

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

In the Matter of)	
)	
Casco Cable Television, Inc.)	CSR 5140-D
Casco Cable Television of Bath, Maine, Inc.)	
)	
Petition for Special Relief)	
Petition for Reconsideration)	

MEMORANDUM OPINION AND ORDER
and
ORDER ON RECONSIDERATION

Adopted: June 26, 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 Casco Cable Television, Inc. Casco Cable Television of Bath, Maine, Inc. ("Casco") seeks a waiver of the Commission's rules to the extent necessary to permit Casco to establish regulated cable rates on behalf of its Brunswick, Maine system 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. We also address a petition for reconsideration, and a request for stay, against our prior order ("Prior Order") in which we granted complaints against Casco's cable programming services tier ("CPST") rates in certain franchise areas in its Brunswick system after finding that Casco's Brunswick system was not entitled to small system status.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 regulatory 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

¹ FCC 95-196, 10 FCC Rcd 7393 (1995).

² *In the Matter of Casco Cable Television, Inc., Casco Cable Television of Bath, Maine, Inc.*, 13 FCC Rcd 6010 (1997). This order granted complaints filed against CPST rates charged by Casco, beginning September 1, 1993, in Topsham (CUID ME0055); Brunswick (CUID ME0057) and Bath (CUID ME0083). Because we are addressing Casco's petition for reconsideration, we will dismiss its request for stay, filed October 27, 1997, as moot.

³ 47 U.S.C. § 543(i).

burdens for these smaller systems.⁴ In the *Small System Order*, the Commission further extended small system rate relief to certain systems that exceeded 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 a small system 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 relaxed

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.

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 may jeopardize its status as a stand-alone system, may file a petition

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.*

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. According to the Petition and supplemental filings, Casco operates a system in Brunswick, Maine serving 14,248 subscribers (CUID Nos. ME0083, ME0057, ME0055, ME0076, ME0258, ME0259, and ME0338), and a system in Newcastle, Maine serving 3,728 subscribers (CUID Nos. ME0281, ME0278, ME0282, ME0164, ME0165, ME0163, ME0279, ME0166 and ME0280).²² Each of Casco's two systems serve fewer than 15,000 subscribers and therefore qualify as a small system. In addition, Casco's parent, Susquehanna Cable Co. ("Susquehanna") owns or controls systems that serve 162,620 subscribers, and therefore qualifies as a small cable company.²³ However, Casco notes that it is affiliated with Lenfest York, Inc. ("Lenfest"), a large cable company, through a combination of direct and indirect ownership interests.²⁴ Casco states that Lenfest holds a 30% interest in Casco because Lenfest holds a 17.5% equity interest directly in Casco and 14.9% interest in Casco's parent, Susquehanna.²⁵ To the extent Casco is affiliated with Lenfest, Casco's Brunswick system is ineligible for the small system cost-of-service methodology, absent special relief.²⁶

8. Casco argues that Lenfest's interest in Casco is passive and that Casco receives little if any benefit from that relationship.²⁷ Accordingly, Casco contends that its affiliation with Lenfest should be disregarded and that Casco should be treated like any other operator with 17,976 subscribers, and whose parent owns or controls systems serving 162,620 subscribers including Casco, i.e. as a small cable company. Such relief would permit Casco's Brunswick system to set rates in accordance with the small system cost-of-service rules. In support of its request, Casco describes the nature of its relationship with Lenfest. Casco states that Lenfest does not play a role in the day-to-day management or operations of either Casco or its parent, Susquehanna, nor is there any management contract, financial advisory agreement or other arrangement whereby Lenfest advises or provides management services to the

²⁰ *Id.* at 7413.

²¹ *Id.*

²² Petition at 2; *See also* Letter from Donna C. Gregg, Counsel for Casco, to Claire Blue, Attorney, Cable Services Bureau, Federal Communications Commission, March 18, 1998 ("March 18 Letter") at 2. Casco's supplemental filing shows a decrease of the subscriber base in its two Maine systems.

²³ Petition at 2.

²⁴ *Id.* at 2-3.

²⁵ *Id.* at 2-3.

²⁶ Casco inherited the small system status of the Newcastle system from the prior owner and thus is only seeking rate relief on behalf of its Brunswick system. *See* March 18 Letter at 2. *See also* *Small System Order*, 10 FCC Rcd at 7427 - 7428.

²⁷ *Id.* at 3-5.

companies. Casco also states that no Lenfest officer or representative serves as an officer of either company, nor does Lenfest have a representative on the Casco board of directors.²⁸ Lenfest has only customary shareholder voting rights in accordance with the Casco Shareholders' Agreement, with respect to major corporate events such as amendment of the Shareholders' Agreement, issuance of stock and increase in the number of directors.²⁹

9. In further support of the Petition, Casco argues that despite its affiliation with Lenfest it continues to operate under the conditions and financial hardships common to small operators.³⁰ Casco argues that both Casco and its parent, Susquehanna, lack financial resources, economies of scale and purchasing advantages comparable to large companies.³¹ In particular, Casco states that Lenfest has never loaned money to Casco or its parent, Susquehanna, nor has Lenfest guaranteed either company's indebtedness to third parties.³² The companies are not entitled to Lenfest's interest rates or terms from lenders.³³ Susquehanna also states that it believes origination fees and interest rates it pays for borrowing are markedly higher than those paid by Lenfest or other large operators.³⁴ In addition, Casco states that despite modest discounts that Casco's relationship with Lenfest has made available (Casco receives a discount of about 1% on certain equipment purchases and annual savings of 20.2 % of Casco's regulated basic service tier ("BST") and CPST programming costs and 10.8% of Casco's unregulated programming costs, or a total savings of 16.5% on programming costs), neither the full purchasing resources or advantages of Lenfest are available to Casco.³⁵

10. As further testament that there is no question Casco is a small operator insofar as its subscriber base is concerned, Casco demonstrates how its Brunswick system shares relevant characteristics with qualifying small systems in addition to meeting the numerical definition of a small system.³⁶ The Brunswick system serves an average of 30 subscribers per mile, which is below 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. The Brunswick system also has a monthly regulated revenue per channel per subscriber of approximately \$0.64, as compared to the \$0.86 average monthly regulated revenue per channel for systems serving fewer

²⁸ *Id.* at 3-4.

²⁹ See Letter from Donna C. Gregg, Counsel for Casco, to Claire Blue, Attorney, Cable Services Bureau, Federal Communications Commission, May 7, 1998 ("May 7 Letter").

³⁰ Petition at 4.

³¹ *Id.* at 4.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 4-5.

³⁵ *Id.* at 5. See also May 7 Letter, Attachment at 1.

³⁶ See Letter from Donna C. Gregg, Counsel for Casco, to Claire Blue, Attorney, Cable Services Bureau, Federal Communications Commission, March 20, 1998 ("March 20 Letter").

than 15,000 subscribers.³⁷ Finally, the record indicates that the Brunswick system has an annual premium revenue per basic subscriber of about \$36.24. This figure is lower than the average of \$41.00 for systems with fewer than 15,000 subscribers and markedly lower than the average of \$73.13 for systems with more than 15,000 subscribers.³⁸

III. DISCUSSION

11. Based on the unopposed record before us, we believe that Casco is entitled to special relief for its Brunswick Maine system. Where a system fails to qualify for the small system definition because it is affiliated with a large 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."³⁹ Casco argues that the degree of Lenfest's interest in Casco is less than the degree of affiliation the Commission has previously found deserving of a waiver.⁴⁰ As in *Insight*, we look to the "other attributes of the system" to determine whether special relief should be granted.⁴¹

12. Insight owned 32 cable systems that complied with the definition of a small cable system. With respect to the definition of a small cable company, although Insight directly served a total of only about 158,000 subscribers, Continental Cablevision, Inc. ("Continental"), which served more than 3 million subscribers, held a 34% ownership interest in Insight, thus in excess of the 20% standard. We noted, however, the Commission's pledge in the *Small System Order* that if a system fails to qualify for the small system definition because it is affiliated with a cable company that serves over 400,000 subscribers, "we will consider . . . whether other attributes of the system warrant that it be treated as a small system notwithstanding the percentage ownership of the affiliate."⁴²

13. Based on the record, we found that Insight gained no meaningful access to financial resources as a result of its affiliation with Continental. We noted that Continental had never loaned Insight any money and that in borrowing money from others, Continental had never guaranteed any indebtedness of Insight. Moreover, Insight had to pay a significantly higher origination fee and interest rate than Continental could secure. We also noted that no officers or directors of Continental sat as officers or directors of Insight, that Continental played no role in the day-to-day management of Insight and that Continental did not provide Insight with any experience or expertise regarding the raising of debt and capital, programming, budgets, mergers and acquisitions, or the disposition of property. Based on this

³⁷ See March 20, 1998 Letter at 2.

³⁸ *Small System Order*, 10 FCC Rcd at 7408.

³⁹ *Small System Order*, 10 FCC Rcd at 7412-13.

⁴⁰ Petition at 3; See also *In the Matter of Insight Communications Company, L.P.*, DA 95-2334, 11 FCC Rcd 1270 (1995) ("*Insight*"). Casco compares its 30% affiliation to the 34% affiliation in *Insight*.

⁴¹ *Insight*, 11 FCC Rcd 1270 (1995).

⁴² *Insight*, 11 FCC Rcd at 1272 quoting *Small System Order*, 10 FCC Rcd at 7412-13.

merely "passive" relationship between Continental and Insight, we found Insight eligible for small system status.⁴³

14. In Casco's case, the Petition indicates that it gains no meaningful access to financial resources as a result of its affiliation with Lenfest.⁴⁴ Neither Casco nor its parent, Susquehanna, have the financial resources, economies of scale and purchasing advantages of large companies.⁴⁵ Lenfest has never loaned money to Casco or Susquehanna, nor has Lenfest guaranteed either company's indebtedness to third parties.⁴⁶ The companies are not entitled to any benefit such as Lenfest's interest rates or terms from lenders.⁴⁷ Despite modest discounts that Casco's relationship with Lenfest has made available, full purchasing resources or advantages of affiliation with a large operator are not available to Casco.⁴⁸ Casco's apparent lack of access to the financial resources, discounts and other economic efficiencies of larger companies make it the kind of system relief is intended for.⁴⁹

15. Further, Lenfest's interest in Casco is passive in nature. Lenfest does not play a role in the day-to-day management or operations of either Casco or its parent, Susquehanna.⁵⁰ In addition, there is no management contract, financial advisory agreement or other arrangement whereby Lenfest advises or provides management services to the companies.⁵¹ No Lenfest officer or representative serves as an officer of either company, and Lenfest has no representative on the Casco board of directors.⁵² Although a representative of Lenfest has one of six seats on the board of directors of Casco's parent, Susquehanna, this does not give Lenfest any say in Casco's day-to-day operations.⁵³ Lenfest's rights as a shareholder allow Lenfest to protect its investment but do not to give Lenfest the power to run the business of Casco.⁵⁴ The evidence in Casco's Petition demonstrates that despite its affiliation with Lenfest, Casco does not receive significant benefits that alleviate the conditions common to small operators. But for its affiliation

⁴³ See *Insight*, 11 FCC Rcd 1270 (1995).

⁴⁴ Petition at 3-5.

⁴⁵ *Id* at 4.

⁴⁶ *Id*.

⁴⁷ *Id* at 4.

⁴⁸ *Id* at 5.

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

⁵⁰ Petition at 3.

⁵¹ *Id* at 3-4.

⁵² *Id* at 3-4. Casco also states there are no Lenfest systems contiguous to Casco's systems or otherwise in the state of Maine.

⁵³ Petition at 4. See also May 7 Letter at 1-2.

⁵⁴ See May 7 Letter at 1-2.

with Lenfest, Casco's subscriber base of 17,976 (14,248 in the Brunswick system, 3,728 in the Newcastle system) together with its parent Susquehanna's subscriber base of 162,620 (which includes Casco's subscriber base) would clearly establish its right to small system rate relief.

16. We believe that Casco should be allowed to use the small system cost-of-service methodology to justify rates. Our decision here is premised on the Commission's policies and rules addressing small systems, and on the specific circumstances of this case, and not on other areas where attributable interests are relevant. 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 definition of small systems or fail the company affiliation standard may still show that they are similar to systems that meet the definition, and are therefore entitled to relief.⁵⁷ For the reasons set forth herein, we believe that granting the Petition will further the intent of Congress and therefore will serve the public interest.

IV. SCOPE OF THE WAIVER

17. As a result of our grant of the Petition, Casco's Brunswick, Maine system shall be deemed a small system for purposes of rate regulation. Accordingly, to the extent that Casco's basic service tier and/or cable programming service tier offerings are subject to rate regulation,⁵⁸ Casco may set rates 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

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.

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 C.F.R. § 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.

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 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. Casco's Brunswick system has 14,248 subscribers, and is thus approaching the 15,000 subscriber threshold. We believe it is reasonable to presume that this system will continue to grow.⁶³ 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 that 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 Casco waiver will terminate two years from the date of this order, subject to the conditions set forth below.⁶⁴

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.

⁶¹ *Id.*

⁶² *Id.* at 7427-28.

⁶³ This system served 13,714 subscribers in 1995.

⁶⁴ *See Insight*, 11 FCC Rcd at 1276.

During the waiver period, Casco may file only one FCC Form 1230 for each franchise area it serves.⁶⁵ This should give Casco 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, Casco 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 Casco 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, Casco 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 becomes subject to regulation within the next two years, Casco then may 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, Casco will not be eligible for small system treatment under this waiver.

24. After filing its initial Form 1230 and giving the required notice, Casco 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 Casco 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. PETITION FOR RECONSIDERATION

25. On October 27, 1997, Casco filed its petition for reconsideration against our Prior Order. In the Prior Order, we found that Casco was not eligible for small system status and, therefore, we did not review the Form 1230 that Casco had filed for its Brunswick system on November 13, 1995. Instead, we reviewed Casco's justification for its CPST rates, effective September 1, 1993, as supported by its showings on FCC Form 1220 (Cost of Service) and FCC Form 1210 (Update Form). Upon review of Casco's forms, we found that Casco had not properly calculated its maximum permitted rates ("MPRs"), beginning September 1, 1993, and we made certain adjustments resulting in revised MPRs. Because Casco was charging CPST rates greater than its revised MPRs, effective September 1, 1993, we ordered

⁶⁵ As discussed below, Casco has already filed a Form 1230 to justify its CPST rates for the franchise areas of Topsham, Bath and Brunswick, Maine.

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.*

Casco to make refunds to its CPST subscribers.⁶⁷ In its petition for reconsideration, Casco seeks review of the denial of its small system status, consistent with the arguments advanced in its petition for special relief. In the alternative, Casco argues that the adjustments made to its MPRs in the Prior Order were inconsistent with prior Commission orders.⁶⁸ Because we are granting Casco's petition for special relief, and giving Casco's Brunswick system small system status, we grant its petition for reconsideration, for the reasons discussed above, and vacate our Prior Order.⁶⁹

26. Our determination that Casco is entitled to small system status requires that we review the Form 1230 that Casco filed to justify its CPST rates.⁷⁰ In order to justify its MPR on Form 1230, a cable operator must show that the Operator Selected Per Subscriber Monthly Programming Rate Per Channel (Form 1230, Line A11) does not exceed the Per Subscriber, Per Channel Monthly Programming Costs (Form 1230, Line A6) and that the Maximum Permitted Rate Per Channel (Form 1230, Line A10) does not exceed \$1.24.⁷¹ Upon review of Casco's Form 1230, we find that Line A11 does not exceed Line A6 and that Line A10 does not exceed \$1.24.⁷² Therefore, we find that Casco's CPST rate of \$11.28, effective September 1, 1993 through September 30, 1994, is reasonable and that Casco's CPST rate of \$11.69, effective October 1, 1994 through the present, is reasonable.

VI. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED**, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the Petition for Special Relief filed by Casco Cable Television, Inc. and Casco Cable Television of Bath, Maine, Inc. **IS GRANTED**.

28. **IT IS FURTHER ORDERED**, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that the CPST rates of \$11.28, effective September 1, 1993, and \$11.69, effective October 1, 1994, charged by Casco Cable Television, Inc., Casco Cable Television of Bath, Maine, Inc

⁶⁷ Our revised MPR, for the period September 1, 1993 through September 30, 1994, was \$10.57 while Casco was actually charging a CPST rate of \$11.28. Our revised MPR, for the period October 1, 1994 through the present, was \$11.11 while Casco was actually charging a CPST rate of \$11.69.

⁶⁸ Specifically, Casco argues that the adjustments made to its Form 1220 were inconsistent with the Commission's *Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking*, MM Docket No 93-215 and CS Docket No. 94-28, FCC 95-502 (January 26, 1996) ("Final Cost Order").

⁶⁹ Because we are granting Casco's petition for reconsideration based on its small system status, we do not reach Casco's alternative issues.

⁷⁰ In accordance with Section 76.934(h)(10) of the Commission's rules, we will consider the Form 1230 filed by Casco as an appropriate response to the CPST complaints filed against Casco in Topsham, Brunswick and Bath because a final decision on those complaints had not been issued as of June 5, 1995. 47 C.F.R. Section 76.934(h)(10). Section 76.934(h)(10) states that "a decision shall not be deemed final until the operator has exhausted or is time-barred from pursuing any avenue of appeal, review, or reconsideration." *Id.*

⁷¹ See Instructions for Line A11, Form 1230, page 3.

⁷² Casco's Maximum Permitted Rate per Channel (Line A10) is \$0.82.

in Topsham (CUID ME0055), Brunswick (CUID ME0057), and Bath (CUID ME0083), **ARE REASONABLE.**

29. **IT IS FURTHER ORDERED**, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. Section 1.106, that the Petition for Reconsideration of In the Matter of Casco Cable Television, Inc., Casco Cable Television of Bath, Maine, Inc., 13 FCC Rcd 6010 (1997) **IS GRANTED.**

30. **IT IS FURTHER ORDERED**, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that In the Matter of Casco Cable Television, Inc., Casco Cable Television of Bath, Maine, Inc., 13 FCC Rcd 6010 (1997) **IS VACATED.**

31. **IT IS FURTHER ORDERED**, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. Section 0.321, that Request for Stay of In the Matter of Casco Cable Television, Inc., Casco Cable Television of Bath, Maine, Inc., 13 FCC Rcd 6010 (1997) **IS DISMISSED AS MOOT.**

FEDERAL COMMUNICATIONS COMMISSION

John E. Logan
Acting Chief, Cable Services Bureau