

FEDERAL COMMUNICATIONS COMMISSION DOCKET FILE COPY ORIGINAL
Washington, D. C. 20554
DEC 8 1998

OFFICE OF
MANAGING DIRECTOR

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

86-285

Re: Multi-Cablevision Co. of
Livingston/Washtenaw
Fee Control # 9709248205418001

Dear Messrs. Breisach and Cinnamon and Ms. Crooks:

This will respond to your request for waiver and refund of the filing fee submitted on behalf of Multi-Cablevision Co. of Livingston/Washtenaw ("Multi-Cablevision") in connection with its petition for special relief.

Our records reflect that Multi-Cablevision sought and was granted "small systems" status for the purpose of rate and related administrative relief under the Commission's *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 10 FCC Rcd 7393 (1995) ("*Small Systems Order*").

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

In the *Small Systems Order*, the Commission stated that petitions for special relief would be entertained for cable systems that exceed the subscriber cap, but nevertheless share the same relevant characteristics and thus would benefit from the same rate and administrative relief. 10 FCC Rcd at 7412-13. The Cable Bureau found that Multi-Cablevision served 15,183 subscribers; that Multi-Cablevision exceeded the subscriber cap by "only a small amount" and shared the relevant characteristics of small companies; and thus that Multi-Cablevision would be afforded the same regulatory treatment. See *Memorandum Opinion and Order*, DA 98-1282 (June 30, 1998).

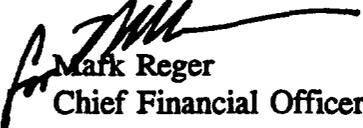
Messrs. Breisach and Cinnamon and Ms. Crooks
Page 2

With respect to Multi-Cablevision's fee waiver request, the Commission did provide small cable systems and companies relief from section 9 regulatory fees, by establishing an assessment formula based upon the exact subscriber count, thereby relieving small cable systems and companies from "bearing a disproportionate burden of the aggregate cable service regulatory fee imposed upon the industry as a whole." *See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 9 FCC Rcd 5333, 5368 (1994); *see also Small Systems Order*, 10 FCC Rcd at 7398. The Commission, however, did not declare a policy or adopt new rules that would nullify Multi-Cablevision's petition for special relief. *See* 47 C.F.R. § 1.1113(a)(4). In absence of such a declaration or adoption of such rules, the Commission may only waive the section 8 filing fee requirement upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. § 158(d)(2); *see also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Reconciliation Act of 1985*, 2 FCC Rcd 947, 961 (1987); 47 C.F.R. § 1.1117(a). In its petition for waiver of the \$960.00 section 8 filing fee, Multi-Cablevision represents that the payment of costly filing fee represents a considerable expense for, and undermines the *Small Systems Order*, which was intended to afford regulatory relief to, small cable companies.

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

Multi-Cablevision's petition for waiver and refund of the filing fee requirement accordingly is denied without prejudice. If you have any questions concerning this matter, please contact the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

9709248205418001

MEMORANDUM

Date: July 13, 1998
From: John Norton, CSB
To: Thomas Holleran
Subject: Waiver Petition

RECEIVED

JUL 14 10 06 AM '98

ASSOC. MNG. DIR.
FINANCIAL OPERATIONS
(AND-FO)

Attached is the petition for waiver we discussed over the phone today, along with a copy of the order we released on June 30 on the related substantive petition.

The petitioner, Multi-Cablevision of Livingston/Washtenaw, seeks relief from payment of the filing fee on the ground that it is a small system under our regulations. We conclude in the attached order that Multi-Cablevision should be accorded small system status. In footnote 1 to the order, we state that the waiver request is being referred to OMD for resolution.

cc: Clair Blue

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

In the Matter of)	
)	
Multi-Cablevision Co. of)	CSR 5113-D
Livingston/Washtenaw)	
)	
Petition for Special Relief)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 1998

Released: June 30, 1998

By the Acting Chief, Cable Services Bureau:

I. INTRODUCTION

1. Here we address a petition for special relief ("Petition") in which Multi-Cablevision of Livingston/Washtenaw ("Multi-Cablevision") seeks a waiver of the Commission's rules to the extent necessary to permit Multi-Cablevision to establish regulated cable rates on behalf of its single system (CUID Nos. MI1723, MI0703, MI0702, MI0704, MI1004, MI1003, MI1572, MI1570, MI1157, and MI1569) 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

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 compliance for cable systems with 1,000 or fewer subscribers.³ 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

¹ FCC 95-196, 10 FCC Rcd 7393 (1995). Multi-Cablevision 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 Multi-Cablevision submitted a Petition for Special Relief and a Petition for Waiver of the Filing Fee on September 23, 1997, and served the appropriate townships and villages served by its system. Public notice of Multi-Cablevision's petitions occurred on October 3, 1997. Oppositions or comments were due by October 23, 1997.

³ 47 U.S.C. § 543(i).

for these smaller systems.⁴ In the *Small System Order*, the Commission further extended small system rate relief to certain systems that exceed the 1,000-subscriber standard.⁵ 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.⁶

3. The *Small System Order* defines a small system as any system that serves 15,000 or fewer subscribers.⁷ 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.⁸ 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.⁹

4. Rate relief provided under the *Small System Order* and the Commission's rules is also available only to those small systems that are 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.¹⁰ 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

⁴ 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).

⁵ *Small System Order*, 10 FCC Rcd at 7406.

⁶ *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.*

⁷ *Small System Order*, 10 FCC Rcd at 7406.

⁸ *Id.* at 7408.

⁹ *Id.*

¹⁰ *Id.* A small system is deemed affiliated with a 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.

relaxed regulatory treatment.¹¹ 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.¹² 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."¹³

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.¹⁴ 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.¹⁵

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.¹⁶ The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems."¹⁷ 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.¹⁸ 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."¹⁹ 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 will jeopardize its status as a stand-alone small system, may file a

¹¹ *Id.* at 7409-11.

¹² *Id.* at 7411.

¹³ *Id.* at 7409.

¹⁴ *Id.* at 7418-28.

¹⁵ *Id.* at 7413. The effective date of the *Small System Order* was August 21, 1995.

¹⁶ *Id.* at 7412-13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

petition for special relief to ask the Commission to find that it is eligible for small system relief."²⁰ 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.²¹

II. THE PETITION

7. In its Petition, Multi-Cablevision seeks authority to establish regulated rates for its single cable system in accordance with the small system cost-of-service methodology. As noted, that form of rate regulation is only available to small systems owned by small cable companies. According to the Petition, Multi-Cablevision serves a total of 15,183 subscribers in ten small rural communities located in mid-Michigan.²² Multi-Cablevision also states that no larger cable company exercises *de jure* control over its system, and that it therefore qualifies as a small cable company.²³ Nevertheless, Multi-Cablevision is in need of special relief because its single system serves 15,183 subscribers, and thus exceeds the 15,000 subscriber limit for small systems.²⁴

8. In support of its Petition, Multi-Cablevision argues that it easily qualifies as a small operator, and that its single system fails to meet the numerical definition of a small system by only a small degree.²⁵ In addition, Multi-Cablevision argues that its cable system shares several relevant characteristics with qualifying small systems even though its system does not meet the numerical definition of a small system.²⁶ According to the Petition, Multi-Cablevision's system serves approximately 18 subscribers per mile, which is almost half the average number of 35.3 subscribers per mile served by systems with fewer than 15,000 subscribers, and far below the average number of 68.7 subscribers per mile served by systems with more than 15,000 subscribers.²⁷ Multi-Cablevision's system also has an average monthly regulated revenue per channel per subscriber of approximately \$0.52, as compared to the \$0.86 average monthly regulated revenue per channel per subscriber for systems serving fewer than 15,000 subscribers.²⁸ Finally, the Petition indicates that Multi-Cablevision's system has an average annual premium revenue per

²⁰ *Id.* at 7413.

²¹ *Id.*

²² Petition at 1-2.

²³ *Id.* at 5.

²⁴ *Id.* at 1-3.

²⁵ *Id.* at 4-5, 7-8.

²⁶ *Id.* at 5-8.

²⁷ *Id.* at 6-7.

²⁸ *Id.* at 5-6.

subscriber of \$50.76.²⁹ This figure is closer to the average of \$41.00 for systems with fewer than 15,000 subscribers than it is to the average of \$73.13 for systems with more than 15,000 subscribers.³⁰

9. In further support of the Petition, Multi-Cablevision argues that it continues to pay "small system" prices for its programming, and does not benefit from the programming discounts enjoyed by larger MSOs.³¹ Multi-Cablevision also argues that a grant of special relief for its Michigan system would be in the public interest.³² Specifically, the Petition states that the public interest would be served because the Commission has determined that providing relief for small systems in need of such relief serves the public interest, and Multi-Cablevision is one such system that would need small system relief to establish reasonable rates for its regulated tiers.³³ The Petition also notes that small LFAs that choose to regulate Multi-Cablevision's basic cable rates will also benefit from the reduced administrative burdens associated with the Form 1230 rate regulation process.³⁴

III. DISCUSSION

10. In the *Small System Order*, the Commission defined a small cable company as a cable company "serving 400,000 or fewer subscribers over all of its systems."³⁵ The Commission also defined a small cable system as a system that "serves 15,000 or fewer subscribers."³⁶ Multi-Cablevision serves a total of 15,183 subscribers on a single system that covers ten small rural communities. It also is not affiliated with any larger cable company exercising *de jure* control over its system. Multi-Cablevision therefore easily qualifies as a small cable company. However, its single system exceeds the small system definition by 183 subscribers and does not, therefore, qualify for small system rate relief absent a grant of special relief.

11. We believe that Multi-Cablevision is entitled to special relief. We previously have granted small system status to systems that exceed the 15,000 subscriber limit by only a small amount where it has been shown that the system in question shares relevant characteristics with systems serving fewer than 15,000 subscribers.³⁷ In *Insight*, we granted special relief so that the cable operator could use the small

²⁹ *Id.* at 6.

³⁰ *Small System Order*, 10 FCC Rcd at 7408. *See also* Petition at 6.

³¹ Petition at 7.

³² *Id.* at 9.

³³ *Id.*

³⁴ *Id.*

³⁵ *Small System Order*, 10 FCC Rcd at 7406.

³⁶ *Small System Order*, 10 FCC Rcd at 7406.

³⁷ *See In the Matter of Insight Communications Company, L.P.*, DA 95-2334, 11 FCC Rcd 1270 (1995) ("*Insight*"); *see also In the Matter of Rifkin & Associates d/b/a Columbia Cablevision*, DA 96-2026, 11 FCC Rcd (continued...)

system rate rules for its systems serving 16,348, 16,328 and 17,798 subscribers, respectively.³⁸ We found that "even the largest of the three systems exceed[ed] the 15,000 subscriber standard by only a relatively small amount."³⁹ With only 15,183 subscribers, Multi-Cablevision's system is smaller than any of the above mentioned *Insight* systems, and exceeds the 15,000 subscriber limit by only 183 subscribers.⁴⁰ In addition, as in *Insight*, we find no evidence that the system in question is "experiencing, or anticipates experiencing, a high rate of subscriber growth."⁴¹ Multi-Cablevision claims that its system faces stiff competition in its region due to the penetration of direct broadcast satellite services, and that significant near-term subscriber growth on its system is not anticipated.⁴² We did not receive any oppositions to the Petition that dispute this claim.

12. Multi-Cablevision's system also shares several relevant characteristics with systems serving fewer than 15,000 subscribers. In the *Small System Order*, the Commission observed that systems with fewer than 15,000 subscribers differed from systems with more than 15,000 subscribers with respect to three main characteristics, including average number of subscribers per mile, regulated revenues, and non-regulated (or premium) revenues.⁴³ With respect to subscriber density, Multi-Cablevision's system serves an average of only 18 subscribers per mile, which is almost half the small system average of 35.3 subscribers per mile and substantially less than the 68.7 subscriber per mile average for larger systems.⁴⁴ Low subscriber density was specifically relied on by the Commission to establish the 15,000 subscriber threshold for small systems.⁴⁵ The Commission noted in the *Small System Order* that commenters had observed that "a smaller system serving a large rural area faces increased construction costs due to the increased amount of cable that must be installed to reach the entire area and increased operating costs given the greater amount of facilities that must be maintained."⁴⁶

³⁷(...continued)

21124 (1996) ("*Rifkin*") and *In the Matter of Lake Cablevision, Inc. and Lake Cablevision (Winder), Inc.*, DA 97-1616 (released August 1, 1997) ("*Lake*").

³⁸ *Insight*, 11 FCC Rcd at 1274.

³⁹ *Id.*

⁴⁰ *See* Petition at 2.

⁴¹ *See Insight*, 11 FCC Rcd at 1274; *see also* Petition at 7.

⁴² Petition at 7.

⁴³ *Small System Order*, 10 FCC Rcd at 7408.

⁴⁴ Petition at 6-7. *See also Small System Order*, 10 FCC Rcd at 7408.

⁴⁵ *Small System Order*, 10 FCC Rcd at 7408.

⁴⁶ *Id.* at 7402.

13. The Commission also found that the average monthly regulated revenue per channel per subscriber is \$0.86 for systems with fewer than 15,000 subscribers.⁴⁷ Multi-Cablevision's average monthly regulated revenue per channel per subscriber of \$0.52 falls between the standards for small and larger systems.⁴⁸

14. Multi-Cablevision's system furthermore reports an average annual premium revenue per subscriber of only \$50.76, which is closer to the \$41 average for small systems than it is to the \$73.13 average for larger systems.⁴⁹ This disparity with respect to unregulated or premium revenues was another factor specifically recognized in the *Small System Order* as a justification for the small system definition.⁵⁰

15. In the *Small System Order*, the Commission stated that it would also consider "evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator."⁵¹ As we have previously noted, small systems with a low subscriber density are often faced with increased costs.⁵² Multi-Cablevision's petition indicates that the subscriber density for its system compares very favorably with the average subscriber density for small systems.⁵³ Multi-Cablevision also states that it "does not benefit from programming discounts enjoyed by larger MSOs."⁵⁴

16. We believe that Multi-Cablevision should be allowed to use the small system cost-of-service methodology to justify rates for its regulated channels. In the *Small System Order*, the Commission adjusted its definition of small systems in order to further Congress' goal of reducing the regulatory burdens and cost of compliance for smaller cable concerns.⁵⁵ The Commission noted that the goals expressed by Congress in the 1992 Cable Act Statement of Policy would also be furthered if it expanded the category of small systems entitled to reduced regulatory burdens.⁵⁶ The *Small System Order* allows for the filing of petitions for special relief so that systems that fail to meet the numerical small system definition may still show that they are similar to systems that meet the definition, and are therefore entitled to relief.⁵⁷ Multi-Cablevision's system exceeds the small system definition by only a very small

⁴⁷ *Id.* at 7408.

⁴⁸ Petition at 5-6.

⁴⁹ *Id.* at 6. See also *Small System Order*, 10 FCC Rcd at 7408.

⁵⁰ *Small System Order*, 10 FCC Rcd at 7408.

⁵¹ *Id.* at 7412.

⁵² *Id.* at 7402. See *supra* at para. 12.

⁵³ See *supra* at para. 12.

⁵⁴ Petition at 7.

⁵⁵ *Small System Order*, 10 FCC Rcd at 7395, 7406.

⁵⁶ *Id.* at 7406-07, citing 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992), § 2(b)(1)-(3).

⁵⁷ *Id.* at 7412.

amount. Multi-Cablevision has also shown that its system has characteristics that compare favorably with the various characteristics that the Commission used to determine the category of systems deserving of regulatory relief. For these reasons, we believe that granting the Petition will further the intent of Congress and will therefore serve the public interest.

IV. SCOPE OF THE WAIVER

17. As a result of our grant of the Petition, Multi-Cablevision's system shall be deemed a small system for purposes of rate regulation. Accordingly, to the extent Multi-Cablevision's basic service tier and/or cable programming service tier offerings are subject to rate regulation,⁵⁸ it may now set rates prospectively in accordance with the small system cost-of-service methodology.

18. 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 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.⁵⁹

19. The Commission adopted this grandfathering treatment for qualifying systems to enhance their value "in the eyes of operators and, more importantly, lenders and investors."⁶⁰ As the Commission

⁵⁸ 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 to 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 617,000 subscribers and is not affiliated with any entity whose gross annual revenues exceed \$250,000,000. 47 U.S.C. § 543(m); 47 CFR § 76.1403(b); *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.

⁵⁹ *Id.* 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.

⁶⁰ *Id.* at 7413.

stated: "The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses."⁶¹

20. 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.⁶²

21. Since Multi-Cablevision's system has already exceeded 15,000 subscribers, there is no obvious numerical limit to serve as a cutoff for its continued eligibility for small system treatment. Although Multi-Cablevision does not anticipate "significant near-term subscriber growth on its system,"⁶³ we believe 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 who are in need of it due to their relatively small size.

22. Therefore, as we have ordered in the context of a similar waiver situation, the Multi-Cablevision waiver will terminate two years from the date of this order, subject to the conditions set forth below.⁶⁴ During the waiver period, Multi-Cablevision may file only one Form 1230 for each franchise area it serves. This should give Multi-Cablevision 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, Multi-Cablevision may seek continued eligibility for small system treatment by filing a petition for special relief at the end of the waiver period.

23. Limiting the waiver period to two years means that any Form 1230 to be filed by Multi-Cablevision 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, Multi-Cablevision may reestablish its maximum permitted rates by filing Form 1230 at any time in the next two years.⁶⁵ Where the system is not currently subject to regulation but becomes subject to regulation within the next two years, Multi-Cablevision may then 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, Multi-Cablevision will not be eligible for small system treatment under this waiver.

⁶¹ *Id.*

⁶² *Id.* at 7427-28.

⁶³ Petition at 7.

⁶⁴ *See Insight*, 11 FCC Rcd at 1276; *Lake* at para. 24.

⁶⁵ The Petition indicates that, at the time of filing, none of the local franchising authorities in the communities served by Multi-Cablevision's system regulated basic rates. Petition at 2.

24. After filing its initial Form 1230 and giving the required notice, Multi-Cablevision 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.⁶⁶ 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 Multi-Cablevision 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

25. Accordingly, **IT IS ORDERED** that the Petition for Special Relief filed by Multi-Cablevision Co. of Livingston/Washtenaw **IS GRANTED**.

26. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.⁶⁷

FEDERAL COMMUNICATIONS COMMISSION

John E. Logan
Acting Chief, Cable Services Bureau

⁶⁶ *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.*

⁶⁷ 47 C.F.R. § 0.321.

Payment Transactions Detail Report

Date: ..20/98

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9709248205418001	HOWARD & HOWARD ATTORNEYS P C	FCC2045388	09/23/97
	215 WASHINGTON SQUARE NORTH		
	SUITE 500		
	LANSING MI 48933		

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$960.00	\$960.00	1	TQC	1		MULTI CABLEVISION CO OF LIVING	48189		\$960.00	1	PMT
Total	1								\$960.00		

From: John Norton
To: A7.A7(THOLLERA), A14.A14(JREMSON)
Date: 7/13/98 3:07pm
Subject: Filing Fee Exemption -Reply -Reply -Reply -Reply -Reply

Thanks, Jerry. I may not have been as precise as I could have been in distinguishing between the substantive petition and the waiver petition. I am sending today [or tomorrow if I run out of time] a copy of the waiver petition [which was filed with Mellon] along with our order on the substantive petition to Tom for action on the waiver petition by OMD. One point I didn't make in our talk is that the ground relied on for the waiver is that the petitioner is a "small system" and is thereby entitled to the waiver. CSB had to make the ruling on the substantive issue [that is, find the petitioner to be a small system] before OMD could rule on the waiver. John

>>> Jerome Remson 07/13/98 02:33pm >>>

John: I agree with you that there is no need to hold up action on the substantive application. The fee has been paid and the determination to refund or not refund the fee can be made at a later time. If the order has not gone out, a good way to handle this might be to drop a footnote citing §0.231(a) dismissing the fee waiver request and noting that it should be filed with OMD. I have discussed this with Tom and he concurs.

>>> Thomas Holleran 07/13/98 12:37pm >>>

John: I sent a copy to Sue Steiman in OGC whose staff is responsible for writing all such waivers. I would think that it is her decision to determine whether or not you had the authority to act. Thanks.

>>> John Norton 07/13/98 11:56am >>>

Tom - The petitioner paid the fee but wanted a waiver to get it back. We went ahead and ruled on the merits of the petition. I will send the petition, with the waiver request contained, along with our order to you today. Thanks.

>>> Thomas Holleran 07/13/98 11:46am >>>

John: Only the Managing Director has the authority to act on such requests. I believe your action must be rescinded. The request should be sent to me for action by the MD. Thanks.

>>> John Norton 07/09/98 05:53pm >>>

The Cable Services Bureau has received a request for waiver of a filing fee as part of a petition filed by a cable operator. We acted on the petition but I understand that OMD acts on the filing fee waiver request. Should I send the waiver request to you or someone in your office?

CC: A10.A10(RDORSEY), A14.A14(SSTEIMAN),

FCC/MI/...

CABLE SERVICES BU

SEP 26

RECEIVED

CSL-5113-D

ju-lead

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

In the Matter of)
)
)
Multi-Cablevision Co. of)
Livingston/Washtenaw)
)
Waiver of Small System Size)
Limitation)

Township of Salem MI 1723
Township of Hamburg MI 0703
Township of Green Oak MI 0702
Township of Northfield MI 0704
Township of Putnam MI 1004
Village of Pickney MI 1003
Township of Dexter MI 1572
Township of Unadilla MI 1570
Township of Webster MI 1157
Township of Marion MI 1569

PETITION BY A SMALL CABLE COMPANY
FOR WAIVER OF FILING FEE

CABLE SERVICES BU

SEP 26, 1997

RECEIVED

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Attorneys for Multi-Cablevision Co.
of Livingston/Washtenaw

Date: September 22, 1997

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

Multi-Cablevision Co. of Livingston/Washtenaw ("Multi-Cablevision") petitions the Commission under 47 C.F.R. § 1.1117(a) for waiver of the \$960.00 required 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.

Multi-Cablevision Co. 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 the *Small System Order*, the Commission determined that small cable companies like Multi-Cablevision 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 Commission granted this relief promptly 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, Multi-Cablevision files the accompanying petition.

According to the Commission, small cable companies like Multi-Cablevision 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 \$1,000, in addition to substantial legal fees and expenses, to attempt to obtain small system relief. Multi-Cablevision, like most small cable companies, has struggled since 1992 with rate regulation that disproportionately burdened small cable. An additional \$960.00 to

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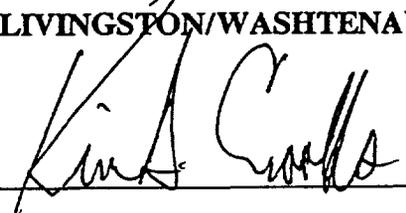
attempt to obtain long-awaited relief only increases the cost to Multi-Cablevision of the regulatory burdens that the Commission has sought to alleviate.

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 Multi-Cablevision by \$960.00, the grant of this petition will service the public interest. Consequently, Multi-Cablevision requests that the Commission waive the \$960.00 filing fee.

As required by 47 C.F.R. § 1.1117(e), Multi-Cablevision attaches a check for \$960.00 and a Form 159.

Respectfully submitted,

**MULTI-CABLEVISION CO.
OF LIVINGSTON/WASHTENAW**

By: 

**Eric E. Breisach
Christopher C. Cinnamon
Kim D. Crooks**

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CERTIFICATE OF SERVICE

I, Carolyn Ann Priest, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Multi-Cablevision Co. of Livingston/Washtenaw Petition for Special Relief, Petition By a Small Cable Company for Waiver of Filing Fee and FCC Form 159 was sent on the 22nd day of September, 1997, by first class and certified mail, return receipt requested and postage prepaid to the following:

Mr. Robert Tentles
Dexter Township
6880 Dexter Pinckney
Dexter, Michigan 48130

Mr. Ronald J. Kleinow
Pinckney Village
220 S. Howell
Pinckney, MI 48169

Mr. Jan Plas
Green Oak Township
10789 Silver Lake Road
South Lyon, MI 48178

Mr. Ronald J. Kleinow
Putnam Township
131 S. Howell
Pinckney, MI 48169

Mr. Dennis Morgan
Hamburg Township
P.O. Box 157
Hamburg, MI 48139-0157

Mr. Michael Penn
Salem Township
9600 Six Mile Road
Northville, MI 48167

Mr. Richard Irish
Marion Township
2877 Conn Lake Road, W.
Howell, MI 48843

Mr. Michael Vogel
Unadilla Township
18806 Dexter Trail
Gregory, MI 48137

Mr. Osbert Williams
Northfield Township
75 Barker Road
Whitmore Lake, MI 48189

Mr. Donald Zeeb
Webster Township
3300 W. Joy Road
Ann Arbor, MI 48105

The undersigned further declares that on the 22nd day of September, 1997, the above-referred to documents were sent via Federal Express to:

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

and that in a second Federal Express envelope directed to Chairman Reed Hundt five individual envelopes were sent, containing copies of the above-referred to documents and a copy of the September 22, 1995 letter directed to Mr. Caton. The envelopes were addressed as follows:

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

Chairman Reed Hundt
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

Mr. William Johnson
Deputy Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

Mr. John Norton
Cable Services Bureau
Federal Commission Bureau
2033 M Street NW
Washington DC 20554

Mr. Thomas Power
Cable Services Bureau
Federal Communications Commission
2033 M Street NW
Washington DC 20554

and that in a third Federal Express envelope directed to Commissioner James Quello three individual envelopes were sent, containing copies of the above-referred to documents and a copy of the September 22, 1995 letter directed to Mr. Caton. The envelopes were addressed as follows:

Commissioner James Quello
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Susan Ness
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Commissioner Rachelle Chong
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Dated: September 22, 1997


Carolyn Ann Priest

Drafted by:
HOWARD & HOWARD ATTORNEYS, P.C.
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KDC\645\cable\multicab.cos