

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

LETTER
December 13, 1995

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Robert J.V. Vose, Esq.
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Suite 1200, The Colonnade
5500 Wayzata Boulevard
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Re: Lake Minnetonka Cable Communications
Commission (CUID Nos. MN0562-MN0568 and
MN0570-MN0576)

Dear Mr. Vose:

This responds to your November 1, 1995 letter written on behalf of the Lake Minnetonka Cable Communications Commission ("LMCCC"). LMCCC is certified to regulate the rates of Triax Midwest Associates, L.P. d/b/a Triax Cablevision, a limited partnership managed by Triax Communications Corporation ("Triax").

According to your letter, on September 25, 1995 Triax attempted to justify a proposed rate increase by filing FCC Form 1230. On October 10, 1995, Triax filed an amended Form 1230. As you know, Form 1230 was adopted by the Commission for use by systems seeking to establish or justify rates in accordance with the small system cost-of-service methodology. See *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, 7424 (1995) ("*Small System Order*"). That methodology is available to small systems owned by small cable companies. *Small System Order*, 10 FCC Rcd at 7406. A small system is defined as a cable television system that serves 15,000 or fewer subscribers. 47 C.F.R. § 76.901(c). A small cable company is defined as a cable television operator that serves a total of 400,000 or fewer subscribers over one or more cable systems. 47 C.F.R. § 76.901(e). Systems seeking to use the small system cost-of-service methodology must qualify under these size standards as of either August 21, 1995, the effective date of the *Small System Order*, or as of the date on which they file their Form 1230. *Small System Order*, 10 FCC Rcd at 7413.

You state that LMCCC has tolled the standard 30-day rate review deadline for an additional 150 days, and has asked Triax to provide further information to explain and support the data in its filing. In light of LMCCC's pending review, you request clarification as to what specific information LMCCC may require Triax to submit. You further request clarification as to how Triax's eligibility for small system relief will be affected if Triax's Lake Minnetonka system ever serves more than 15,000 subscribers,

thus exceeding the small system limit. Finally, you ask if LMCCC can require Triax to immediately report when its system has more than 15,000 subscribers.

The first issue you raise is whether LMCCC is permitted to request that Triax verify and certify its subscriber counts and explain how those counts were generated. LMCCC seeks an explanation of how Triax defines a subscriber and how it treats residents of multiple dwelling units and seasonal customers, among other things. As you are aware, in the *Small System Order* the Commission stated that the permissible scope of a franchising authority's request for information would depend upon whether the operator was seeking to justify a rate that exceeded \$1.24 per regulated channel. If the proposed rate does not exceed that amount, the franchising authority:

should seek only existing, relevant documents or other data compilations and should not require the operator to create documents, although the operator should replicate responsive documents that are missing or destroyed. Where the requested rate exceeds \$1.24 per channel, a broader request for supporting documentation, and greater scrutiny of that documentation, will be permitted. *Id.* at 7424.

As you state in your letter, requiring Triax to explain how it arrived at its subscriber counts might require the creation of documents that Triax would not otherwise produce. However, we do not believe that the Commission, in setting forth limitations on franchising authority requests, intended to prohibit a franchising authority from requesting a brief description of how specific figures are calculated when the manner of calculation is not apparent from the figures themselves. We believe LMCCC is entitled to request this information because the issues raised are relevant to determining the number of subscribers served by Triax's system. With these considerations in mind, we trust that LMCCC will be able to formulate requests that will satisfy its interest in this regard, without unduly burdening the operator.

Your second inquiry concerns how Triax's eligibility for small system relief will be affected if Triax ever has more than 15,000 subscribers after August 21, 1995, the effective date of the *Small System Order*. Specifically, you seek clarification as to the impact on Triax's small system status if Triax has fewer than 15,000 subscribers on August 21, 1995 but subsequently exceeds the threshold on the date it files the Form 1230, on some date during LMCCC's review of Triax's form, or at various times thereafter due to seasonal variations in the subscriber base.

The *Small System Order* provides that when a small system attempts to qualify for any existing form of small system relief, it may elect to show that it met the small system and company size standards on either the effective date of the *Small System Order* or on the date that it files the documentation that supports its claim (*i.e.*, a Form 1230). *Small System Order*, 10 FCC Rcd at 7413. Once an operator "has established rates at a level permitted by Form 1230, it may increase rates thereafter at its discretion until it reaches the maximum level permitted by the form, subject only to the 30 days' notice requirement." *Id.* at 7426. Moreover, the *Small System Order* states:

When a system that has established rates in accordance with Form 1230 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." *Id.* at 7428.

Thus, when Triax files a Form 1230 for the first time, it has the option of showing that it met the new small system size standards on the effective date of the *Small System Order*, without regard to its subscribership on the day of filing. If Triax files a proper Form 1230 which indicates that it met the small system size standards on August 21, 1995 and which otherwise complies with our rules, this form will govern Triax's maximum rates for regulated services, regardless of whether Triax exceeds 15,000 subscribers at some point after having filed the form. The fact that Triax subsequently exceeds 15,000 subscribers will affect its ability to raise its maximum permitted rate, but it will not affect Triax's ability to raise its actual rates up to the maximum rate established by the previously filed Form 1230. If Triax wants to establish a new maximum permitted rate after having exceeded 15,000 subscribers, it must do so in accordance with our standard benchmark or cost-of-service rules. Of course, despite exceeding 15,000 subscribers, Triax would again become eligible to use the small system rules if its subscriber count subsequently fell back below 15,000 and it filed a new Form 1230 while below that threshold.

Finally, LMCCC asks whether it may require Triax to immediately report when its system has more than 15,000 subscribers. As stated above, a system need only establish that it qualifies under the 15,000 subscribership standard when it files Form 1230. Exceeding 15,000 subscribers does not affect the validity of a previously filed Form 1230. Therefore, any further inquiry into Triax's subscribership after Triax has established its right to set rates according to the Form 1230 is unnecessary unless and until Triax files a new Form 1230. Consequently, LMCCC should not require Triax to immediately report when its system has more than 15,000 subscribers.

Should you have any further questions concerning this matter, please call Tom Power at (202) 416-1180 or Rodney McDonald at (202) 416-0822.

Sincerely,

Meredith J. Jones
Chief, Cable Services Bureau