

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

In the Matter of

INSIGHT COMMUNICATIONS CSR No. 4559-D
COMPANY, L.P.

Petition for Special Relief

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1995; Released: November 13, 1995

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On July 11, 1995, Insight Communications Company, L.P. ("Insight"), a cable operator that owns 32 cable systems encompassing several franchise areas,¹ filed a petition for special relief (the "Petition"). In its Petition, Insight requested that the Bureau grant a waiver of the Commission's rules to the extent necessary to permit Insight to establish regulated cable rates on behalf of its systems 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, FCC 95-196, 10 FCC Rcd 7393 (1995) ("*Small System Order*"). The Commission received one opposition to Insight's Petition.²

2. Section 623(i) of the Communications Act of 1934, as amended, requires that the Commission design rate regulations in such a way as to 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 available to cable operators generally, the Commission adopted various measures aimed specifically at easing regulatory burdens for these smaller systems.⁴ More recently, in the *Small System Order* the Commission extended small system rate relief to certain systems that exceed the 1,000 subscriber standard but that, because of their size, were found to face higher costs and other bur-

dens disproportionate to their size. As a result, a small system now includes any system that serves 15,000 or fewer subscribers.⁵ However, most forms of rate relief are available only to those small systems that are owned by 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.⁶ Under the Commission's affiliation rules, a small system may be deemed owned by a larger cable company if, for example, the company holds more than a 20 percent equity interest (active or passive) in the system.⁷

3. 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.⁸ This form of rate regulation, 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.

4. Cable systems that fail to meet the numerical standards contained in the 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.⁹ The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems."¹⁰ The Commission recognized that, relative to larger systems, some of the relevant characteristics of systems with fewer than 15,000 subscribers are: (1) substantially higher average monthly regulated revenues per channel per subscriber; (2) a significantly lower average number of subscribers per mile; and (3) markedly lower average annual premium revenues per subscriber.¹¹

5. In addition to similarities between the petitioning system and qualifying systems, factors potentially relevant to a petition for special relief 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."¹² 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

¹ See Appendix A for a list of the franchising authorities Insight served on September 18, 1995.

² Insight filed its Petition for Special Relief on July 11, 1995. The interested parties listed in Appendix A were served by mail on September 18, 1995. Public notice of Insight's petition occurred on September 26, 1995. Oppositions or comments were due by October 16, 1995. See 47 C.F.R. § 76.7(d). On October 12, 1995, the Commission received a letter dated October 6, 1995 filed on behalf of the Board of Supervisors of Isle of Wight County, VA by Mr. H. Woodrow Crook, Jr., County Attorney. Insight filed a reply to the letter on October 17, 1995.

³ 47 U.S.C. § 543(i).

⁴ See, e.g., *Report and Order and Further Notice of Proposed Rulemaking*, 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*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994) ("*Second*

Reconsideration Order"); *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking*, MM Docket Nos. 93-215 & 93-266, 9 FCC Rcd 5327 (1994); *Eighth Order on Reconsideration*, MM Docket Nos. 92-266 & 93-215, FCC 95-42 (rel. March 17, 1995).

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

⁶ *Id.* An independent small system, i.e., a small system that is not owned or affiliated in any way with any another system or operator, is a small system owned by a small cable company since the owner of the system serves fewer than 400,000 subscribers.

⁷ *Id.* at 7412-13 n.88.

⁸ *Id.* at 7418-28.

⁹ *Id.* at 7412-13.

¹⁰ *Id.*

¹¹ *Id.* at 7408.

¹² *Id.* at 7412-13.

affiliate."¹³ 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 deem relevant.¹⁴

II. THE PETITION AND OPPOSITION

6. In its Petition, Insight seeks authority to establish regulated rates for each of its 32 cable systems in accordance with the small system cost-of-service methodology. As noted, that form of rate regulation is available only to small systems owned by small cable companies.

7. Twenty-nine of Insight's 32 systems serve fewer than 15,000 subscribers and therefore are small systems.¹⁵ However, these systems are not eligible for small system cost-of-service treatment because their operator, Insight, is not a small cable company. Although Insight directly serves only about 158,000 subscribers, it is affiliated with Continental Cablevision, Inc. ("Continental"), a multiple system operator ("MSO") that serves well in excess of 400,000 subscribers.¹⁶ We consider Insight to be affiliated with Continental because Continental holds a 34% ownership interest in Insight, thus exceeding the 20% affiliation standard.¹⁷ Because of its affiliation with Continental, Insight is not a small cable company and thus its 29 small systems are ineligible for the small system cost-of-service methodology, absent special relief.

8. In addition, the three remaining Insight systems serve more than 15,000 subscribers each.¹⁸ None of these systems is a small system, and hence none is eligible for the small system cost-of-service methodology, absent special relief, regardless of whether Insight is a small cable company.

9. In view of these circumstances, Insight's Petition seeks two forms of special relief. First, Insight asks that it be treated as a small cable company, despite its affiliation with Continental. Such relief would permit Insight's 29 small systems to set rates in accordance with the small system cost-of-service rules. Second, Insight requests that small system status be accorded its three systems that serve more than 15,000 subscribers each, so that they too may use the small system cost-of-service methodology, assuming Insight is accorded status as a small cable company.

10. The specific assertions and arguments put forth by Insight in support of its request are described in the following section. In general, however, Insight describes its relationship with Continental, emphasizing the passive nature of Continental's interest and arguing that Insight receives little if any benefit from that relationship. Accordingly, Insight contends that its affiliation with Continental should be disregarded and that Insight should be treated like any other operator with 158,000 subscribers, i.e., as a small cable company. With respect to the second aspect of its Petition, Insight argues that its three systems with more than 15,000 subscribers share the relevant characteristics of

the class of small systems that the Commission targeted for relief in the *Small System Order*. Since the three systems are allegedly materially indistinguishable from small systems, Insight contends they should, in fact, be deemed small systems for purposes of rate regulation.

11. On September 12, 1995, in response to a further inquiry by the Bureau, Insight provided further information concerning its relationship with Continental.¹⁹ The substance of this information is discussed in Section III below.

12. On October 12, 1995 the Commission received a letter objecting to Insight's petition for special relief from the Board of Supervisors of Isle of Wight County, VA (the "County"). The County's letter was the only filing received in opposition to Insight's petition. Insight filed a response to the County's objection on October 17, 1995. The substance of the County's letter and Insight's response are discussed in Section III below.

III. DISCUSSION

A. The Potential Rate Increase Issue

13. The County objects to Insight's Petition on the grounds that Insight's cable service rates in the county may be increased if the Petition is granted. Insight filed a response which states that the grant of the Petition will have no effect on the cable rates in Isle of Wight County, because Insight's system in the county is already subject to effective competition and therefore not subject to rate regulation.²⁰ The County has failed to raise an adequate basis for denial of Insight's Petition. As Insight argues, it may legitimately raise rates in the county based on its status as a system subject to effective competition, even if we were to deny the Petition. Moreover, the *Small System Order* specifically allows qualifying small systems to justify potentially higher rates using the small system cost-of-service methodology. Higher rates for qualifying small systems is an anticipated result of small system rate relief. The County's letter simply mentions this potential outcome without contesting the reasons behind Insight's request for status as a small system. Therefore, we find that the County fails to raise an adequate basis for denial of the Petition.

B. The Affiliation Issue

14. Although the Commission established a limit of no more than 400,000 subscribers as the definition of a small cable company, it indicated its willingness to entertain petitions for special relief from systems owned by larger companies, recognizing that a strict numerical test "can exclude some systems which may also be in need of rate relief."²¹ The Commission identified various factors that it would consider, depending upon the particular circumstances raised by such a petition. In general, the Commis-

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Petition at 2.

¹⁶ *Id.* Although the Petition does not state how many subscribers Continental serves, Continental's most recent Form S-4/A filed with the Securities and Exchange Commission states that Continental has about 3.1 million basic subscribers.

¹⁷ See *supra* at ¶ 2.

¹⁸ Petition at 2.

¹⁹ See Letter from Stuart Feldstein, Counsel for Insight Communications, to Meredith Jones, Chief, Cable Services Bureau, dated September 12, 1995 ("Insight Letter").

²⁰ See Communications Act of 1934 § 623(a)(2), 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a); Insight Communications, Inc., 10 FCC Rcd 1537 (1994).

²¹ *Small System Order*, 10 FCC Rcd at 7412-13.

sion determined that petitioners should be "able to demonstrate that they share relevant characteristics with qualifying systems and therefore should be entitled to the same regulatory treatment."²² With respect to the affiliation standard, the Commission stated: "If the 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 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."²³

15. Continental's ownership interest in Insight is well above the affiliation standard established in the *Small System Order*.²⁴ Although fairly substantial, the extent of Continental's affiliation with Insight is only one of the factors for us to consider. As noted above, we are required to decide whether "other attributes of the system" warrant the granting of the relief.

16. To determine what other attributes should be considered, we first review the reasoning that led the Commission to adopt the 20% affiliation standard. The Commission concluded that where a cable company of over 400,000 subscribers owns more than 20% of a small system, "the system will have access to the resources it needs to grow as well as larger systems, and hence should not be in need of the rate relief we will accord to small systems that have no such access."²⁵ The Commission previously had adopted the same 20% affiliation standard in the *Second Reconsideration Order* for purposes of determining whether a cable operator qualified as a small operator for purposes of transition relief.²⁶ In that context, the Commission determined that where a larger company's ownership interest in a small operator exceeds 20%, "the large company will have a significant enough stake that it will be likely to expand financial resources to the small operator should that operator face financial difficulties."²⁷

17. Access to financial and other resources, or the lack of such access, also motivated the Commission's decision to adopt the 400,000 subscriber threshold that defines a small cable company. The Commission adopted this figure because it translates into approximately \$100 million in annual regulated revenues.²⁸ Noting that the \$100 million revenue figure determines the threshold of imposing certain regulatory burdens on common carriers, the Commission concluded that the logic underlying the common carrier rules also can be applied to the cable industry to

justify an equivalent revenue threshold for purposes of establishing small cable company rate relief.²⁹ As the Commission stated:

We believe that the impact of regulation on common carriers is similar to that imposed on cable companies. Small cable companies also must generate a minimum level of revenue in order to attract financing to upgrade their networks, to provide new programming to subscribers, and to introduce new services that are now being developed. Therefore, by targeting rate relief at small cable companies with 400,000 or fewer subscribers, we believe we will be assisting those companies earning \$100 million or less in annual gross revenues to obtain financing needed to grow.³⁰

18. The evidence contained in the Petition and in Insight's supplemental filing demonstrates that Insight gains no meaningful access to financial resources as a result of its affiliation with Continental. In particular, Continental has never loaned Insight money and has never guaranteed any indebtedness of Insight to third parties.³¹ Indeed, its affiliation with Continental apparently has done nothing to distinguish Insight from other operators of under 400,000 subscribers, all of whom have been found to face greater impediments than larger MSOs when attempting to raise financing. For example, in conjunction with a recent borrowing, Insight incurred an origination fee that was four times the percentage paid by Continental as part of its most recent borrowing.³² In addition, Insight could obtain financing only by agreeing to a significantly higher interest rate than that which Continental was able to attract.³³ Insight also reports that at least one large institutional lender has indicated that while it will continue to lend to large MSOs such as Continental, it will extend no additional credit to smaller operators such as Insight.³⁴ The apparent irrelevance of Insight's affiliation with Continental when it comes to raising capital weighs in favor of according Insight treatment as a small cable company.

19. Other relevant factors also support the granting of the Petition with respect to the affiliation issue. For example: there are no contracts between Insight and Continental concerning management of Insight; Continental does not sit on any management or other governance committees of Insight; no officers or directors of Continental serve as

²² *Id.*

²³ *Id.*

²⁴ In the Petition and the subsequent filing, Insight argues that under the terms of its partnership agreement, variations in the market value of the partnership can dilute the value of Continental's interest in Insight. More specifically, as the market value of the partnership increases, so does the relative value of the general partner's interest, at the expense of Continental and the other limited partners. In addition, in 1993 Insight issued a preferred security to a group of investors. This security carries a liquidation preference as well as a variable equity participation. As a result of these considerations, the value of Continental's interest in Insight can dip as low as 17% of the total market value of the partnership, although it can never exceed 34%, according to Continental. Because the lower range of the market value can drop below 20% of the overall market value of the partnership, Insight argues that "under certain circumstances, Insight would need no waiver of the Commission's rules." We do not have sufficient information to accept Insight's

"dilution" arguments *in toto*. As set forth below, however, even were we to disregard these arguments entirely, we would still grant the Petition with respect to the affiliation issue on the strength of the other factors discussed herein.

²⁵ *Small System Order*, 10 FCC Rcd at 7412-13 n.88, citing *Second Reconsideration Order*, 9 FCC Rcd at 4173.

²⁶ *Second Reconsideration Order*, 9 FCC Rcd at 4173.

²⁷ *Second Reconsideration Order*, 9 FCC Rcd at 4173 n.157.

²⁸ *Small System Order*, 10 FCC Rcd at 7408-10. The Commission chose to define a small cable company in terms of the number of its subscribers, rather than in terms of revenues, primarily for purposes of regulatory simplicity and certainty. *Id.* at 7408.

²⁹ *Id.* at 7408-09.

³⁰ *Id.* at 7410-11.

³¹ Insight Letter at 2.

³² Petition at 5.

³³ *Id.*

³⁴ *Id.*

officers, directors, or partners of Insight; and Continental plays no role in the day-to-day operations of Insight. Furthermore, Continental is not involved in Insight's operations with respect to the raising of debt and capital, programming, budgets, mergers, acquisitions, or the disposition of property.³⁵ All rights and obligations associated with these functions are vested in Insight's general partner, ICC Associates, L.P., and Continental has no ownership interest in the general partner.³⁶ Thus, Insight does not benefit from any management experience or expertise that Continental might be able to offer.

20. It is also apparent that in acquiring an interest in Insight, Continental has made no move to consolidate or cluster its systems with those directly owned by Insight, since the respective systems are not geographically situated so as to permit the employment of such a strategy.³⁷ This physical separation between the systems owned by Insight and those directly owned by Continental mirrors the operational gulf between Insight and Continental.

21. Insight benefits from its affiliation with Continental in only one way: Insight shares in certain programming discounts that Continental receives, presumably because of the large volume of programming Continental purchases on behalf of all of its affiliated cable systems. Insight estimates that absent the discounts, its programming costs would increase by 2% to 3% per subscriber for regulated services and by about 15% per subscriber for unregulated pay programming services.³⁸ While the percentage discount associated with the pay services is rather large, we note that the Commission adopted the small cable company threshold of 400,000 subscribers because it was the approximate equivalent of \$100 million in annual regulated revenues. Since the Commission did not take unregulated revenues into account in deciding which operators are entitled to small system rate relief, we are not inclined to attach much weight to such revenues when making the same decision in the context of a petition for special relief. Moreover, Insight points out that revenues from unregulated services represent only 18% of total revenues and 7% of cash flow.³⁹

22. The discounts Insight receives on its purchases of regulated programming are much lower than those associated with its unregulated services. These discounts do not appear to be significant enough to make up for the other obstacles that Insight and other smaller operators have been found to face. We certainly do not deem the discounts on regulated programming to be so substantial, standing alone, as to justify withholding from Insight the rate relief that is available to operators that have as many as 240,000 more subscribers than Insight has. Operators of that size presumably enjoy other operating efficiencies that approach or perhaps even exceed the programming discounts that Insight receives. Thus, we do not believe that the programming discounts by themselves are large enough to provide a meaningful distinction between Insight and other operators that meet the small cable company definition.

23. 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."⁴⁰

24. In the absence of the affiliation issue, Insight's subscriber base of 158,000 would clearly establish its need for, and entitlement to, the small system rate relief. Since we have concluded that its affiliation with Continental does not create a material distinction between Insight and the class of operators specifically targeted by the Commission for relief, we necessarily must conclude that Insight has shown its need for the requested relief with respect to the affiliation issue.

25. We also find that the grant of the Petition would serve the public interest. As indicated above, in the *Small System Order*, the Commission found that extending rate relief to those operators in need of it would further specific congressional goals set forth in the 1992 Cable Act's Statement of Policy.⁴¹ Having concluded that Insight is likewise in need of that relief, our grant of the Petition will serve the same congressional goals that were furthered by the Commission's adoption of the *Small System Order* and hence is in the public interest. For the reasons stated above, we will grant the Petition with respect to the affiliation standard. We address the scope of this grant in Section IV below.

C. The Small System Issue

26. We now turn to the portion of the Petition concerning the three Insight systems that exceed the 15,000 subscriber threshold that defines small systems. 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.⁴² 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:

- 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.⁴³

³⁵ Insight Letter at 2.

³⁶ *Id.*; see Attachment A to Insight Letter (Insight Limited Partnership Agreement).

³⁷ Insight Letter at 3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 47 C.F.R. § 76.7(c)(1).

⁴¹ See *Small System Order*, 10 FCC Rcd at 7406-07, citing 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992), § 2(b)(1)-(3).

⁴² *Small System Order*, 10 FCC Rcd at 7408.

⁴³ *Id.*

27. The magnitude of these differences between the two classes of systems indicated that the 15,000 subscriber threshold was the appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.⁴⁴

28. The Commission stated its willingness to "entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should be entitled to the same regulatory treatment."⁴⁵ A non-exhaustive list of relevant factors identified by the Commission included the degree by which the system fails to satisfy the standard and evidence of increased costs faced by the operator.⁴⁶

29. The largest of the three systems at issue is based in Noblesville, Indiana and serves 17,798 subscribers across seven franchise areas.⁴⁷ The smallest system, serving 16,328 subscribers over five franchise areas, is based in Jeffersonville, Indiana.⁴⁸ The third system is based in Pleasant Grove, Utah and serves 16,348 subscribers spread across eight franchise areas.⁴⁹ As Insight states, even the largest of the three systems exceeds the 15,000 subscriber standard by only a relatively small amount. In addition, there is no evidence that any of the three systems is experiencing, or anticipates experiencing, a high rate of subscriber growth.

30. These three Insight systems share many of the defining characteristics of small systems identified by the Commission in the *Small System Order*.⁵⁰ For example, the systems earn between about \$45 and \$52 per subscriber in annual premium revenues.⁵¹ These amounts are much closer to the small system average of \$41 than to the average figure of \$73 for larger systems. The disparity with respect to unregulated revenues was specifically recognized by the Commission as a justification for the small system definition and was highlighted as a particular problem for smaller systems in a number of comments that lead to the adoption of the *Small System Order*.⁵²

31. For two of the three systems, subscriber density is another factor which the Insight systems share with the typical small system. The Noblesville system has 35 subscribers per mile, almost exactly the average of small systems generally and about half of the subscriber density of larger systems.⁵³ The Pleasant Grove system has an even lower subscriber density count of 31 subscribers per mile.⁵⁴ Lower subscriber density was another factor specifically relied upon by the Commission in establishing the 15,000 subscriber threshold for small systems. As summarized by the Commission: "[C]ommenters observe that a smaller system serving a large rural area faces increased 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."⁵⁵

32. With respect to the final factor relied upon by the Commission to distinguish small systems from their larger counterparts, the average regulated revenues of the three Insight systems fall in between the average revenues of small systems and the average revenues of larger systems, with the Jeffersonville and Noblesville systems being somewhat closer to the small system average.⁵⁶

33. For essentially the same reasons stated above with respect to the affiliation standard, we find that Insight has met its burden under Section 76.7(c)(1) of establishing its need for the special relief it has requested on behalf of the three systems at issue here and of demonstrating that the public interest will be served by the grant of such relief.⁵⁷ Insight has established that the three systems share many of the relevant characteristics of systems that the Commission found to be in need of rate relief. As such, we believe that the Insight systems are in as much need of that relief as are the small systems that qualify for it automatically. And since the Commission has found that extending rate relief to those in need of it will help to achieve the goals identified by Congress in passing the 1992 Cable Act, we find that granting small system status to the three Insight systems will further those same goals and therefore is in the public interest.

34. For these reasons, we will grant the Petition to the extent it requests small system status for the Insight systems based in Noblesville, Indiana, Jeffersonville, Indiana, and Pleasant Grove, Utah.

IV. SCOPE OF THE WAIVER

35. As a result of our grant of the Petition, each of Insight's 32 cable systems serving the franchising authorities in Appendix A shall be deemed a small system owned by a small cable company, as of the date of this order. Accordingly, each such system may now file FCC Form 1230 and set rates prospectively in accordance with the small system cost-of-service methodology.

36. In addition, we note that Insight's rates for its Phoenix, Arizona system (CUID AZ0109) are the subject of a pending rate proceeding. In the *Small System Order*, the Commission decided, in some instances, to permit small systems to use the small system cost-of-service methodology to justify rates that were the subject of rate proceedings that were pending when that order was released.⁵⁸ This approach was made applicable if the system qualified as a small system owned by a small cable company as of the release date of the *Small System Order* and as of the date the system became subject to regulation.⁵⁹ Assuming that Insight qualified under the terms of this waiver as of the release date of the *Small System Order* and as of the date its Phoenix, Arizona system became subject to regulation, Insight may also file an FCC Form 1230 and use the small

⁴⁴ *Id.*

⁴⁵ *Id.* at 7412-13.

⁴⁶ *Id.*

⁴⁷ Petition at 7.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See *supra* at ¶ 26.

⁵¹ Petition at 8.

⁵² *Small System Order*, 10 FCC Rcd at 7401-02.

⁵³ Petition at 8.

⁵⁴ *Id.*

⁵⁵ *Small System Order*, 10 FCC Rcd at 7401-02. The third

Insight system, Jeffersonville, has a subscriber density comparable to that of larger systems. However, this appears to be the only way in which the Jeffersonville system resembles a larger system.

⁵⁶ Petition at 8.

⁵⁷ See *supra* at ¶¶ 23-25.

⁵⁸ *Small System Order*, 10 FCC Rcd at 7428.

⁵⁹ *Id.*

system cost-of-service methodology to justify its rates in that rate proceeding. We are advised that Insight operates on a calendar year basis. Therefore, we will allow Insight to close out its books for the calendar year and then base its Form 1230 on this most current information. Accordingly, if Insight chooses to justify its rates in the pending rate proceeding under the small system cost of service methodology, it must file a Form 1230 no later than March 31, 1996.

37. With respect to any particular system, the duration of the waiver shall depend upon whether the system is one of the 29 Insight systems with fewer than 15,000 subscribers, or one of the three systems with more than 15,000 subscribers. We shall address the duration issue with respect to these two categories of systems separately. In addition, we must discuss the impact of the waiver on systems that Insight might acquire in the future.

A. *Insight's 29 Small Systems*

38. 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.⁶⁰

39. The Commission adopted this grandfathering treatment for qualifying systems to enhance their value "in the eyes of operators and, more importantly, lenders and investors."⁶¹ 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."⁶²

40. Insight's 29 small systems are accorded similar grandfathering treatment pursuant to this waiver. Thus, now that the 29 Insight systems have been deemed eligible for small system rate regulation, each system remains eli-

gible for small system treatment for so long as it serves 15,000 or fewer subscribers, without regard to subsequent changes in the status of Insight or any other entity that holds or acquires an interest in the system. For example, each of the 29 systems that are currently smaller than 15,000 subscribers will remain eligible for small system treatment as long as its subscriber base does not exceed 15,000 subscribers, even if Insight subsequently conveys the system to a MSO with more than 400,000 subscribers.

41. Upon exceeding the 15,000 subscriber threshold, the 29 Insight systems shall be treated like any other qualifying system that has crossed that barrier.⁶³ Thus, if a system establishes its rates in accordance with the small system cost-of-service methodology, and later exceeds 15,000 subscribers:

. . . the system 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.⁶⁴

42. The "then existing rates" described above refers to the maximum rate that the system is entitled to charge under the small system cost-of-service methodology, not the rate that the system is actually charging, when it exceeds 15,000 subscribers. This maximum rate shall be determined by the most recently filed FCC Form 1230, the form created by the Commission for purposes of the small system cost-of-service showings. Thus, after passing the 15,000 subscriber standard, the system may continue to increase rates up to the maximum amount permitted by the most recent Form 1230, subject only to the standard 30 days' notice requirement.⁶⁵ Future Form 1230 filings are not permitted after the system exceeds 15,000 subscriber, although in that case the system may file a petition for special relief seeking continued treatment as a small system.⁶⁶

B. *Insight's Remaining Three Systems*

43. Having been granted the status of small systems, the three Insight systems with more than 15,000 subscribers may now establish rates in accordance with the small system cost-of-service methodology. For the reasons stated above, their continued eligibility for small system status under this waiver shall not be affected by any subsequent change in the status of Insight or any other entity that holds or acquires an interest in the systems.⁶⁷

44. Since these systems already have exceeded 15,000 subscribers, there is no obvious numerical limit to serve as a cutoff for their continued eligibility for small system

⁶⁰ *Small System Order*, 10 FCC Rcd 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.

⁶¹ *Id.* at 7413.

⁶² *Id.*

⁶³ *See id.* at 7413-17.

⁶⁴ *Id.* at 7427-28.

⁶⁵ *Id.* at 7426; see 47 C.F.R. § 76.932. Allowing Insight's systems to take these increases after exceeding 15,000 subscribers, subject

only to the notice requirement, is consistent with the small system cost-of-service rules that apply before a system reaches that threshold. That is, regardless of whether a system has passed the 15,000 subscriber mark, once a system's Form 1230 has been approved, the system may take rate increases up to the maximum amount permitted by the form, without further regulatory review. *Small System Order*, 10 FCC Rcd at 7426.

⁶⁶ *Id.* at 7427-28 n.135.

⁶⁷ *See supra* at ¶ 40.

treatment. However, it is reasonable to presume that these systems will continue to grow. Thus, we must place some duration on the waiver, since the alternative would be to grant these systems 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.

45. Therefore, for these three systems the waiver will terminate two years from the date of this order, subject to the conditions set forth below. In addition, only one Form 1230 may be filed on behalf of these systems during the waiver period. These conditions should give Insight adequate regulatory certainty for the foreseeable future, while still ensuring that the systems are not permitted to charge rates indefinitely under a scheme designed for smaller systems. Of course, these systems may seek continued eligibility for small system treatment by filing a petition for special relief at the end of the waiver period.

46. Limiting the waiver period to two years means that any Form 1230 to be filed on behalf of these three systems must be submitted with the appropriate regulatory authorities within two years of the date of this order. If the system is currently subject to regulation, it may reestablish its maximum permitted rates by filing Form 1230 at anytime in the next two years. If the system is not currently subject to regulation but, within the next two years, becomes subject to regulation due to the certification of a local franchising authority or the filing of a CPST rate complaint, it then may file Form 1230 within the normal response time. If the system is not now subject to regulation, and does not become subject to regulation until more than two years from now, it will not be eligible for small system treatment under this waiver.

47. After filing its initial Form 1230 and giving the required notice, the system may set its actual rates 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.⁶⁸ 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 each of these three systems to a single Form 1230 filing provides further assurance that these systems will not have grown too large to be establishing rates under the small system cost of service methodology.

C. Systems Subsequently Acquired By Insight

48. The final class of systems to discuss in the context of the waiver consists of systems that Insight acquires in the future. With respect to systems acquired hereafter, we need be concerned only with those systems with 15,000 or fewer subscribers; any subsequently acquired systems of more than 15,000 subscribers are not small systems and are not entitled to small system status under our rules or this waiver.

49. Any small system that Insight acquires hereafter may already be entitled to small system status, regardless of the provisions of this waiver. As noted above, once a system establishes its eligibility for small system treatment, it remains eligible for that treatment as long as its subscriber base does not exceed 15,000, regardless of the size of its operator.⁶⁹ Therefore, a system that has already qualified for small system treatment as of the date it is acquired by Insight shall remain qualified for as long as it has no more than 15,000 subscribers. After it exceeds 15,000 subscribers, such a system will be subject to the same rules as any other system in the same circumstances.⁷⁰

50. This leaves for our resolution the status of small systems that are ineligible for small system treatment at the time they are acquired by Insight, e.g., a small system that previously was owned by a MSO with more than 400,000 subscribers. Because such a system meets the small system definition, it will become eligible for small system treatment upon its conveyance to Insight, if Insight qualifies as a small cable company at the time of the acquisition. Although Insight is granted that status based upon the circumstances and factors described above, we cannot expect those circumstances and factors to remain unchanged forever. For instance, even ignoring the Continental affiliation issue, it can be expected that the number of subscribers over all of Insight's systems will eventually exceed the 400,000 subscribership limit which defines small cable companies. Alternatively, following the release of this order, Continental could increase its interest in or control of Insight to such a degree that waiver of the affiliation standard would no longer be proper.

51. Consequently, application of this waiver to previously ineligible small systems that are subsequently acquired by Insight will not continue indefinitely.⁷¹ Insight may only apply the waiver to these systems if they are acquired at a time that there have been no material changes in the conditions specified in Insight's petition and this order. One clear example of a material change in the conditions cited in the petition and order is if Insight's subscribership, exclusive of Continental subscribers, exceeds 400,000. Likewise, should Continental take an active role in the management of Insight, we would no longer disregard the affiliation between the two operators. In such a case, Insight would no longer be deemed a small cable company, and small systems it acquired thereafter would not be covered by this waiver.

⁶⁸ *Small System Order*, 10 FCC Rcd at 7426. As noted earlier, 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. See *supra* at n.65.

⁶⁹ See *supra* at ¶ 38.

⁷⁰ See *supra* at ¶ 42.

⁷¹ The systems currently owned by Insight remain eligible, as provided above, without regard to any change in Insight's status. See *supra* at ¶¶ 38, 41. Therefore, such systems are not affected by our decision not to accord small cable company status to Insight indefinitely.

V. ORDERING CLAUSES

52. Accordingly, IT IS ORDERED that the Petition for Special Relief filed by Insight Communications Company, L.P. requesting a waiver of the Commission rules defining systems subject to small system rate relief IS GRANTED with respect to Insight systems regulated by the franchising authorities listed in Appendix A, and systems subsequently acquired by Insight, to the extent provided herein.

53. This action is taken pursuant to delegated authority under Section 0.321 of the Commission's rules.⁷²

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Appendix A

Arizona

Avondale, AZ
(AZ0254)
El Mirage, AZ
(AZ0272)
Gilbert, AZ
(AZ0203)
Luke Air Force Base, AZ
(AZ0169)
Maricopa County, AZ
(AZ0183, AZ0191)
Phoenix, AZ
(AZ0109, AZ0273)
Tolleson, AZ
(AZ0213)

California

Artesia, CA
(CA1294)
Bell/Cudahy, CA
(CA1222, CA1223)
Claremont, CA
(CA1224)
Los Angeles County, CA
(CA1346)

Georgia

Griffin, GA
(GA0083)
Orchard Hill, GA
(GA0483)
Spalding County, GA
(GA0377)
Sunnyside, GA

(GA0828)

Indiana

Arcadia, IN
(IN0269)
Atlanta, IN
(IN0643)
Charlestown, IN
(IN0083)
Cicero, IN
(IN0267)
Clark County, IN
(IN0081)
Clarksville, IN
(IN0085)
Fishers, IN
(IN0270)
Greenfield, IN
(IN0716)
Hamilton County, IN
(IN0205)
Hancock County, IN
(IN0713)
Jeffersonville, IN
(IN0086)
Madison County, IN
(IN0718)
Markleville, IN
(IN0717)
New Palestine, IN
(IN0714)
Noblesville, IN
(IN0204)
Sellersburg, IN
(IN0084)
Shelby County, IN
(IN0715)
Spring Lake, IN
(IN0712)
Tipton, IN
(IN0211)
Tipton County, IN
(IN0644)
Utica, IN
(IN0652)
Westfield, IN
(IN0358)

Kentucky
Bedford, KY
(KY1016)
Campbellsburg, KY
(KY1012)

⁷² 47 C.F.R. § 0.321.

Crestwood, KY
(KY0576)
Henry County, KY
(KY1099, KY1100)
LaGrange, KY
(KY0575)
Oldham County, KY
(KY0577)
Orchard Grass Hills, KY
(KY0636)
Smithfield, KY
(KY1125)
Trimble County, KY
(KY1171)

Utah

American Fork, UT
(UT0050)
Alpine City, UT
(UT0056)
Bear River City, UT
(UT0167)
Box Elder County, UT
(UT0194)
Brigham City, UT
(UT0021)
Cedar City, UT
(UT0039)
Clearfield, UT
(UT0085)
Clinton City, UT
(UT0200)
Corinne City, UT
(UT0169)
Davis County, UT
(UT0203)
Delta, UT
(UT0110)
Deweyville, UT
(UT0186)
Farr West, UT
(UT0084)
Fielding, UT
(UT0170)
Fruit Heights, UT
(UT0201)
Garland, UT
(UT0147)
Highland, UT
(UT0189)
Honeyville City, UT
(UT0168)
Layton, UT
(UT0090)
Lehi, UT
(UT0124)

Lindon, UT
(UT0190)
Mapleton, UT
(UT0191)
Midvale, UT
(UT0049)
Naples, UT
(UT0193)
Orem, UT
(UT0058)
Perry, UT
(UT0150)
Plain City, UT
(UT0159)
Pleasant Grove, UT
(UT0052)
Pleasant View, UT
(UT0158)
Plymouth City, UT
(UT0171)
Salt Lake County, UT
(UT0157)
Sandy, UT
(UT0046)
Springville, UT
(UT0016)
Syracuse, UT
(UT0091)
Tremonton, UT
(UT0071)
Utah County, UT
(UT0192)
Vernal City, UT
(UT0019)
Weber County, UT
(UT0187)
West Haven, UT
(UT0217)
West Jordan, UT
(UT0051)
West Point, UT
(UT0148)
Willard, UT
(UT0166)

Virginia

Boykins, VA
(VA0413)
Branchville, VA
(VA0412)
Courtland, VA
(VA0378)
Franklin, VA
(VA0386)
Isle of Wight, VA
(VA0380)

Ivor, VA
(VA0525)
Newsoms, VA
(VA0414)
Smithfield, VA
(VA0388)
Southampton County, VA
(VA0381)
Sussex County, VA
(VA0382)
Wakefield, VA
(VA0383)
Waverly, VA
(VA0384)
Windsor, VA
(VA0385)