

III. Discussion

A. The New Category of Systems and Operators Eligible for Relief

4. We acknowledge 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. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates. Based on the record in this proceeding and our analysis of the rate justifications that have been submitted since our revised rate rules became effective in May 1994, we conclude that our definitions of small operators and small MSOs need to be changed to encompass the broader range of operators in need of rate relief. Therefore, we will expand upon the definition of a small system to include any system that serves 15,000 or fewer subscribers. Furthermore, we significantly expand upon the definition of a small operator, redefining it and renaming it as a "small cable company" serving a total of 400,000 or fewer subscribers over all of its systems. Finally, we will eliminate the existing definitions of a small operator and small MSO. We will extend to the expanded category of small systems owned by small cable companies certain rate and administrative relief as discussed below, and also the small system rate relief provisions adopted in the accompanying *Eleventh Order on Reconsideration*.

5. In the 1992 Cable Act and its legislative history, Congress made clear its belief that small systems would be in need of administrative and rate relief as a consequence of the re-regulation of the cable industry.¹ We are convinced, however, that systems of up to 15,000 subscribers are likewise in need of relief and that we have the authority to extend relief to them. As more fully explained below, the comments in this proceeding and our review of benchmark and cost-of-service rate justifications leads us to conclude that these larger systems generally face many of the same challenges that systems 1,000 or fewer subscribers do in providing cable service. In view of this finding, we

believe the relaxation of certain rate rules that we hereby order is consistent with the 1992 Cable Act. We note in particular the Statement of Policy contained in the statute in which Congress expressed its intent, *inter alia*, to:

(1) Promote the availability to the public of a diversity of views and information through cable television * * *;

(2) Rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) Ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems * * *.

Relaxing regulatory burdens 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 cited above. Moreover, in prescribing rules governing basic service rates, the Communications Act requires us to "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission * * *." We believe this mandate authorizes us to expand the category of small systems and provide them with rate and administrative relief. Section 303(r) of the Communications Act further supports our decision to take Congress's goals into account in extending relief to systems with up to 15,000 subscribers. The action we take today should also ease burdens for local franchising authorities and the Commission, in furtherance of congressional intent. In particular, as we simplify matters for smaller cable companies, we do the same for smaller local franchising authorities, who we understand to be just as concerned as smaller cable operators with the potential burdens and costs of regulation.

6. The staff evaluated the 15,000 subscriber standard on the basis of shared economic, physical, and financial characteristics for systems above and below this size, in order to determine the significance of that breakpoint. To evaluate this standard, the staff used data from Warren Publishing Inc.'s cable services database, which was obtained by the Commission in the fall of 1994. This database contains detailed information on most of the country's 11,200 cable systems and 1,500 cable companies. Staff determined that systems with fewer than 15,000 subscribers differ from systems with more than 15,000

subscribers with respect to the following characteristics:

(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.

This confirms that the use of the 15,000 subscriber standard does result in two groups of systems that have significant distinctions between them.

7. As we have observed previously, our relief for smaller cable entities is aimed at those that do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies. Therefore, relief will be available only to small systems, as now defined, that are owned by small cable companies serving 400,000 or fewer subscribers over all of its systems. In defining a small cable company as one serving no more than 400,000 subscribers, we accepted the recommendations of commenters who urged that we define a small cable company as one that earns \$100 million or less in annual regulated revenues. As explained below, establishing the company size in terms of subscribers, rather than dollars, will advance regulatory simplicity; in the cable context, \$100 million in annual regulated revenues equates to approximately 400,000 subscribers.

8. With respect to the \$100 million standard, we note in particular the recommendation of this measure of company size by SBA's Office of Advocacy. As it and other commenters point out, in the common carrier field entities having annual regulated revenues of more than \$100 million are subject to much greater regulatory burdens than those earning less than that amount. For example, for various regulatory purposes the Common Carrier Bureau has created the Tier 1 category of local exchange carriers ("LECs"), consisting solely of LECs with at least \$100 million in annual regulated revenues. In expanding LEC interconnection requirements, we limited the impact of our rules to Tier 1 LECs, citing the limited resources of smaller LECs, among other factors. Numerous common carrier reporting

¹ To the extent we refer herein to systems of up to 15,000 subscribers as "small systems," we do so for purposes of convenience. We are not using that term to refer to the class of systems described in section 623(i) of the Communications Act.