 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.[63] Therefore, regardless of whether the shared headend was proposed by Booth or by the franchising authorities, we will consider the construction of a combined facility to be a beneficial cost-saving action that weighs in favor of Booth's request for small system relief.

17. We note that the average subscriber density for Booth's system is 31 subscribers per mile. We also recognize that Booth no longer receives programming discounts. However, we do not find that these factors alone are sufficient to overcome the countervailing factors that weigh against small system relief in this case. First, the system's subscribership of 24,295 exceeds the Commission's 15,000 ceiling by 62%. Although in *Inter Mountain* we granted relief to a system with 22,763 subscribers, that decision is distinguishable because other characteristics of the system in that case were particularly compelling for granting a waiver.[64] The *Inter Mountain* system was a combination of extremely small systems that served, on average, fewer than 600 subscribers each. It had a subscriber density of only 21 subscribers per mile, as compared to the small system average of 35.3 subscribers per mile.[65] Its annual premium revenues of $8.03 per subscriber were far below the small system average of $41.00 per subscriber.[66] As with the Booth system, programming discounts were not available to the *Inter Mountain* system. The Commission also found it noteworthy that the petition in *Inter Mountain* was unopposed. The Commission decided that the combination of all of these factors outweighed the fact that the subscribership of the *Inter Mountain* system substantially exceeded the 15,000 limit.

18. Similarly, *Alexcom, L.P.* ("*Alexcom*") is also distinguishable, despite the fact that one of the systems granted relief in that decision served 23,990 subscribers.[67] The Commission found that small system relief was appropriate in light of a number of balancing factors that sufficiently compensated for the large subscribership. For example, Alexcom owned only two cable systems serving a total of 42,539 subscribers, and its management team for both systems consisted of only three people.[68] In contrast, Booth

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[63] 11 FCC Rcd 7081, 7086 (Cable Serv. Bur. 1996).

[64] *See id.* at 7086-87.

[65] *Small System Order*, 10 FCC Rcd at 7408.

[66] *Id.*

[67] DA 97-1836 (released August 27, 1997).

[68] *Id.* at paras. 12, 14.

serves a total of approximately 142,000 subscribers in 47 communities in six states.[69] In addition, whereas the regulated and premium revenues for Alexcom's system fell in between those of small and larger systems,[70] the revenue figures for Booth are akin to those of larger systems, as described below. Lastly, we found it significant in *Alexcom* that the petition was unopposed.[71]

19. Unlike in *Inter Mountain* and *Alexcom*, the relevant characteristics of the Booth system do not warrant an exception for a system where the subscribership exceeds the 15,000 ceiling by such a substantial amount. As mentioned above, Booth states that the monthly regulated revenues per subscriber per channel are $0.43 for the Birmingham system and $0.48 for the Bloomfield system. These figures are almost identical to the $0.44 figure that the Commission determined to be the average for systems with more than 15,000 subscribers (and far less than the $0.86 average for small systems).[72] Likewise, the average annual premium revenues per subscriber for the Booth system are much closer to those of larger systems. Booth provides figures of $73.29 for the Birmingham system and $91.66 for the Bloomfield system, and the Commission determined that the average is $73.13 for larger systems and $41.00 for small systems.[73] Therefore, with respect to both of these factors, the Booth system more closely resembles a larger system than a small system. Furthermore, in contrast with the unopposed petitions in *Inter Mountain* and *Alexcom*, both Birmingham and Bloomfield oppose Booth's petition and argue that small system relief will not benefit either the franchising authorities or the subscribers. Taking all of these factors into consideration, we do not believe that small system relief is warranted in this case. We therefore deny Booth's Petition.

IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Booth American Company with respect to its system serving the Birmingham and Bloomfield communities in Michigan is hereby **DENIED**.

21. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.[74]

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

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[69] Booth Petition at 1.

[70] *Alexcom* at para. 14.

[71] *Id.* at para. 15.

[72] *Small System Order*, 10 FCC Rcd at 7408.

[73] *Id.*

[74] 47 C.F.R. § 0.321.

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.