



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY  
Cable Television Division**

In the Matter of	)	
AT&T Broadband	)	
formerly Cablevision of	)	
Boston, Inc. and	)	Docket No. CTV 00-8
Cablevision of	)	Date Issued: December 17, 2001
Massachusetts, Inc.	)	
	)	
AT&T CSC, Inc.	)	
formerly	)	Acton, CUID MA 0196 Hudson, CUID MA 0139
Cablevision of	)	Ashburnham, CUID MA 0337 Leominster, CUID MA 0017
Massachusetts, Inc.	)	Ayer, CUID MA 0257 Lexington, CUID MA 0140
	)	Bedford, CUID MA 0210 Lincoln, CUID MA 0324
MediaOne of	)	Belmont, CUID MA 0316 Littleton, CUID MA 0294
New York, Inc.	)	Boston, CUID MA 0182 Lunenburg, CUID MA 0077
formerly	)	Boxborough, CUID MA 0289 Lynnfield, CUID MA 0167
Cablevision of Boston, Inc.	)	Braintree, CUID MA 0217 Maynard, CUID MA 0146
	)	Brookline, CUID MA 0219 Norwood, CUID MA 0148
UACC Midwest, Inc.	)	Carlisle, CUID MA 0293 Peabody, CUID MA 0119
formerly	)	Concord, CUID MA 0270 Stow, CUID MA 0256
Cablevision of Brookline	)	Danvers, CUID MA 0279 Sudbury, CUID MA 0255
Limited Partnership	)	Fitchburg, CUID MA 0015 Templeton, CUID MA 0127
	)	Framingham, CUID MA 0094 Townsend, CUID MA 0296
all d/b/a AT&T Broadband	)	Gardner, CUID MA 0016 Tyngsborough, CUID MA 0232
	)	Georgetown, CUID MA 0133 Westford, CUID MA 0192
For a Determination of	)	Groveland, CUID MA 0071 Westminster, CUID MA 0230
Cable Television Rates	)	Haverhill, CUID MA 0031 Westwood, CUID MA 0204

**ORDER ACCEPTING COMPLIANCE FILING  
AND  
SETTLEMENT AGREEMENT**

---

APPEARANCES: William P. Leahy  
Regional Director of Government Affairs  
99 Bedford Street, Suite 430  
Boston, MA 02111

AND

James G. White, Jr.  
Senior Attorney  
6 Campanelli Drive  
Andover, MA 01810-1095  
FOR: AT&T BROADBAND  
Petitioner

Charles J. Beard, Esq.  
Foley Hoag  
1 Post Office Square  
Boston, MA 02109-2170  
FOR: THE CITY OF BOSTON  
Intervenor

Thomas H. Connors  
22 Monument Square  
P.O. Box 535  
Concord, MA 01742  
FOR: THE TOWN OF CONCORD  
Intervenor

Wayne P. Marquis  
Town Administrator  
Town Hall  
One Sylvan Street  
Danvers, MA 01923  
FOR: THE TOWN OF DANVERS  
Intervenor

David G. Kanter  
48 Fifer Lane  
Lexington, MA 02420-1224  
FOR: THE TOWN OF LEXINGTON  
Intervenor

Robert Zurek  
78 Morse Lane  
Boxborough, MA 01719  
FOR: THE TOWN OF BOXBOROUGH  
Limited Participant

C. Stephen Bressler  
11 Pierce Street  
Brookline, MA 02445  
FOR: THE TOWN OF BROOKLINE  
Limited Participant

I. THE BROOKLINE COMPLIANCE FILING

On October 1, 2001, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued a rate order concerning AT&T Broadband’s (“AT&T Broadband” or “the Company”) proposed basic service tier programming and equipment rates for the above-referenced communities. AT&T Broadband, CTV 00-8 (2001) (“Order”). In the Order, the Cable Division determined that a projected franchise related cost was not reasonably certain and therefore should be removed from the rate calculation on the Boston/Brookline Federal Communications Commission (“FCC”) Form 1240. Order at 6. The Cable Division directed the Company to revise its FCC Form 1240 and file it with the Cable Division. On November 2, 2001, the Company filed a revised FCC Form 1240.

On November 15, 2001, Brookline filed comments in response to the Company’s compliance filing.<sup>1</sup> In its submission, Brookline raised several issues that are not related to the revisions on the FCC Form 1240, but pertain to AT&T Broadband’s proposal as originally filed. Brookline provided no justification for failing to raise these issues while the record was open. Brookline also did not request the Cable Division to reopen the record. Therefore, the Cable Division will not address those questions raised by Brookline that were not affected by the Compliance Filing and that could have been raised earlier. We find it appropriate to address only those issues raised by Brookline that result from the Compliance Filing.

Those appropriately raised issues in Brookline’s submission concern the nature of the revised FCC Form 1240. Specifically, Brookline questions whether the form calculates a rate for Brookline only, and if so, whether such a rate were calculated appropriately. Brookline also seems to suggest that the form should be submitted with Brookline data only. The Company stated that it filed a revised FCC Form 1240 for the Boston/Brookline system but further stated that the compliance filing applied to Brookline only. The Company apparently made the latter statement given its position that the Cable Division’s authority to regulate Boston’s rates was revoked by the FCC and our statement in the Order that the question of jurisdiction over Boston’s rates would be resolved at a later time. Order at 7, see also Cablevision of Boston, Inc.; Petition for Determination of Effective Competition, CSR 5048-E, DA 01-1731 (July 20, 2001) (the “Effective Competition Order”).<sup>2</sup>

---

<sup>1</sup> Brookline’s submission was actually a list of questions and requests for clarification. There is no procedural mechanism for such a filing after the close of the record. Brookline would be better served to offer its position on the issues based on record evidence and supported by argument with legal citations.

<sup>2</sup> The City of Boston challenged this determination, filing with the FCC on August 20, 2001 an Application for Review of Determination of Effective Competition and a Petition to Stay Determination of Effective Competition. As of the date of this Order, the FCC has not yet acted on the City’s filings.

The FCC Form 1240 at issue in this proceeding was one prepared jointly for the Boston/Brookline system, as is specifically permitted by FCC Form 1240. FCC Form 1240 at 1; FCC Form 1240 Instructions at 11. The combined filing established the Brookline rate currently in effect and under review in this proceeding. In fact, the form was subject to the full adjudicatory process, following which the Cable Division ordered a revision of the franchise related cost calculation. A combined filing is not only allowed, but is required at this stage of the proceeding. A de novo filing would require examination through the full regulatory review process, including a public and evidentiary hearing. Therefore, the Compliance Filing appropriately remains a combined filing with Boston and Brookline data.<sup>3</sup>

With respect to the substance of the filing, we find that, as directed by our Order, the Company removed from the combined filing a \$750,000 payment to the Boston Network Fund, an adjustment that reduces the basic service tier (“BST”) maximum permitted rate for Brookline from \$9.38 to \$8.99<sup>4</sup> (Compliance Filing at 4, Line I9). Since the current BST rate charged Brookline subscribers is \$9.38, AT&T Broadband must compensate subscribers for these overcharges. This compensation is provided through the true-up mechanism on FCC Form 1240. FCC Form 1240 Instructions at 5. This mechanism provides that “[i]f the sum collected is more than what should have been collected, then you must lower your rates in future rate periods to compensate subscribers for the difference.” *Id.* Accordingly, the Cable Division directs AT&T Broadband to provide true-up adjustments on its next Brookline FCC Form 1240 rate filing to offset its excessive BST rates.

The Cable Division finds that the Compliance Filing has been prepared in conformity with the Rate Order and the FCC’s rate regulations, and establishes a just and reasonable rate.

---

<sup>3</sup> The Cable Division notes that the next FCC Form 1240 AT&T Broadband files for Brookline will apply only to Brookline. Given the FCC’s determination of the existence of effective competition in the City of Boston, it would be inappropriate to establish Brookline’s rates by including on the Brookline FCC Form 1240 financial data from a community whose BST rates the FCC has specifically excluded from regulation and are established pursuant to a negotiated settlement. Even were the FCC to reverse the Effective Competition Order, AT&T Broadband has agreed that it would file a separate rate form for the City of Boston, thus leaving Brookline’s rate to be calculated independently.

<sup>4</sup> The removal of the \$750,000 Boston Network Fund payment reduces Worksheet 7-External Costs, Projected Period, Line 710, “Monthly Per-Subscriber External Costs For Period I” from \$0.4744 to \$0.0882 (Exh. AT&T Broadband-5 at Worksheet 7, Compliance Filing at Exhibit 7).

## II. THE BOSTON SETTLEMENT AGREEMENT

In the Order, while the Cable Division issued final findings with respect to the Boston/Brookline FCC Form 1240, we deferred making a specific finding as to the status of our regulatory authority to establish BST rates in the City of Boston (“Boston” or “City”). Subsequent to the issuance of our Order, the City and AT&T Broadband entered into settlement negotiations that produced an agreement as to the BST rate in Boston (“Settlement Agreement”). The Settlement Agreement was filed with the Cable Division on December 13, 2001. The parties sought the Cable Division’s acceptance of the Settlement Agreement but stated that any such acceptance need not address the jurisdictional issues arising from this matter.

Upon review of the Settlement Agreement, the Cable Division finds that the BST rate to which the parties agree, \$7.63, exclusive of franchise fees, is reasonable. This rate is to remain in effect through 2002.<sup>5</sup> The Settlement Agreement also provides a methodology for calculating the BST rate increases after 2003. We find this methodology acceptable.

Finally, the Settlement Agreement provides that should the FCC reverse its finding of effective competition in Boston, AT&T Broadband would file an FCC Form 1240 covering Boston only and an FCC Form 1205 on each anniversary date for AT&T’s Broadband’s filings (currently March 1). The Cable Division would accept such filings for informational purposes.

Therefore, based on our review and above discussion, the Cable Division finds the terms of the Settlement Agreement acceptable.

## III. CONCLUSION AND ORDER

ORDERED: That the compliance filing made by AT&T Broadband on November 1, 2001 is hereby approved; and it is

FURTHER ORDERED: That AT&T Broadband’s FCC Form 1240 filing for the next rate period for the Town of Brookline include true-up adjustments that compensate subscribers for basic service tier rates charged during the current rate period that exceed the maximum permitted rates for the Town of Brookline approved by this Order.

---

<sup>5</sup> Paragraph 3 of the Settlement Agreement indicates that the BST rate would remain effect until the FCC rules on the City’s Application For Review of Determination of Effective Competition In Re Cablevision of Boston, Inc. and the City’s Petition to Stay Determination of Effective Competition. We do not know when the FCC will act on these matters. Our acceptance of this Settlement Agreement is therefore conditioned on the provision in Paragraph 1, which states the BST rate will not be increased in 2002, as being the operative language.

The attached schedule provides the proposed and approved permitted basic service tier programming rates for the Town of Brookline.

**By Order of the  
Department of Telecommunications and Energy  
Cable Television Division**

/s/Alicia C. Matthews  
**Alicia C. Matthews**  
**Director**

## **APPEALS**

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.

TOWN OF BROOKLINE  
Rate Schedule

A	B	C	D
Previous Rate	Current Rate Effective February 1, 2001	Proposed Adjusted Maximum Permitted Rate	Approved 1240 Maximum Permitted Rate
\$8.85	\$9.38	\$9.38	\$8.99