

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

In the Matter of	)
Tele-Media Company of Virginia	)
	)
	) CUID No. VA0292 (Botetourt County)
Small System Filing to Support	)
Cable Programming Services	)
Tier Rates and Basic Service	)
Tier Rates	)

**ORDER**

**Adopted: September 18, 1996**

**Released: September 23, 1996**

By the Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider a complaint filed on February 7, 1994 regarding the rate that Tele-Media Company of Virginia ("Tele-Media") was charging for its cable programming services tier ("CPST") in the franchise area referenced above. Additionally, on September 15, 1994, Botetourt County, Virginia ("the County")<sup>1</sup> petitioned the Federal Communications Commission ("Commission"), requesting assistance in reviewing the Basic Service Tier ("BST") cost of service showing filed by Tele-Media on August 16, 1994.<sup>2</sup> The Commission granted the County's request on February 10, 1995, and agreed to review Tele-Media's BST cost of service filing.<sup>3</sup>

2. On December 15, 1995, Tele-Media filed FCC Form 1230, seeking to justify its CPST and BST rates through the simplified small system cost of service procedures under the Commission's *Small System Order*.<sup>4</sup> In this Order we grant Tele-Media's request for small system relief under the *Small System Order* and, based on our review of Tele-Media's FCC Form 1230

<sup>1</sup> See Petition for Special Relief, Botetourt County, filed September 14, 1994 wherein the County asserted it lacks the resources and adequately trained personnel necessary to conduct the BST cost of service review.

<sup>2</sup> See Third Order on Reconsideration in MM Docket Nos. 92-266 and 92-262 ("*Third Recon. Order*"), 9 FCC 4316, 4338-39 (1994) (authorizing requests by local franchising authorities for assistance in reviewing cost of service showings for BST rates); 47 C.F.R. § 76.933(d).

<sup>3</sup> See Letter dated February 10, 1995 from Jacqueline Spindler, Deputy Chief, Financial Analysis and Compliance Division, to Douglas W. Harold, Jr., Esq.

<sup>4</sup> Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 & 93-215, 10 FCC Rcd 7393 (1995) ("*Small System Order*"). Triax initially filed FCC Form 1220 on December 20, 1993 to justify its rates, however, those forms are superseded by the later filed FCC Form 1230.

filing, deny the pending CPST complaint and find the CPST and BST rates to be not unreasonable.

3. Under the Cable Television Consumer Protection and Competition Act of 1992, and the Commission's rules implementing it, the Commission must review a cable operator's rates for its CPST upon the filing of a valid complaint.<sup>5</sup> The filing of a valid complaint triggers an obligation on behalf of the cable operator to file a justification of its CPST rates. Additionally, once a franchising authority has been certified by the Commission, the cable operator is required to file a justification of its BST rate with the franchising authority.<sup>6</sup> Under the Commission's rules, an operator may attempt to justify its CPST and BST rates through a benchmark showing, a cost of service showing, or a small system cost of service showing. In any case, the operator has the burden of demonstrating that its rates are not unreasonable.<sup>7</sup>

4. Under cost of service regulation a cable system's rates are reviewed under traditional rate of return analysis. Cost of service regulation imposes heavy burdens upon regulators and the regulated entity because of the significant administrative and compliance costs associated with this regulatory model.<sup>8</sup> The Commission recognized that some local franchising authorities may have resources and personnel sufficient to conduct a review of the rate-setting justification based on the benchmark approach but not to examine a cost of service showing. The Commission also understood that this concern may have discouraged certification by many local franchising authorities.<sup>9</sup> Therefore, it established procedures under which the Commission, if requested by the local franchising authority in a petition for special relief under Section 76.7 of the Commission's rules, will issue a ruling that makes cost determinations for the BST.<sup>10</sup>

5. The Commission's original rate regulations took effect on September 1, 1993. The Commission subsequently revised its rate regulations effective May 15, 1994.<sup>11</sup> In a further effort to offer small cable companies administrative relief from rate regulation, the Commission amended the definition of small cable companies and small systems and introduced a simplified

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<sup>5</sup> Pub. L. No. 102-385, §§ 3, 9, 14, 106 Stat. 1460 (1992) ("1992 Cable Act"); Communications Act § 623(c), as amended, 47 U.S.C. § 543(c)(1993).

<sup>6</sup> 47 C.F.R. §§ 76.930 and 76.933.

<sup>7</sup> 47 C.F.R. §§ 76.956(d) and 76.934.

<sup>8</sup> See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate regulation, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 ("Rate Order").

<sup>9</sup> *Id.*

<sup>10</sup> *Third Recon. Order*, 9 FCC Rcd at 4338.

<sup>11</sup> *Id.*; see also 47 C.F.R. § 76.933(d).

form of small system rate relief in the *Small System Order*. Cable systems serving 15,000 or fewer subscribers, and owned by a company having 400,000 or fewer subscribers, may elect to use the new small cable system rate mechanism in lieu of other Commission rate processes, provided the Commission has not reached a final resolution on the rate complaints filed against the system. Operators attempting to justify their rates through small system relief must file FCC Form 1230. FCC Form 1230 requires that the Operator Selected Per Subscriber Monthly Programming Rate Per Channel (FCC Form 1230, Line A11) not exceed the Per Subscriber, Per Channel Monthly Programming Costs (FCC Form 1230, Line A6).<sup>12</sup> If the maximum rate established on FCC Form 1230 does not exceed \$1.24 per channel, the rate shall be presumed reasonable.

6. On December 15, 1995, Tele-Media filed FCC Form 1230 seeking to justify its CPST and BST rates through the simplified small system cost of service procedures under the Commission's *Small System Order*. We find that Tele-Media is a company with fewer than 400,000 total subscribers and that the system in question serves fewer than 15,000 subscribers, making it eligible for small system relief. Further, Tele-Media's filing shows that its actual rate per channel for regulated cable service (FCC Form 1230, Line A11) does not exceed its per subscriber, per channel monthly programming costs (FCC Form 1230, Line A6) and the Maximum Permitted Rate (FCC Form 1230, Line A10) does not exceed \$1.24. We, therefore, find the rates to be not unreasonable.<sup>13</sup>

7. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that Tele-Media's request for small system relief IS GRANTED.

8. IT IS FURTHER ORDERED that the BST rate charged by Tele-Media during the period under review with respect to the above-referenced CUID number IS JUSTIFIED.

9. IT IS FURTHER ORDERED, pursuant to Section 76.933(d) of the Commission's Rules, 47 C.F.R. § 76.933(d), that this decision is binding on the local franchising authority, Botetourt County, Virginia and the cable operator, Tele-Media Company of Virginia.

10. IT IS FURTHER ORDERED that the CPST rate charged by Tele-Media during the period under review for the above-referenced CUID number IS JUSTIFIED.

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<sup>12</sup> See instructions for Line A11, FCC Form 1230, page 3.

<sup>13</sup> This finding is based solely on the representations of the operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

11. IT IS FURTHER ORDERED that the complaint against the CPST rate charged by Tele-Media during the period under review with respect to the above-referenced CUID number IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth W. Beaty  
Chief, Financial Analysis and Compliance Division  
Cable Services Bureau