



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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

In the Matter of )	Docket No. CTV 02-2				
AT&T Broadband )	Date Issued: February 19, 2003				
)					
AT&T CSC, Inc. )	Acton	Deerfield	Ipswich	North	Taunton
Intermedia Partners, a )	Acushnet	Dennis	Lakeville	Attleborough	Templeton
California Limited )	Agawam	Dighton	Lancaster	North	Tewksbury
Partnership )	Amherst	Dover	Lawrence	Reading	Topsfield
MediaOne of Brockton, Inc. )	Andover	Dracut	Leominster	Northampton	Townsend
MediaOne of )	Ashburnham	East	Lincoln	Northfield	Truro
Massachusetts, Inc. )	Ashland	Bridgewater	Littleton	Norton	Tyngsborough
MediaOne of Needham, Inc. )	Attleboro	Eastham	Longmeadow	Norwell	Upton
MediaOne of )	Avon	Easton	Lowell	Norwood	Wakefield
New England, Inc. )	Ayer	Erving	Lunenburg	Orleans	Walpole
MediaOne of )	Barnstable	Everett	Lynn	Palmer	Waltham
MediaOne of New York, Inc. )	Bedford	Fairhaven	Lynnfield	Peabody	Ware
MediaOne of Ohio, Inc. )	Bellingham	Fall River	Malden	Pelham	Wareham
MediaOne of Southern )	Belmont	Fitchburg	Mansfield	Phillipston	Warren
New England, Inc. )	Berkley	Foxborough	Marblehead	Plainville	Watertown
MediaOne of Virginia, Inc. )	Bernardston	Framingham	Marion	Provincetown	Wayland
MediaOne of Western )	Beverly	Franklin	Marlborough	Quincy	Wellesley
New England, Inc. )	Billerica	Freetown	Mattapoisett	Randolph	Wellfleet
TCI Cablevision of )	Blackstone	Gardner	Maynard	Raynham	Wenham
Georgia, Inc. )	Boxborough	Georgetown	Medfield	Reading	West
TCI TKR of Georgia, Inc. )	Boxford	Gill	Medford	Rehoboth	Bridgewater
UACC Midwest, Inc. )	Braintree	Granby	Medway	Revere	West
United Cable Television Corp. )	Bridgewater	Granville	Melrose	Rochester	Newbury
of Eastern Connecticut )	Brockton	Greenfield	Mendon	Rowley	West
United Cable Television )	Brookline	Groveland	Methuen	Salem	Springfield
Services Corporation )	Buckland	Hamilton	Middleborough	Saugus	Westfield
Westmarc Development )	Burlington	Hanover	Middleton	Scituate	Westford
Joint Venture )	Cambridge	Hanson	Milford	Seekonk	Westhampton
all d/b/a )	Canton	Hardwick	Millis	Sharon	Westminster
AT&T Broadband )	Carlisle	Harwich	Milton	Shelburne	Weston
For a Determination )	Chatham	Hatfield	Monson	Sherborn	Westwood
Of Cable )	Chelmsford	Haverhill	Montague	Somerset	Weymouth
Television Rates )	Chelsea	Hingham	Nahant	South Hadley	Whitman
)	Chester	Holbrook	Nantucket	Southwick	Williamsburg
)	Clinton	Holliston	Natick	Springfield	Wilmington
)	Cohasset	Holyoke	Needham	Stoneham	Winchendon
)	Concord	Hopedale	New Bedford	Stoughton	Winchester
)	Conway	Hopkinton	Newbury	Stow	Winthrop
)	Danvers	Hudson	Norfolk	Sudbury	Wrentham
)	Dartmouth	Hull	North	Sunderland	Yarmouth
)	Dedham	Huntington	Andover	Swampscott	

**RATE ORDER**

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AND

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Limited Participant

## I. INTRODUCTION

On March 1, 2002, and March 28, 2002, AT&T Broadband<sup>1</sup> (“AT&T Broadband” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1240, and equipment and installation rates on FCC Form 1205, for all of the above-captioned communities. Pursuant to 47 C.F.R. § 76.933(g), the rates AT&T Broadband proposed in its FCC Form 1240 and FCC Form 1205 filings became effective on July 1, 2002.

The Cable Division held a public and evidentiary hearing on the pending filings in Boston on December 17, 2002. The Cities of Cambridge, Fall River, Haverhill, Medford and Revere, and the Towns of Bedford, Brookline, Danvers, Holliston, Needham, North Andover, Rehoboth, Somerset, Townsend and Yarmouth intervened in this proceeding, and the Cities of Brockton and Everett and the Towns of Stoneham, Winchester and Wrentham were admitted as Limited Participants. The evidentiary record consists of the Company’s rate forms admitted as AT&T Broadband Exhibits 1 through 185, AT&T Broadband’s responses to our information requests admitted as Cable Division Exhibits 1 through 37, and several responses to record requests.

## II. STANDARD OF REVIEW AND BURDEN OF PROOF

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. The FCC Form 1205 establishes rates for installations and equipment such as converters and remote controls, based upon actual capital costs and expenses. FCC Form 1205 Instructions at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator’s previous fiscal year. *Id.* at 2. Subscriber charges established by the FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with the FCC’s regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted on the FCC Form 1240 for projections in external costs, or for projected changes to the

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<sup>1</sup> In each of the communities it offers service, AT&T Broadband, at the time of these filings, was formally licensed as one of the following: AT&T CSC, Inc., Intermedia Partners, a California Limited Partnership, MediaOne of Brockton, Inc., MediaOne of Massachusetts, Inc., MediaOne of Needham, Inc., MediaOne of New England, Inc., MediaOne of New York, Inc., MediaOne of Ohio, Inc., MediaOne of Southern New England, Inc., MediaOne of Virginia, Inc., MediaOne of Western New England, Inc., TCI Cablevision of Georgia, Inc., TCI TKR of Georgia, Inc., UACC Midwest, Inc., United Cable Television Corp. of Eastern Connecticut, United Cable Television Services Corporation, and Westmarc Development Joint Venture.

number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A); 47 C.F.R. § 76.922(e)(2)(iii)(A). Although cable operators may project for increases in franchise related costs (“FRCs”) to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC’s rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Communications Act of 1934, as amended. 47 C.F.R. §§ 76.922, 76.923, 76.930. The Cable Division may accept as in compliance with the statute BST rates that do not exceed the “Subsequent Permitted Per Channel Charge” as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for the basic service tier and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993) at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

### III. DISCUSSION AND ANALYSIS

#### A. Interest-on-Interest in True-Up Calculations

For those operators employing the annual rate adjustment method, the first step in completing an FCC Form 1240 for the current year is to enter on Line A1, “Current Maximum Permitted Rate,” the amount reported on the previous FCC Form 1240 at Line I9, “Maximum Permitted Rate for Projected Period.” FCC Form 1240 Instructions at 12. In this proceeding, the appropriate amount to be reported on Line A1 is in question, since the previous forms’ Line I9 amount has not been finally approved. In AT&T Broadband, CTV 01-1/01-3 (2002) (the “2002 Rate Order”), the Cable Division directed the Company to include on its FCC Form 1240s, at Line H14, “Amount of True-Up Claimed for this Projected Period,” only the amount of true-up that the Company actually included in subscribers’ BST rates. As a result, the amount reported on Line I9 would be altered.<sup>2</sup> AT&T Broadband appealed the Cable Division’s

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<sup>2</sup> The amount reported on Line H14, which is an annual figure, is converted into a monthly per-subscriber amount and entered on Line I8. FCC Form 1240 Instructions at 22-23. Line I8 is one of the five figures added together to derive Line I9. Id. at 23.

ruling to the Media Bureau of the FCC, which has not acted on the appeal as of the issuance date of this Rate Order. A stay of our 2002 Rate Order was neither requested by the Company nor imposed by the FCC. The Media Bureau, however, has ruled on the question of the appropriate calculation of Line H14, and by implication, Line I9, in CoxCom, Inc., d/b/a Cox Communications New England, DA 02-967 (released April 29, 2002) ("Cox"). We appealed Cox to the Commission, which has not yet issued an order. Thus, there exists conflicting precedent: the 2002 Rate Order that remains in full force and effect, and the decision of the Media Bureau which is under review on appeal.

AT&T Broadband filed the majority of the rate forms at issue on March 1, the day after the Cable Division issued the 2002 Rate Order. As a result, these forms necessarily did not comply with the directives of the 2002 Rate Order. However, the Company submitted abbreviated forms that included the revisions required by our 2002 Rate Order (the "Compliance Forms") (RR-CTV-3). In order to promote administrative efficiency, balance regulatory burdens and costs, and avoid the need for redundant appeals, the Cable Division will review both sets of forms, each under the relevant precedent. The Company will be allowed to charge rates deemed reasonable and appropriate pursuant to the Media Bureau's precedent, as that is authoritative as of the date of the issuance of this Rate Order. In the event the FCC issues a decision upholding the Cable Division, the Company will be required to implement the alternative rates calculated on the Compliance Forms.

B. Rate-Making Treatment of Franchise Related Costs

1. Regional Average Versus Actual Franchise Related Costs

Several communities questioned AT&T Broadband's use of a different methodology than it had applied in previous years in order to recover its FRCs (Hearing Audiotape, Side B, at Counter Nos. 357-420; Side D, at Counter Nos. 137-255). The Company had previously used regional FRC averages in its rate calculations for a number of communities (see Exh. AT&T Broadband-18, Regional Average FRC page). In the current filings for those communities that had renewed franchise agreements, AT&T Broadband proposed to remove the regional average FRCs from the inflation portion of the rate calculation, and replace it with the actual FRCs identified from the prior license agreement plus any incremental amounts negotiated in the renewal agreement (Exh. CTV-5). According to the Company, the external costs were adjusted to allow only the incremental amount to flow through the form (id.).

For example, in Needham, the renewal license became effective in September 2001 (id.). Before renewal, the FRCs on Needham's FCC Form 1240s had been calculated using regional averages (Exh. CTV-6). Since Needham renewed its license, AT&T Broadband replaced the regional averages on the current Needham FCC Form 1240 with Needham's actual FRCs under the previous license agreement and

the incremental FRC amounts negotiated in the renewal agreement (Exh. CTV-5). On the current filing for Needham, the Company reported both continuing FRC obligations from the previous license, equivalent to a monthly payment of \$1.74 per subscriber, and a new obligation for institutional network maintenance under the renewal license, equivalent to a monthly payment of \$0.03 per subscriber (Exh. AT&T Broadband-108, at FRC Worksheet). These obligations result in an annual FRC charge of \$144,924, which is the amount AT&T Broadband entered at Worksheet 7, Line 707, for both the true-up and projected periods (Exh. AT&T Broadband-108, at Worksheet 7). Because the previous form's Line I7 was based on the pre-renewal regional average FRC, AT&T Broadband replaced it on Line D2 with the actual Needham per-subscriber FRC commitment from the previous license (Exh. CTV-6). In addition to Needham, five other communities renewed their franchises with the Company during the true-up period and the Company made similar adjustments to the FRC component of the rate calculation on each of its forms (Exh. CTV-5).<sup>3</sup>

In MediaOne of Massachusetts, Inc., Y-97 INC, Y-98 INC, Y-98 EQU at 6 (1998), the Cable Division noted that there may be instances where average, as opposed to actual, FRC calculations would result in a significant difference in the maximum permitted rate ("MPR"). Pursuant to the instructions to the FCC Form 1240, the previous form's Line I7 and the current form's Line D2 should be the same. FCC Form 1240 Instructions at 15. However, to ensure the accuracy of rate computations where a cable license has been renewed, the Cable Division directed the Company's predecessor to use a franchise-specific FRC amount for both pre-renewal and post-renewal FRCs. Id. at 7. For such communities, the Company has adjusted the FCC Form 1240 to reflect actual FRCs, by adjusting both Worksheet 7, Line 707 for the true-up period and Line D2 of the form. We therefore conclude that the Company's proposed methodology for recovering FRCs in Bernardston, Beverly, Nahant, Needham, Rochester and Topsfield is reasonable and appropriate and in compliance with applicable law and precedent.

## 2. Needham: Public Access Fee

Both the previous and current Needham cable licenses provide for a public access fee equal to 2.5 percent of gross annual subscriber revenues (RR-CTV-4). See Needham License (May 10, 1983), at 18-19, § 24(a); Needham Renewal License (September 11, 2001), at 27, § 6.5(a)-(c).<sup>4</sup> AT&T Broadband stated that effective

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<sup>3</sup> The communities are: Bernardston, Beverly, Nahant, Rochester, and Topsfield (Exh. CTV-5). The Company initially adjusted Winchendon's FRC calculation but revised this adjustment because the license had not been renewed during the true-up period (Exhs. CTV-5, -15).

<sup>4</sup> The Needham cable licenses are public documents filed with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of these licenses pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).



July 1, 2002, upon the first change in Needham's BST rate after the license renewal, the Company reduced its BST rate, and simultaneously began to charge the access fee separately on subscribers' bills (RR-CTV-4). The Company accomplished this by subtracting a per-subscriber amount equivalent to the entire pre-renewal 2.5 percent access fee from the BST MPR (id.). By removing the public access fee from Needham's BST rate and charging it as a separate fee, AT&T Broadband acted in compliance with Cable Division precedent and applicable law. See Charter Communications Entertainment I, L.L.C., CTV 01-8 (2002).

The Town noted that the access fee the Company is actually charging is 2.75 percent of gross revenues, rather than 2.5 percent (Hearing Audiotape, Side B, at Counter Nos. 387-394). The Company explained that the 2.75 percent consists of the 2.5 percent access fee required by the license, and an additional 0.25 percent increment (Hearing Audiotape, Side B, at Counter Nos. 400-420; RR-CTV-4). This increment consists of two elements. The first element, 0.06 percent, recovers the access fee amount charged against that portion of the gross revenue in Needham that is used to pay the access fee; this element is frequently called the "fee on fee" (RR-CTV-4). The second element, 0.19 percent, is the access fee amount paid to Needham on advertising and home shopping revenues (id.).<sup>5</sup> The "fee-on-fee" charge was authorized by the U.S. Court of Appeals in Dallas v. FCC, 118 F. 3d 393 (5<sup>th</sup> Cir. 1997), see also Franchise Fee "Pass Through" and Dallas v. FCC, DA 98-396 (released March 2, 1998). The access fee amount paid on revenues derived from advertising and home shopping channels was authorized by the FCC in its Memorandum Opinion and Order, City of Pasadena, California, FCC 01-289 (released October 4, 2001). Since both components of the 0.25 percent increment were allowed only after the Company entered into the original license, the amounts associated with this percentage were not embedded in the rate. Thus, the Company need not remove 2.75 percent from the rate; but according to federal law, may charge 2.75 percent as the public access fee.

### 3. Somerset: Franchise Related Costs

Somerset raised the issue of whether the Town's BST rate included any embedded costs related to the institutional network, PEG access studio, and the local customer service office (RR-Somerset-1; Comments of the Town of Somerset, February 5, 2003, at 3). AT&T Broadband acquired the Somerset license from Cox Communications in 1999 (Exh. CTV-3; RR-Somerest-1). According to AT&T Broadband, Cox Communications had not included FRC costs in its rate filing (id.). The Company stated that it was its practice to identify and calculate FRCs at the time of the license renewal for inclusion in the rate forms (id.). AT&T Broadband contends that it has not included FRCs in any of the Somerset rate calculations it has prepared (id.).

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<sup>5</sup> The Company stated that it would eliminate either the "fee on fee" or the home shopping element of the access fee, or both of them, if the Town agreed to forego this revenue (RR-CTV-4).

The methodology AT&T Broadband has used in Somerset is consistent with how it has prepared its rate filings since 1997, when an FRC settlement was reached between the Company and a number of communities.<sup>6</sup> The present license in Somerset is set to expire on October 2, 2003. Somerset Renewal License (October 2, 1996), at 8, § 2.2.<sup>7</sup> Since this date falls in the middle of AT&T Broadband's next projected period, whether these costs will be included in AT&T Broadband's next filing will be dependent upon how certain and quantifiable they are in March 2003, when the filing is made. 47 C.F.R. § 76.922(e)(2)(ii)(A). When AT&T Broadband does determine that it is appropriate to include these costs, the Cable Division expects AT&T Broadband to include costs only to the extent they exceed previous costs or are in fact new costs. Id. As AT&T Broadband will be required to identify these costs at the time they are included in the filing, the Cable Division will address the appropriateness of these costs at that time.

#### 4. Westwood: Omission of Franchise Related Costs

On the current Westwood FCC Form 1240 filing, AT&T Broadband omitted FRCs that had been reported on the previous combined Norwood and Westwood FCC Form 1240 filing (Exh. AT&T Broadband 175; Exh. CTV-14).<sup>8</sup> AT&T Broadband conceded that due to an oversight, these costs had been omitted from the current FCC Form 1240 at Worksheet 7 and the FRC worksheet (Exh. CTV-14). Because this omission affects the amount of true-up computed on the next form, we direct AT&T Broadband to submit a revised FCC Form 1240 for Westwood, including the FRCs. The revisions will not require an adjustment to the Company's BST rate currently charged in Westwood.

#### C. Costs Associated with the Carriage of WPIX

AT&T Broadband seeks to recover both copyright and programming costs associated with the carriage of WPIX on its Western Massachusetts systems (Exhs. CTV-17, -18, -19, -22, -25, -26). AT&T Broadband contended that WPIX is a permitted distant signal for its Western Massachusetts communities (RR-CTV-2). The

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<sup>6</sup> The FRC Settlement Agreement was approved in MediaOne of Massachusetts, Inc., et al., Y-96, at 6, 7 (1997). The FRC Settlement Agreement provided that the cable operator only need calculate the actual FRC amount for each municipality once that municipality's license was renewed.

<sup>7</sup> The Somerset Renewal License is a public document filed with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of this license pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

<sup>8</sup> The Company reported the appropriate FRCs on the Norwood FCC Form 1240 (Exh. AT&T Broadband-119).

Company further contended that it also incurs programming costs because it pays WPIX a fee to microwave its signal to Western Massachusetts (id.).

Under federal law, the Federal Register of Copyrights charges a copyright royalty fee on all gross receipts that cable operators receive from each tier of service that contains any broadcast signals. 17 U.S.C. § 111(d)(1). Federal regulations specifically provide that a royalty fee is due if a cable system transmits a broadcast station's non-network programming as a permitted distant signal beyond the broadcast station's service area. 37 C.F.R. § 256.2. Both copyright and programming fees are permitted external costs that cable operators may recover on FCC Form 1240, at Worksheet 7. FCC Form 1240 Instructions at 39. Although AT&T Broadband did not submit evidence of WPIX's location to confirm that WPIX is a permitted distant signal, an authoritative treatise reports that WPIX is located in New York City, and that its broadcast service area does not include Massachusetts. Television & Cable Factbook, Warren Communications News (2001), at A-865. Based on our review, we accept AT&T Broadband's payment of a copyright royalty fee for WPIX as reasonable and appropriate. Because WPIX's broadcast signals are not received in Massachusetts, we also accept as reasonable and appropriate AT&T Broadband's payment of a fee to receive WPIX's signal via microwave.

D. Channel Movements and Deletions

1. Everett

Everett expressed concerns regarding several changes being imposed by AT&T Broadband, including an increase in the rate for Standard Cable, the movement of certain channels to digital service, and the movement of one channel to premium service (Hearing Audiotape Side D, at Counter Nos. 282-344; Letter of David Ragucci, December 9, 2002). As an initial matter, the issues Everett raises are evidenced on the most recent Everett rate card. AT&T Broadband: January 1, 2003 Rate Adjustment Notifications, at 32.<sup>9</sup> These channel changes coincided with the Company's annual adjustment to its cable programming service tier ("CPST") rates on January 1, 2003, which occurred six months after the BST rate adjustments at issue in this proceeding. In reviewing the rate card, we determine that the increase in the charge for Standard Cable was entirely due to an increase in the rate for CPST or what the Company refers to as Expanded Basic Service. Id. Because the CPST became deregulated in 1999, the increase is not subject to rate regulation. 47 U.S.C. § 543(c)(4). The channel movements also did not involve any channels carried on the regulated BST and rather

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<sup>9</sup> The AT&T Broadband: January 1, 2003, Rate Adjustment Notifications notebook, including all channel lineup changes and rate changes for AT&T Broadband's Massachusetts communities effective January 1, 2003, was filed with the Cable Division on November 22, 2002, pursuant to the requirements of 207 C.M.R. § 10.02(2). The Cable Division hereby takes administrative notice of this notebook pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

involved only CPST and premium services that are not subject to regulation.  
AT&T Broadband: January 1, 2003 Rate Adjustment Notifications, at 32.

However, even though the changes being made by AT&T Broadband do not involve rates or services that are subject to rate regulation, there are certain notice requirements that must be met. The notice regulations ensure that subscribers receive proper pricing signals and hence can make appropriate purchasing decisions. Specifically, the Company is required to notify subscribers at least 30 days in advance of any rate increase or substantial change in programming services, regardless of whether the service involved is subject to rate regulation. 207 C.M.R. § 10.02(2). The 30-day notice works in conjunction with a requirement that subscribers may downgrade service at no cost. The regulation provides that the Company is required to allow subscribers to downgrade service at no cost if the downgrade is requested within the 30-day period following notice of the change. 207 C.M.R. § 10.06(1)(b). Hence, subscribers who receive notice of an increase in rates or a substantial change of programming services are provided with the means to determine the service that best fits their needs. While the Cable Division enforces these notice requirements, Issuing Authorities are encouraged to contact the Cable Division when the requirements are not being followed.

## 2. Somerset

On AT&T Broadband's FCC Form 1240 for Somerset, the Company had included, on Worksheet 5, a channel movement and deletion segment for both the true-up and projected periods (Exh. AT&T Broadband-142). No channel movements had been projected on the previous Somerset FCC Form 1240 (Exh. CTV-32). AT&T Broadband conceded that it erred by using a methodology that is only appropriate where the Company is filing an FCC Form 1240 for the first or second time (*id.*). After an operator has switched from filing FCC Form 1210 to FCC Form 1240, special rules apply to the true-up calculations on the first and second FCC Form 1240s filed. FCC Form 1240 Instructions at 6-7. However, AT&T Broadband and its predecessor cable companies have filed FCC Form 1240s for Somerset since 1996. See CoxCom, Inc. Y-96 INC, Y-96 EQU at 1 (1997). Accordingly, AT&T Broadband submitted a revised copy of the Somerset FCC Form 1240 that removed any adjustment resulting from the special rules, and instead reported the correct channel movement and deletion segment (Exh. CTV-32). This adjustment reduced the proposed BST MPR from \$13.43 to \$11.48 (*id.*). There was no immediate rate impact resulting from this adjustment, as this reduced BST MPR of \$11.48 exceeds Somerset's actual BST rate of \$8.54. The Cable Division finds that the BST MPR of \$11.48 in Somerset is reasonable and in compliance with the law.

### 3. Winchendon

On the FCC Form 1240 for Winchendon, the Company sought to recover costs associated with certain channel movements. AT&T Broadband acknowledged that a channel decrease included on its FCC Form 1240 had not actually occurred, because a new channel was inserted on the BST to replace the deleted channel (Exh. CTV-15). AT&T Broadband submitted a revised copy of the Winchendon FCC Form 1240 that removed this channel decrease, and also included an FRC adjustment (see Footnote 3) (id.). This form reported a BST MPR on Line I9 of \$6.63, compared with the BST MPR of \$7.68 reported on the initial Winchendon FCC Form 1240 filing (id.; Exh. AT&T Broadband-180). Because the actual BST rate currently charged in Winchendon is \$6.77, subscribers in Winchendon have overpaid their BST rate. We hereby direct AT&T Broadband to refund subscribers the amount of overpayment, with interest. We further direct AT&T Broadband to file a refund plan, for our approval, that describes the method used to calculate the amount of the per-subscriber refund and specifies the date on which the refund will be paid or credited to subscribers' bills.

#### E. Negotiated Franchise Related Cost Pass-Throughs

Although Issuing Authorities may not condition renewal of a license on negotiated rates for cable service, Issuing Authorities often negotiate with cable operators as to the amount of FRCs that will be recovered from, *i.e.*, passed through to, subscribers. The product of these negotiations is contained in the final executed license. For three communities, the Company indicated that recovery of FRCs would be limited to some extent (Exhs. AT&T Broadband-14, -15, -35, FRC Worksheets). AT&T Broadband noted that in Bernardston, Beverly and Danvers, the current cable licenses provide that only a portion of the communities' FRCs would be recovered from subscribers (Exhs. CTV-9, -10, -11; Bernardston Renewal License (October 17, 2001); Beverly Renewal License (May 5, 2001); Danvers Renewal License (April 22, 2001)).<sup>10</sup> Nevertheless, the Company proposed to capture the entire FRC amount in the BST MPR (see, e.g., Exhs. CTV-10, -11).

In the Beverly license, the parties agreed that subscribers would not be responsible for certain capital costs. Beverly Renewal License at 34, § 5.1(q). In addition, the Company agreed to "reduce by 20 cents per month the amount it would pass-through to each subscriber based on franchise costs includable in rate pass-through calculations." Id. In Beverly, AT&T Broadband reported an annual FRC amount for the Projected Period of \$277,560, which is equivalent to a monthly FRC amount of \$1.71 (Exh. AT&T Broadband-15, Worksheet 7, Projected Period; FRC Worksheet).

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<sup>10</sup> The Bernardston, Beverly and Danvers renewal cable licenses are public documents filed with the Cable Division pursuant to G.L. c. 166A, § 3. The Cable Division hereby takes administrative notice of these licenses pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

This amount is reported on the FRC worksheet and included in the BST MPR calculation (id.).

The Danvers license provides that the Company may pass through the cost of constructing and installing an Institutional Network to subscribers, but caps the pass-through at \$0.34 per month per subscriber. Danvers Renewal License at 19, § 3.2(u). In Danvers, AT&T Broadband reported an annual FRC amount for the Projected Period of \$48,492, which is equivalent to a monthly FRC amount of \$0.50 (Exh. AT&T Broadband-35, Worksheet 7, Projected Period; FRC Worksheet).

In the Bernardston license, the parties agreed that the monthly FRC amount would not exceed \$0.92 per subscriber. Bernardston Renewal License at 32, § 8.5(a). In Bernardston, AT&T Broadband reported an annual FRC amount for the Projected Period of \$7,848, which is equivalent to a monthly FRC amount of \$0.92 (Exh. AT&T Broadband-14, Worksheet 7, Projected Period; FRC Worksheet). However, the Company also indicated that the monthly pass-through per subscriber should remain \$0.55 below the BST MPR for the term of the license (Exh. AT&T Broadband-14, FRC Worksheet; Exh. CTV-9).

In Beverly and Danvers, the Company included all FRCs in its MPR calculation. Therefore, in these two communities, the amount of FRCs for which subscribers are responsible exceeds the amounts agreed to in the licenses. The Company claims that it accounted for the license provisions regarding a reduction in “pass-through” by discounting the operator selected rate in each community. The language contained in the Beverly and Danvers licenses is clear: the parties intended to reduce subscriber liability for FRCs. The Company’s proposal does not limit such liability but merely defers it to a later point in time. By including the full FRCs in the MPR, the Company avails itself of a positive true-up adjustment in its next filing. The Company could then add this accumulated true-up plus accrued interest to the actual BST rate and charge it to subscribers at a later date.

The Cable Division finds that AT&T Broadband agreed to reduce its BST MPR in Beverly and Danvers. This reduction is not simply a deferral of this amount but, instead, an agreement to reduce the amount that is passed through to subscribers. As such, AT&T Broadband agreed to forego including these FRCs in its rates. The Cable Division, therefore, orders AT&T Broadband to resubmit the FCC Form 1240s for Beverly and Danvers. AT&T Broadband should devise a methodology that would remove the FRC amounts in question from the rate forms in order to assure that these amounts may not, through the mechanics of the rate form, impact the BST rate at a future point in time.

The Bernardston situation differs in that the FCC Form 1240 includes, at Worksheet 7, Line 707, the monthly FRC amount of \$0.92 that was agreed to in the license (Exh. AT&T Broadband-14). Therefore, we must conclude that

AT&T Broadband's proposed BST MPR, the rate over which we have jurisdiction, complies with the provisions of the Bernardston license. While the parties have agreed to some further reduction of the rate, this agreement establishes that any such reduction is to be taken from the BST MPR. Since the agreement with AT&T Broadband is not included in the license, is not admitted as evidence in this proceeding, and concerns a rate (the Operator Selected Rate) that is not established by the Cable Division, we make no findings as to the appropriateness of the operator selected rate charged in Bernardston.

The Cable Division's findings in this section demonstrate the importance of license provisions. Any agreement reached between an issuing authority and a cable operator that has rate implications must spell out, in unambiguous terms, how the provisions are to be treated for regulatory purposes. Moreover, Issuing Authorities and cable operators should make certain that they understand how any agreement containing pass-through of FRCs or other rate-related issues will actually affect the rates paid by subscribers. In addition, parties should be knowledgeable of the scope of rate regulation: It is the Cable Division's role to ensure that the BST MPR is just, reasonable, and in compliance with applicable law. G.L. c. 166A, § 15; 47 C.F.R. § 76.922(a). When unambiguous terms such as "pass-through" are used in a license provision, the Cable Division is provided with the means of determining the appropriateness of the proposed BST MPR. However, when a license contains terms that allow for varying interpretations, the Cable Division will not step in and determine the rate-setting goal that the Issuing Authority and cable operator had in mind.

F. Gardner: Reduction in the Basic Tier Rate

In Gardner, the Company entered into a settlement agreement with the City to reduce its BST rate because of delays in completing its rebuild (Exh. AT&T Broadband-34). The written Memorandum of Understanding between the Company and the City provided that the Company would reduce its monthly BST rate from \$8.33 to \$6.50 beginning no later than February 2002 (Memorandum of Understanding, dated November 20, 2001, at 1).<sup>11</sup> The Memorandum of Understanding further stated: "[i]n its next Form 1240 filed with Cable Division ... AT&T Broadband will reduce the maximum permitted rate for BST by \$1.83 effective as of the date the actual BST is reduced." (*id.*). On the Gardner FCC Form 1240, the actual BST rate, including the \$0.04 FCC regulatory fee, was reduced to \$6.54 on Line I10, "Operator Selected Rate" (Exh. AT&T Broadband-55). However, the rate form reported a BST MPR of \$8.89 on Line I9, a BST MPR higher than the \$8.33 established by the previous form (*id.*; see Line A1 for the previous BST MPR). The Memorandum of Understanding required a reduction in the Gardner BST MPR, not

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<sup>11</sup> The Memorandum of Understanding was filed with the Cable Division in response to an official request, pursuant to our review of rate changes under 207 C.M.R. § 10.02(2). The Cable Division hereby takes administrative notice of this Memorandum of Understanding pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

merely in the actual BST rate charged subscribers. However, AT&T Broadband has increased the BST MPR, instead of reducing it. Accordingly, the Cable Division directs AT&T Broadband to submit a revised FCC Form 1240 for Gardner with a BST MPR calculated in compliance with the Memorandum of Understanding.

G. Copyright Costs

AT&T Broadband reported that on the FCC Form 1240s filed for Amherst, Hardwick, Monson, Palmer, Pelham, Ware and Warren, copyright costs had increased because gross receipts were overstated on two copyright filings (Exh. CTV-20).<sup>12</sup> At the rate hearing, AT&T Broadband explained that a miscalculation by the Company resulted in the higher copyright expenses (Hearing Audiotape Side B, at Counter Nos. 127-160). The Company also stated that the higher copyright costs had been included on the communities' FCC Form 1240s because the overpayment was not recoverable from the Copyright Office (*id.*).

This is not the first time the Cable Division has encountered issues relating to copyright payments for these communities. In the 2002 Rate Order, we addressed AT&T Broadband's copyright errors in 33 communities, including the communities listed above. 2002 Rate Order at 3. Since the errors in reporting the costs affected the true-up calculation, we directed the Company to remedy the errors by filing revised FCC Form 1240s for these communities. While our Order reduced the BST MPR in the bulk of the affected communities, it also had the effect of increasing the BST MPR in certain instances.

While it is not our role to regulate every aspect of a cable operator's accounting practices, we will not ignore manifest errors. Furthermore, these irregularities concerning copyright costs have affected the BST MPR in the same communities for consecutive years. Therefore, the Cable Division orders AT&T Broadband to refile its FCC Form 1240s for Amherst, Hardwick, Monson, Palmer, Pelham, Ware and Warren, and directs the Company to include on the forms as copyright costs, only those amounts that it would have paid to the Copyright Office had the copyright filings been completed correctly.

H. The Nationwide FCC Form 1205 Filing

As allowed under FCC rules, AT&T Broadband filed for approval an FCC Form 1205 based on nationwide data (Exh. AT&T Broadband-185; see 47 C.F.R § 76.923(c)(1)). On this form, AT&T Broadband employed a depreciable life of three years for its converters (RR-CTV-10(a)). The period over which converters are depreciated affects the monthly lease rate, because a short depreciable life allows a higher percentage of the unit cost to be recovered each year, thus leading to higher lease

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<sup>12</sup> Copyright costs are reported on the FCC Form 1240 at Worksheet 7, Lines 703 and 713.



rates when new, more expensive digital converters are introduced and averaged in with the cost of the standard addressable units. Typically, the Company's choice of depreciable life would raise concerns regarding its rate impact. However, while AT&T Broadband's FCC Form 1205 established a basic-only Converter 1 monthly BST MPR of \$5.66 and a standard Converter 2 BST MPR of \$7.17, AT&T Broadband's actual monthly converter rates are \$2.00 for the basic-only Converter 1, and \$4.95 for the standard Converter 2, except in 15 communities, where the rate is \$3.95. AT&T Broadband: July 1, 2002, Rate Adjustment Notifications.<sup>13</sup> Moreover, Comcast Corporation has acquired AT&T Broadband since the filing of the current FCC Form 1205. AT&T Broadband reported that Comcast has generally assigned a six-year depreciable life to its converters (RR-CTV-10(d)). As a result, the impact on subscriber rates upon deployment of new units will be lessened if the Comcast approach is employed. Given these factors, the Cable Division will approve the current form as filed. However, the Cable Division is putting the Company on notice that we will be closely scrutinizing equipment rates in subsequent filings. Accordingly, the Cable Division concludes that the equipment and installation rates established on the FCC Form 1205 are just and reasonable.

#### I. Approval of Compliance Forms

As discussed above, the Company has provided the Cable Division with revisions to its FCC Form 1240s, adjusting Line A1 to comport with the 2002 Rate Order. We find these revisions are consistent with our Order and are accepted as just and reasonable. For the reasons stated in Sections III.B.4, III.E, and III.G, further revisions are required. In addition, on the Nahant FCC Form 1240, AT&T Broadband reported that it had adjusted Line D2 by replacing the regional average FRC with a community-specific FRC (Exh. CTV-6). Nahant's Compliance Form, at Line D2, contained, not the \$0.4957 reported on the original Nahant FCC Form 1240, but \$1.1151, which appears to be a regional average (Exh. AT&T Broadband-105; RR-CTV-3; Exh. AT&T Broadband-18). The Cable Division directs AT&T Broadband to revise its Compliance Form for Nahant, so that it contains, on Line D2, the amount reported on Line D2 of the original Nahant FCC Form 1240. The Cable Division will require the Company to file these further revisions only upon a final order of the FCC upholding the Cable Division's Order in AT&T Broadband, CTV 01-1/01-3 (2002).

#### IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby conditionally accepts, for immediate implementation, as reasonable and in compliance

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<sup>13</sup> The AT&T Broadband: July 1, 2002, Rate Adjustment Notifications notebook, including all rate changes for AT&T Broadband's Massachusetts communities effective July 1, 2002, was filed with the Cable Division on June 10, 2002, pursuant to the requirements of 207 C.M.R. § 10.02(2). The Cable Division hereby takes administrative notice of this notebook pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

with applicable statutes and regulations, AT&T Broadband's FCC Form 1240s as filed on March 1, 2002, and March 28, 2002, for Acton, Acushnet, Agawam, Andover, Ashburnham, Ashland, Attleboro, Avon, Ayer, Barnstable, Bedford, Bellingham, Belmont, Berkley, Bernardston, Billerica, Blackstone, Boxborough, Boxford, Braintree, Bridgewater, Brockton, Brookline, Buckland, Burlington, Cambridge, Canton, Carlisle, Chatham, Chelmsford, Chelsea, Chester, Clinton, Cohasset, Concord, Conway, Dartmouth, Dedham, Deerfield, Dennis, Dighton, Dover, Dracut, East Bridgewater, Eastham, Easton, Erving, Everett, Fairhaven, Fall River, Fitchburg, Foxborough, Framingham, Franklin, Freetown, Georgetown, Gill, Granby, Granville, Greenfield, Groveland, Hamilton, Hanover, Hanson, Harwich, Hatfield, Haverhill, Hingham, Holbrook, Holliston, Holyoke, Hopedale, Hopkinton, Hudson, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence, Leominster, Lexington, Lincoln, Littleton, Longmeadow, Lowell, Lunenburg, Lynn, Lynnfield, Malden, Mansfield, Marblehead, Marion, Marlborough, Mattapoissett, Maynard, Medfield, Medford, Medway, Melrose, Mendon, Methuen, Middleborough, Middleton, Milford, Millis, Milton, Montague, Nahant, Nantucket, Natick, Needham, New Bedford, Newbury, Norfolk, North Andover, North Attleborough, North Reading, Northampton, Northfield, Norton, Norwell, Norwood, Orleans, Peabody, Phillipston, Plainville, Provincetown, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rowley, Salem, Saugus, Scituate, Seekonk, Sharon, Shelburne, Sherborn, South Hadley, Southwick, Springfield, Stoneham, Stoughton, Stow, Sudbury, Sunderland, Swampscott, Taunton, Templeton, Tewksbury, Topsfield, Townsend, Truro, Tyngsborough, Upton, Wakefield, Walpole, Waltham, Wareham, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westford, Westhampton, Westminster, Weston, Weymouth, Whitman, Williamsburg, Wilmington, Winchester, Winthrop, Wrentham and Yarmouth.

Further, upon due notice, hearing, and consideration, the Cable Division hereby rejects AT&T Broadband's FCC Form 1240s as filed on March 1, 2002 for Amherst, Beverly, Danvers, Gardner, Hardwick, Monson, Palmer, Pelham, Somerset, Ware, Warren, Westwood and Winchendon. The Cable Division conditionally accepts, for immediate implementation, as reasonable and in compliance with applicable statutes and regulations, the revised FCC Form 1240s filed for Somerset and Winchendon as Exhibits CTV-15 and CTV-32. The Cable Division directs AT&T Broadband to refile its FCC Form 1240s for Amherst, Beverly, Danvers, Gardner, Hardwick, Monson, Palmer, Pelham, Ware, Warren and Westwood, in compliance with this Rate Order, on or before February 28, 2003.

Further, upon due notice, hearing and consideration, the Cable Division directs AT&T Broadband to file a refund plan for Winchendon, in compliance with this Rate Order, on or before February 28, 2003.

Further, upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, AT&T Broadband's FCC Form 1205 as filed on March 1, 2002, and March 28, 2002, for Acton, Acushnet, Agawam, Amherst, Andover, Ashburnham, Ashland, Attleboro, Avon, Ayer, Barnstable, Bedford, Bellingham, Belmont, Berkley, Bernardston, Beverly, Billerica, Blackstone, Boxborough, Boxford, Braintree, Bridgewater, Brockton, Brookline, Buckland, Burlington, Cambridge, Canton, Carlisle, Chatham, Chelmsford, Chelsea, Chester, Clinton, Cohasset, Concord, Conway, Danvers, Dartmouth, Dedham, Deerfield, Dennis, Dighton, Dover, Dracut, East Bridgewater, Eastham, Easton, Erving, Everett, Fairhaven, Fall River, Fitchburg, Foxborough, Framingham, Franklin, Freetown, Gardner, Georgetown, Gill, Granby, Granville, Greenfield, Groveland, Hamilton, Hanover, Hanson, Hardwick, Harwich, Hatfield, Haverhill, Hingham, Holbrook, Holliston, Holyoke, Hopedale, Hopkinton, Hudson, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence, Leominster, Lexington, Lincoln, Littleton, Longmeadow, Lowell, Lunenburg, Lynn, Lynnfield, Malden, Mansfield, Marblehead, Marion, Marlborough, Mattapoisett, Maynard, Medfield, Medford, Medway, Melrose, Mendon, Methuen, Middleborough, Middleton, Milford, Millis, Milton, Monson, Montague, Nahant, Nantucket, Natick, Needham, New Bedford, Newbury, Norfolk, North Andover, North Attleborough, North Reading, Northampton, Northfield, Norton, Norwell, Norwood, Orleans, Palmer, Peabody, Pelham, Phillipston, Plainville, Provincetown, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rowley, Salem, Saugus, Scituate, Seekonk, Sharon, Shelburne, Sherborn, Somerset, South Hadley, Southwick, Springfield, Stoneham, Stoughton, Stow, Sudbury, Sunderland, Swampscott, Taunton, Templeton, Tewksbury, Topsfield, Townsend, Truro, Tyngsborough, Upton, Wakefield, Walpole, Waltham, Ware, Wareham, Warren, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westford, Westhampton, Westminster, Weston, Westwood, Weymouth, Whitman, Williamsburg, Wilmington, Winchendon, Winchester, Winthrop, Wrentham and Yarmouth.

Further, upon due notice, hearing and consideration, the Cable Division hereby conditionally accepts as reasonable and in compliance with applicable statutes, regulations and precedent, AT&T Broadband's Compliance Forms as submitted as RR-CTV-3, for all communities except Amherst, Beverly, Hardwick, Monson, Nahant, Palmer, Pelham, Ware and Warren. The basic service tier maximum permitted rates established by these forms will be implemented only after an order of the FCC

upholding the Cable Division's Order in AT&T Broadband, CTV 01-1/01-3 (2002). At that time, AT&T Broadband is directed to file revised Compliance Forms, consistent with this Order, for these communities.

**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.