

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

In the Matter of
Caribbean Communications Corp.
Petition for Special Relief
CSR 5825-D

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2002

Released: April 18, 2002

By the Chief, Media Bureau:

I. INTRODUCTION

1. Herein we address a petition for special relief ("Petition") in which Caribbean Communications Corporation ("Caribbean") seeks a waiver of the Commission's rules to the extent necessary to establish regulated cable rates on behalf of its system serving St. Thomas and St. John, USVI, ("Caribbean system") in accordance with the Commission's small system cost-of-service methodology. No oppositions to the Petition were filed. We grant the Petition upon a finding that a waiver of the Commission's rules is in the public interest.

2. Section 623(i) of the Communications Act of 1934, as amended ("Communications Act"), requires that the Commission design rate regulations in such a way as to reduce administrative burdens and compliance costs for cable systems with 1,000 or fewer subscribers. Accordingly, when 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. In the Small System Order, the Commission further extended small

1 The community unit identifiers ("CUIDs") for St. Thomas and St. John are VI0001 and VI0005, respectively. Petition at 1.

2 The small system cost-of-service methodology was adopted in the Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) ("Small System Order").

3 47 U.S.C. § 543(i).

4 See, e.g., Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993); Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994); Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking, 9 FCC Rcd 5327 (1994); Eighth Order on Reconsideration, 10 FCC Rcd 5179 (1995).

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. Most forms of rate relief provided under the *Small System Order* and the Commission's rules are available only to those small systems that are owned by a small cable company. A small cable company is defined as serving a total of 400,000 or fewer subscribers over all of its systems.¹⁰ The Commission adopted this threshold because it roughly corresponded 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.¹¹ The Commission found that cable companies exceeding this threshold would have less difficulty attracting the financing and investment necessary to maintain and improve service than would smaller companies.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 these 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

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

⁶ *Id.* at 7407. In 1996, 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, Pub. L. No. 104-104, 110 Stat. 56, 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. See 47 C.F.R. §§ 76.901(f); 76.990.

⁷ *Small System Order*, 10 FCC Rcd at 7406. See 47 C.F.R. §§ 76.901(c); 76.934.

⁸ *Id.* at 7408.

⁹ *Id.*

¹⁰ *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. See 47 C.F.R. §§ 76.901(e); 76.934.

¹¹ *Id.* at 7409-11.

¹² *Id.* at 7411.

¹³ *Id.* at 7409.

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 differ substantively from the standard cost-of-service rules, allowing for 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 regulatory relief afforded by the small system cost-of-service methodology, systems and companies must meet the size standards as of either the effective date of the *Small System Order* or, thereafter, on the filing date of the documents necessary to elect such relief.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 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, whether the system recently has been the subject of an acquisition or other transaction that substantially reduced its size or that of its operator, 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 specifically stated that this list of relevant factors was not exclusive and invited petitioners to support their petitions with any other information and arguments they deemed relevant.²⁰

II. THE PETITION

7. Caribbean is a wholly owned subsidiary of Innovative Communications Corporation ("Innovative"). The Caribbean system serves 15,985 subscribers. Innovative also owns St. Croix Cable TV. Innovative's total number of subscribers is 29,111 as of December 31, 2000. Innovative easily qualifies as a small cable company.²¹ However, its Caribbean system serves more than the 15,000 limit for small cable systems.²²

¹⁴ *Id.* at 7418-28.

¹⁵ *Id.* at 7412-13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Petition at 2.

²² *Id.*

8. Caribbean argues that its Caribbean system should qualify for special relief, in part because Innovative easily meets the small cable company definition and the system in question only slightly exceeds the 15,000 small system subscriber cap.²³ Caribbean states that a pertinent factor identified in the *Small System Order* when determining if a system warrants special relief is "the degree by which the system fails either or both definitions."²⁴

9. Caribbean also states that its Caribbean system shares relevant characteristics with qualifying small systems, and provides the following information in support of its assertion: First, the Caribbean system averages only 41.6 subscribers per mile, which approximates the average subscriber density of small systems;²⁵ second, the Caribbean system's average annual premium revenue per subscriber is \$35.09, which is less than that of most small systems;²⁶ third, the Caribbean system's \$0.63 average monthly regulated revenue per channel, per subscriber, is between the averages of larger and smaller systems;²⁷ and, finally, the Caribbean system's historical growth rate suggests that the system will remain small.²⁸

10. Caribbean further asserts that a grant of the requested rate relief would serve the public interest by protecting a small, independent cable operator from the "substantial hardships" of traditional rate regulation, thereby enabling it to continue to provide quality service to consumers.²⁹ Caribbean also states that while it endeavors to minimize costs (most notably by linking the communities of St. Thomas and St. John via microwave as opposed to deploying and maintaining separate headends) it cannot achieve economies of scale comparable to larger systems in the areas of equipment purchasing, system maintenance and program acquisition.³⁰

III. DISCUSSION

11. The Commission adopted the 15,000 subscriber threshold for small systems "on the basis of shared economic, physical, and financial characteristics" for any systems at or below that size.³¹ Based on the available data, the Commission found that systems with fewer than 15,000 subscribers differ from systems with more than 15,000 subscribers with respect to the following characteristics:

²³ *Id.* at 3.

²⁴ *Id.* (citing *Small System Order* at 7412).

²⁵ *Id.* at 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 5.

²⁹ *Id.* at 5-6.

³⁰ *Id.*

³¹ *Small System Order*, 10 FCC Rcd at 7408.

- a) the average monthly regulated revenue per channel per subscriber is \$0.86 for systems with fewer than 15,000 subscribers and \$0.44 for systems with more than 15,000 subscribers;
- b) the average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers;
- c) the average annual premium revenue per subscriber is \$41.00 for systems with fewer than 15,000 subscribers and \$73.13 for systems with more than 15,000 subscribers.³²

13. As noted above, Innovative clearly falls below the 400,000 subscriber threshold for small cable companies, though Caribbean's system exceeds the 15,000 subscriber cap for small cable systems. Although we agree that the system exceeds the cap by only a small amount, the degree by which the system exceeds either or both numerical caps is not the only factor to be considered in special relief cases.

14. Accordingly, we also examine whether the petitioning company has demonstrated that its system shares relevant characteristics with other small cable systems.³³ As previously noted, Caribbean states that the Caribbean system averages 41.6 subscribers per mile. This figure is significantly less than the 68.7 subscriber per mile average for systems with more than 15,000 subscribers, and is near the 35.3 subscriber density average for small systems. In addition, the Caribbean system's average annual premium revenue per subscriber is \$36.09, also near (and somewhat below) the small system average of \$41.00 per subscriber. Finally, Caribbean concedes that, at \$0.63, the Caribbean system's average monthly regulated revenue per channel, per subscriber, falls between that of small systems (\$0.86) and that of systems with more than 15,000 subscribers (\$0.44). However, given the totality of the circumstances, we find that Caribbean Corp. has demonstrated that the Caribbean system resembles a small system according to most of the applicable criteria.

15. Under Section 76.7(c)(1) of the Commission's rules, a petition for special relief "shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest."³⁴ Caribbean has adequately established its "need for the relief requested" as required by Section 76.7(c)(1). In making this finding, we note that the Commission's decision to target relief at small systems owned by operators with fewer than 400,000 subscribers was based on a recognition that the then-existing rate rules did not sufficiently take into account the higher costs of business faced by smaller companies.³⁵ In addition, the Commission acknowledged that qualifying systems and companies were in need of relief from the procedural burdens imposed upon such entities by the other forms of rate

³² *Id.* These figures reflect the Commission's most recently compiled data categorizing systems with greater and fewer than 15,000 subscribers.

³³ *Id.* at 7412-13.

³⁴ 47 C.F.R. § 76.7(c) (1).

³⁵ *Id.*

regulation.³⁶ The Commission found that alleviating the substantive and procedural burdens associated with the standard benchmark and cost-of-service methodologies "should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress," as set forth in the Cable Television Consumer Protection and Competition Act of 1992.³⁷ Given that we have found that the Caribbean system is likewise entitled to small system treatment, granting the Petition will serve the same congressional goals identified in the *Small System Order* and will thus be in the public interest.

IV. SCOPE OF THE WAIVER

18. We must next determine the scope of the waiver. After establishing the small system and small cable company definitions in the *Small System Order*, 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.³⁸

19. The Commission adopted this "grandfathering" approach to enhance qualifying systems' value "in the eyes of operators and, more importantly, lenders and investors."³⁹ As the Commission stated, "[t]he enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses."⁴⁰

20. Upon exceeding the 15,000-subscriber cap, 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."⁴¹

³⁶ *Id.*

³⁷ *Id.* at 7407, citing the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 ("1992 Cable Act").

³⁸ *Small System Order*, 10 FCC Rcd at 7413. The quoted text is discussing a system's initial and continuing eligibility for any "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.

³⁹ *Id.* at 7413.

⁴⁰ *Id.*

⁴¹ *Id.* at 7427-28.

21. Because the Caribbean system already exceeds 15,000 subscribers, and because it is reasonable to presume that the system will continue to grow, there is no obvious alternative subscriber limit which, if exceeded, should result in the loss of Caribbean's ability to make small system rate adjustments. Therefore, we will instead place a limit on the duration of this waiver. In the absence of a limit on the waiver's duration, the system would enjoy small system status indefinitely, regardless of its eventual size. Such a result would be inconsistent with the goal of creating rate regulatory relief for systems that need such relief due to their relatively small subscriber base.

22. Therefore, the Caribbean waiver will terminate two years from the date of this order, unless extended further, subject to the conditions set forth below. We believe the two-year limit will afford Caribbean adequate regulatory certainty for the foreseeable future, while ensuring that the system is not permitted to charge rates indefinitely under a scheme designed for smaller systems. We note that Caribbean may seek a finding of continued eligibility for small system treatment by filing a petition for special relief at the close of the waiver period.

23. Any Form 1230 filed by Caribbean concerning its Caribbean system must be submitted with the appropriate regulatory authorities within two years of the date of this order.⁴² In any franchise area where the system is currently subject to regulation, Caribbean may reestablish its maximum permitted rates by filing Form 1230 at any time in the next two years. Where the system is not currently subject to regulation but, within the next two years, becomes subject to regulation, Caribbean may file Form 1230 within the usual response time.⁴³ Where the system is not currently subject to regulation, and does not become subject to regulation until more than two years from this date, Caribbean will not be eligible for small system treatment under this waiver.

24. After filing Form 1230 and providing the requisite 30 days' notice for rate increases, Caribbean may set its rate at any level that does not exceed the maximum rate generated by the form, subject to the standard rate review process.⁴⁴ Subsequent increases (also not to exceed the maximum rate established by the initial Form 1230) shall be permitted upon 30 days' notice, but are not subject to further regulatory review.⁴⁵ If Caribbean reaches the maximum rate established by the initial Form 1230, and subsequently wishes to raise rates further, it must justify the rate increase in accordance with our standard benchmark or cost-of-service rules or, alternatively, file another petition for special relief seeking continued treatment as a small system.

⁴² During the waiver period, Caribbean may file only one Form 1230 in each franchise area served by the Caribbean system.

⁴³ See 47 C.F.R. § 76.934 (c)(3).

⁴⁴ Upon the filing of Form 1230, the Commission's rules permitting a certified local franchising authority to review the proposed rates, to request additional information, and to toll the effective date of the proposed rates, will then apply. See *Small System Order* at 7425; see also 47 C.F.R. Part 76, Subpart T (Notices); 47 U.S.C. § 552.

⁴⁵ *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, so long as the rate is no higher than the initial Form 1230's maximum permitted rate. *Id.*

V. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that the Petition for Special Relief filed by Caribbean Communications Corp., requesting a waiver of the Commission rules defining systems subject to small system rate relief, IS GRANTED, with respect to its Caribbean system.

26. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.⁴⁶

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

⁴⁶ 47 C.F.R. § 0.321.