

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

CABLE TELEVISION DIVISION

In the Matter of	)	Docket No. CTV 01-1/01-3			
AT&T Broadband	)	Date Issued: February 28, 2002			
)				
MediaOne of	)	Acushnet	Fall River	Middleborough	Sherborn
Massachusetts, Inc.	)	Agawam	Foxborough	Middleton	Somerset
	)	Amherst	Franklin	Milford	South Hadley
MediaOne Enterprises, Inc.	)	Andover	Freetown	Millis	Southwick
	)	Ashland	Gill	Milton	Springfield
MediaOne of Brockton, Inc.	)	Attleboro	Granby	Monson	Stoneham
	)	Avon	Granville	Montague	Stoughton
MediaOne of Milton, Inc.	)	Barnstable	Greenfield	Nahant	Sunderland
	)	Bellingham	Hamilton	Nantucket	Swampscott
MediaOne of Needham, Inc.	)	Berkley	Hanover	Natick	Taunton
	)	Bernardston	Hanson	Needham	Tewksbury
MediaOne of Needham, Inc.	)	Beverly	Hardwick	New Bedford	Topsfield
	)	Billerica	Harwich	Newbury	Truro
MediaOne of Ohio, Inc.	)	Blackstone	Hatfield	Norfolk	Upton
	)	Boxford	Hingham	North Andover	Wakefield
MediaOne of Southern New England, Inc.	)	Bridgewater	Holbrook	North Attleborough	Walpole
	)	Brockton	Holliston	North Reading	Waltham
MediaOne of Southern New England, Inc.	)	Buckland	Holyoke	Northampton	Ware
	)	Burlington	Hopedale	Northfield	Wareham
MediaOne of Virginia, Inc.	)	Cambridge	Hopkinton	Norton	Warren
	)	Canton	Hull	Norwell	Watertown
MediaOne of Western New England, Inc.	)	Chatham	Huntington	Orleans	Wayland
	)	Chelmsford	Ipswich	Palmer	Wellesley
MediaOne of Western New England, Inc.	)	Chelsea	Lakeville	Pelham	Wellfleet
	)	Chester	Lancaster	Phillipston	Wenham
all d/b/a	)	Clinton	Lawrence	Plainville	West Bridgewater
AT&T Broadband	)	Cohasset	Longmeadow	Provincetown	West Newbury
	)	Conway	Lowell	Quincy	West Springfield
	)	Dartmouth	Lynn	Randolph	Westfield
	)	Dedham	Malden	Raynham	Westhampton
	)	Deerfield	Mansfield	Reading	Weston
	)	Dennis	Marblehead	Rehoboth	Weymouth
	)	Dighton	Marion	Revere	Whitman
	)	Dover	Marlborough	Rochester	Williamsburg
	)	Dracut	Mattapoissett	Rowley	Wilmington
For a Determination of Cable Television Rates	)	East Bridgewater	Medfield	Salem	Winchendon
	)	Eastham	Medford	Saugus	Winchester
	)	Easton	Medway	Scituate	Winthrop
	)	Erving	Melrose	Seekonk	Wrentham
)	Everett	Mendon	Sharon	Yarmouth
)	Fairhaven	Methuen	Shelburne	

RATE ORDER

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I. INTRODUCTION

On March 1, 2001, MediaOne of Massachusetts, Inc., MediaOne Enterprises, Inc., MediaOne of Brockton, Inc., MediaOne of Milton, Inc., MediaOne of Needham, Inc., MediaOne of Southern New England, Inc., MediaOne of Virginia, Inc., and MediaOne of Western New England, Inc., collectively offering services as AT&T Broadband (“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 and equipment rates on Federal Communications Commission (“FCC”) Form 1240 and FCC Form 1205, respectively, for all of the above-captioned communities except Andover, Barnstable, Chatham, Dennis, Dracut, Harwich, Middleton, Nantucket, North Reading, Waltham and Yarmouth. Pursuant to 47 C.F.R. § 76.933(g), the rates AT&T Broadband proposed in its FCC Form 1240s and FCC Form 1205 became effective on July 1, 2001. The Cable Division docketed this matter as CTV 01-1. On April 9, 2001, AT&T Broadband filed amended FCC Form 1240s for Provincetown, Truro and Wellfleet.

On March 29, 2001, MediaOne of Massachusetts, Inc., offering services as AT&T Broadband, filed with the Cable Division proposed BST programming and equipment rates on FCC Form 1240s and FCC Form 1205, respectively, for Andover, Barnstable, Chatham, Dennis, Dracut, Harwich, Middleton, Nantucket, North Reading, Waltham and Yarmouth. These proposed rates also became effective on July 1, 2001. The Cable Division docketed this matter as CTV 01-3.

Upon initial review of these matters, the Cable Division determined that there were issues common to both dockets, and that separate proceedings would be inefficient and burdensome to the parties and the Cable Division. Therefore, in the interest of administrative efficiency, the Cable Division, on its own motion, consolidated these dockets as CTV 01-1/01-3. Order Consolidating Proceedings (November 16, 2001).

The Cable Division held a public and evidentiary hearing on the pending filings in Taunton on December 11, 2001 and in Marlborough on December 12, 2001. The Cities of Fall River and New Bedford and the Towns of Canton, Mansfield, North Attleborough and Somerset intervened in this proceeding, and the City of Attleboro and the Town of Yarmouth were admitted as Limited Participants. The City of Brockton and the Town of Nantucket filed comments. The evidentiary record consists of the Company’s rate forms admitted as Company Exhibits 1 through 165, AT&T Broadband’s responses to our information requests admitted as Cable Division Exhibits 1 through 31, and responses to record requests posed by the Cable Division and the Town of Somerset. The Town of Somerset filed comments on AT&T Broadband’s response to the Town’s record request.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

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 (the "Communications Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute basic service tier 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 under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates are reasonable and comply with federal regulations, 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) (the "Rate Order") at 5716, ¶ 128; see also 47 C.F.R. § 76.937(a).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company's FCC rate form filings to determine whether the rates are reasonable and in compliance with the Communications Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

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. 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 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 basic service tier 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 FCC Form 1240 for projections in external costs, or for projected changes to the 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 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).

III. DISCUSSION AND ANALYSIS

A. Copyright costs

As stated above, federal regulations allow a cable operator to adjust its BST programming rates to account for changes in external costs. 47 C.F.R. § 76.922(e)(2)(ii). One category of external costs is the copyright fees that cable operators are required to pay for the carriage of broadcast signals. 47 C.F.R. § 76.922(f)(1)(iv). On the FCC Form 1240s filed for nine communities,¹ the Company reported increased copyright costs from its previous year's filing (Exhs. AT&T Broadband-28, -31, -47, -59, -68, -128, -132, -154 and -158). However, no channel additions were reported on any of these forms to account for the increase in copyright costs (id.). In response to an information request regarding this issue, AT&T Broadband conceded that it had erred in completing the form for the nine communities, by including on Attachment 4 copyright costs associated with channels carried on tiers other than the BST (Exh. CTV-10). In addition, the Company identified 24 other communities whose forms contain copyright payment errors (id.).² The Company prepared a schedule listing the BST MPRs in these 33 communities, with adjusted copyright costs and updated with the most recent inflation figures (id.).

While projected period copyright costs may be corrected on future filings, correcting copyright costs for the true-up periods may only be remedied by filing properly completed FCC Form 1240s in the current rate proceeding. Upon cross-examination, AT&T Broadband acknowledged that it is necessary to remove non-BST copyright costs from both the true-up periods and the projected period (December 12, 2001 Hearing Audiotape, Side 1, at counter nos. 184-214). AT&T Broadband submitted revised FCC Form 1240s for the 33 communities (RR CTV-1-1 through RR CTV-1-33).

The Cable Division finds that AT&T Broadband appropriately adjusted the BST copyright costs on the FCC Form 1240s for these communities. We also find that AT&T Broadband appropriately updated its inflation adjustments, as the Instructions to FCC Form 1240 direct. FCC Form 1240 Instructions at 13-14.

B. The Barnstable FCC Form 1240

The FCC Form 1240 process allows a cable operator to project its revenues and costs, and later reconcile these projected amounts against its actual revenues and costs. This reconciliation is performed for either one or two "true-up periods." On the form, a true-up

¹ The nine communities are Conway, Deerfield, Granby, Holyoke, Longmeadow, Springfield, Sunderland, Westhampton and Williamsburg.

² The 24 communities are Agawam, Amherst, Attleboro, Billerica, Chelmsford, Chester, Dracut, Granville, Hardwick, Hatfield, Huntington, Lowell, Monson, Northampton, Palmer, Pelham, Rehoboth, South Hadley, Southwick, Tewksbury, Ware, Warren, West Springfield and Westfield.

adjustment is made to the BST rate, by comparing the total revenue the cable operator collected during the true-up period with the revenue the operator would have received if it had charged its BST MPR during the true-up period. FCC Form 1240, at 4, Module H, Lines H1-H3. The total revenue the operator collected is computed by multiplying the average BST rate during the true-up period by the number of months in the true-up period and the average number of subscribers served. FCC Form 1240 Instructions at 19. The average BST rate during the true-up period is computed on FCC Form 1240, Worksheet 8 - True-Up Rate Charged.

On AT&T Broadband's FCC Form 1240 for Barnstable, although the first page reported a true-up period of 12 months, on Worksheet 8 the Company entered a BST rate for only 11 months, while leaving the month 12 blank at Line 812 (Exh. AT&T Broadband-8, at 1 and Worksheet 8, Line 812). The consequence is an average rate for the 12 months that is lower than any monthly rate actually charged during the true-up period (AT&T Broadband-8, at Worksheet 8, Line 813). In response to an information request regarding this issue, AT&T Broadband acknowledged that an entry of \$8.95 had been inadvertently omitted from Line 812 (Exh. CTV-7). The Company filed a revised FCC Form 1240 for Barnstable with a completed Worksheet 8 and updated inflation figures (*id.*). This FCC Form 1240 reduced the proposed BST MPR for Barnstable by \$ 0.78, from \$ 10.50 to \$ 9.72 (Exh. AT&T Broadband-8, at 4; Exh. CTV-7 at 4). The operator selected rate of \$ 8.99 remained unchanged (*id.*).

The Cable Division finds that AT&T Broadband appropriately corrected the FCC Form 1240 for Barnstable. We also find that AT&T Broadband appropriately updated its inflation adjustments, as the Instructions to FCC Form 1240 direct.

C. The FCC Form 1240s in the former Time Warner communities³

On FCC Form 1240, a cable operator is entitled to earn interest on its true-up period adjustment, resulting from the difference between its actual rate and its BST MPR. FCC Form 1240, at 4, Line H4. Interest is calculated for the number of months that elapse between the end of the true-up period and the end of the last projected period. FCC Form 1240 Instructions at 20. As part of this calculation, FCC Form 1240, at Line E3, directs the operator to enter the number of months between the end of True-Up Period 1 and the end of the last projected period. FCC Form 1240, at 3.

On AT&T Broadband's FCC Form 1240s for the 30 former Time Warner communities, the Company entered six months as the number of months between the end of True-Up Period 1 and the end of the last projected period, on Module E, Line 3 (Exhs.

³ The former Time Warner communities are Acushnet, Ashland, Bellingham, Bridgewater, Canton, Chelsea, Dover, Everett, Fairhaven, Foxborough, Holliston, Hopedale, Lynn, Malden, Mansfield, Medfield, Medford, Medway, Melrose, Mendon, Norfolk, Salem, Seekonk, Sharon, Stoneham (Jerry Jingle section), Swampscott, Wakefield, Walpole, Winthrop and Wrentham.

AT&T Broadband-1, -5, -9, -16, -21, -24, -34, -40, -41, -43, -58, -60, -70, -71, -72, -77, -78, -79, -80, -81, -96, -118, -121, -122, -130, -133, -139, -140, -161 and -162). In response to an information request, AT&T Broadband reported that in these communities, True-Up Period 1 ended on September 30, 2000 and the most recent projected period ended on December 31, 2000 (Exh. CTV-3). The Company admitted that the correct number of months on Line E3 should have been three (*id.*). The Company prepared a schedule listing the BST MPRs in the former Time Warner communities, as adjusted by the change to Line E3 and updated with the most recent inflation figures (*id.*). Upon cross-examination, AT&T Broadband acknowledged that these adjustments affected both the true-up periods and the projected period (December 12, 2001 Hearing Audiotape, Side 1, at counter nos. 204-214). AT&T Broadband provided revised FCC Form 1240s for these 30 communities (RR-CTV-1-34 through RR-CTV-1-63).

The Cable Division finds that AT&T Broadband appropriately corrected Module E of the revised FCC Form 1240s. We also find that AT&T Broadband appropriately updated its inflation adjustments, as the Instructions to FCC Form 1240 direct.

D. Channel deletions in Ashland and Bellingham

In Ashland and Bellingham, AT&T Broadband removed nine channels from the BST during the true-up period (Exhs. AT&T Broadband-5 and -9, Attachment 3B). The removal of these channels from the BST also removes their associated programming expenses from the calculation of the true-up BST rate. FCC Form 1240, at 4, Line F3 and G3, Worksheets 4 and 5. On the Ashland and Bellingham FCC Form 1240s, the channel deletions were shown as having occurred during June 2000, whereas the programming expenses did not decrease until July 2000 (Exhs. AT&T Broadband-5 and -9, Attachment 3B). In response to an information request, AT&T Broadband responded that the BST channels were removed on June 27, 2000 (Exh. CTV-5). The Company moved the channel deletions to July 2000 and adjusted its BST MPRs accordingly (*id.*). Since the nine channels remained on the BST for a month longer than projected, the true-up of actual costs resulted in an increase in the BST MPRs in both communities (*id.*). Both Ashland and Bellingham are former Time Warner communities: AT&T Broadband incorporated these adjustments into the FCC Form 1240s filed because of the change to Line E3 (see Section III.C above) (RR-CTV-1-62 and RR-CTV-1-63).

The Cable Division finds that AT&T Broadband has made the appropriate channel movement corrections on the revised FCC Form 1240s for Ashland and Bellingham.

E. The revised FCC Form 1240 filed for Stoneham

In AT&T Broadband, Docket Nos. Y-00A, CTV 00-2, CTV 00-3, CTV 00-4, at 3-7 (2001) ("Rate Order"), we ordered AT&T Broadband to remove certain franchise related costs from the former MediaOne portion of the Stoneham basic rate, thus reducing the BST,

and to refund overcharges to subscribers. However, the FCC Form 1240 that AT&T Broadband filed in this proceeding for the former MediaOne portion of Stoneham did not incorporate these adjustments (Exh. AT&T Broadband-129). In response to a Cable Division request, AT&T Broadband submitted a revised FCC Form 1240 reflecting our Rate Order (Exh. CTV-23). The revised FCC Form 1240 reports a reduced BST rate for that portion of the true-up period for which refunds were issued (*id.*). For the first six months of 2001, during which AT&T Broadband charged a higher BST rate, but for which no refund was paid, the BST MPR is reduced through the function of the FCC Form 1240 true-up process.

The Cable Division finds that AT&T Broadband's revised FCC Form 1240 for Stoneham appropriately incorporates the changes required by our Rate Order.

F. Interest on True-Up

As stated above, the FCC Form 1240 allows a cable operator to annually update its BST rates to account for inflation, changes in external costs, and changes in the number of regulated channels. A portion of the FCC Form 1240 computation is based upon projected costs. If a cable operator has underestimated its projected costs, it may "true-up" its projection to correct for the difference between its actual and projected costs, and in some instances collect interest on the true-up amount. The issue is whether AT&T Broadband calculated and reported the true-up amount in compliance with applicable law.

The FCC Form 1240, at Module H, computes true-up and the interest on true-up. FCC Form 1240 Instructions at 19-21. The cable operator begins by computing two versions of its true-up period revenue. First, it computes this revenue using the BST rates it actually charged for True-Up Period 1, reported on Line H1, "Revenue From Period 1."⁴ *Id.* at 19. The operator then computes what its revenue would have been had it charged its BST MPR, reported on Line H2, "Revenue From Maximum Permitted Rate for Period 1." *Id.* at 20. Line H1 is then subtracted from Line H2 to derive Line H3, "True-Up Period 1 Adjustment," which is the amount the operator's actual revenue either exceeded or fell short of its maximum possible revenue. *Id.* The FCC allows interest to be accrued on the Line H3 true-up at 11.25 percent, for the period between the beginning of True-Up Period 1 and the end of the most recent Projected Period shown on the previous FCC Form 1240, reported on Line H4, "Interest on Period 1 Adjustment." *Id.* The process is the same for True-Up Period 2 on Lines H5 through H11, with one exception. *Id.* at 20-21. The accrual of interest is cut off at the end of the most recent Projected Period. *Id.* at 5. Therefore, the calculation

⁴ The Instructions to FCC Form 1240 provide that if a cable operator's total true-up period exceeds 12 months, it must be divided into two true-up periods, and True-Up Period 1 should be 12 months long. FCC Form 1240 Instructions at 5. True-Up Periods 1 and 2 are reported separately on the FCC Form 1240. See FCC Form 1240 at 3-4. All of AT&T Broadband's FCC Form 1240s have a total true-up period longer than twelve months, with the exception of Andover, Barnstable, Dennis, Dracut, Harwich, Middleton, Nantucket, North Reading, Waltham and Yarmouth. (Exhs. AT&T Broadband-4, -8, -32, -35, -54, -84, -91, -99, -141 and -164).

of True-Up Period 2 has two parts; Lines H5 through H8 apply to that portion of Period 2 eligible for interest, and Lines H9 through H11 apply to that portion of Period 2 ineligible for interest. Id. at 20-21.

The cable operator then calculates Line H13, “Total True-Up Adjustment,” which adds the true-up and interest from True-Up Periods 1 and 2, as well as the unclaimed true-up from previous filings on Line H12, “Previous Remaining True-Up Adjustment.” Lines H3 and H4 are added together on Line H13, “Total True-Up Adjustment.”⁵ Id. at 21. Line H13 is then divided into Line H14, the “Amount of True-Up Being Claimed This Projected Rate Period,” and Line H15, “Remaining True-Up Adjustment.” Id.

On AT&T Broadband’s initial and revised FCC Form 1240s for all its communities, the Company claimed Line H13’s entire true-up on Line H14, and included it within the BST MPR on Line I9 (Exhs. AT&T Broadband-1 through -164, at 4; Exh. CTV-7, at 4; Exh. CTV-23, at 4, and RR-CTV-1 through -63, at 4).⁶ However, AT&T Broadband’s operator-selected rates on Line I10 are lower than the BST MPRs in every community except in Dover, where Line I10 is \$0.02 greater than Line I9, and in Erving, Holliston, and Montague, where the Lines I9 and I10 are the same (id.). Consequently, on the next annual FCC Form 1240s that AT&T Broadband files, the true-up computation would incorporate the true-up included in this year’s MPR into Line H2,⁷ whereas Line H1 would incorporate this year’s lower actual BST rate, excluding much of this true-up.⁸ Some or all of this year’s excess true-up would appear on the next annual Line H3 and accrue interest for a second time

⁵ Line H13 is the total of Line H3, “True-Up Period 1 Adjustment,” Line H4, “Interest on True-Up Period 1 Adjustment,” Line H7, “Period 2 Adjustment Eligible for Interest,” Line H8, “Interest on Period 2 Interest,” Line H11, “Period 2 Adjustment Ineligible for Interest,” and Line H12, “Previous Remaining True-Up Adjustment.” FCC Form 1240 Instructions at 21.

⁶ The true-up amount on Line H14 is carried over into the BST MPR calculation as follows. Line H14 is divided first by the estimated number of subscribers during the Projected Period (Line B3), and then by 12 for the number of months in the Projected Period; the resulting amount is included on the form as Line I8. FCC Form 1240 Instructions at 22-23. Line I8 is then added together with Lines I4, I5, I6 and I7 to calculate the BST MPR on Line I9. Id. at 23.

⁷ Line H2 is computed by multiplying together three numbers, including Line F9, “Maximum Permitted Rate for True-Up Period 1.” FCC Form 1240 Instructions at 20. Line F9 in turn is derived by adding together five numbers, including Line F8, “True-Up Segment for True-Up Period 1.” Id. at 18. Line F8 is computed by dividing Line H14 from the previous FCC Form 1240 by the number of months in the total true-up period and by the estimated number of average subscribers during True-Up Period 1. Id. at 18. A similar process is followed to calculate Lines H5 and H9, applicable to True-Up Period 2. Id. at 20, 21.

⁸ The Instructions direct cable operators to report the “average rate you elected to charge.” FCC Form 1240 Instructions at 19.

on Line H4. Indeed, the amount of true-up carried over to Line H4 on the next annual FCC Form 1240 would accrue interest on this year's interest.

The FCC addressed interest on true-up in its rate regulations at 47 C.F.R. § 76.922(e)(3)(iii):

If an operator has underestimated its cost changes and elects not to recover these accrued costs with interest on the date the operator is entitled to make its annual rate adjustment, the interest will cease to accrue as of the date the operator is entitled to make the annual rate adjustment, but the operator will not lose its ability to recover such costs and interest.

The FCC explained the rationale for this rule in its Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397, 11 FCC Rcd. 388 (released September 22, 1995) (“Thirteenth Order”). The FCC stated that operators would be able to recover excess accrued costs with interest to the extent that the projected costs did not cover the increases that actually took place. Id. at 422, ¶ 80. On the operator's next filing, the operator would be entitled to recover the excess costs plus interest between the date the costs are incurred and the date the operator is entitled to make its next annual rate adjustment. Id. The FCC reasoned that this rule gives operators the flexibility to delay rate increases without losing the opportunity to recover interest on costs that accrued due to circumstances beyond their control, while ensuring that where an operator makes a business decision to delay a rate increase, subscribers are not required to pay for the cost of the delay. Id.

The FCC Form 1240 ensures an operator's compliance with this rule. First, the FCC Form 1240 Instructions state that “the accrual of interest is cut off at the end of the most recent Projected Period (except for first time filers of Form 1240). For example, if, on your most recent Form 1240, you defined the Projected Period as running from January 1 to December 31, your next true-up has the accrual of interest stopping at the end of December 31.” FCC Form 1240 Instructions at 5.⁹

Second, the FCC designed Module H of the FCC Form 1240 to prevent operators from accruing interest on the same true-up on two successive FCC Form 1240s. Line H13 computes the “Total True-Up Adjustment.” Id. at 21. However, not all of this true-up adjustment is required to be reported on Line H14, “Amount of True-Up Being Claimed This Projected Rate Period,” in all instances. The Instructions to Line H14 begin: “[e]nter the amount of the True-Up Adjustment being passed through to your subscribers during the Projected Period.” (Emphasis added.) Id. Therefore, only true-up amounts that will be included in subscribers' rates at the outset of the Projected Period may be properly carried over to Line H14. The FCC provided Line H15, “Remaining True-Up Adjustment,” so the

⁹ See also the FCC's Cable Letter, Richard D. Treich, DA 97-1518, CSB-ILR 97-6 (released July 18, 1997).

cable operator could report the excess true-up it would not pass through during the Projected Period, but could elect to recover in future years. *Id.* The FCC Form 1240 Instructions direct that on the next annual FCC Form 1240, Line H15 shall be reported as Line H12, “Previous Remaining True-Up Adjustment.” *Id.* The form indicates that Line H12 be added directly into the total true-up adjustment on Line H13, without any interest being accrued upon it. *Id.* In addition, for the next annual form’s true-up calculation, the actual BST rate used to compute Line H1 and the BST MPR used to compute Line H2 would contain the same amount of previous true-up.¹⁰ *Id.* at 19-20. Thus, none of this true-up is to be included on Line H3 and none of it is to accrue interest on Line H4.

Although AT&T Broadband proposed to claim its entire true-up on Line H14 without passing it completely through in subscribers’ rates, the Company is aware of the Cable Division’s contrary precedent on this issue (RR-CTV-4; see also *Cox Com, Inc.*, CTV 00-9 (2001) (the “Cox Order”). However, AT&T Broadband noted that the Cable Division’s precedent in the Cox Order is before the FCC on appeal (RR-CTV-4). AT&T Broadband suggested that with respect to its filings, the interest on true-up issue be held in abeyance until the FCC makes its final ruling (*id.*). As part of this proposal, the Company would file consolidated multi-community FCC Form 1240s in its next rate proceeding (*id.*).

Since AT&T Broadband submitted this proposal, its parent, AT&T Corp., announced its plans to spin off AT&T Broadband and merge it with Comcast Corporation. AT&T Broadband’s proposal amounts to a major rate restructuring and is predicated on a complex analysis of current and prospective MPRs. We determine that because of the pending purchase of AT&T Broadband by Comcast, it would be premature for us to approve so drastic a change in AT&T Broadband’s filing practices at this time. Such a change would be more appropriately addressed by the communities’ new cable operator once the transfer process is complete.

Moreover, consistent with our position in the Cox Order, we find that AT&T Broadband’s proposal to claim its entire true-up on Line H14 without passing it completely through in subscribers’ rates does not comply with the Instructions to FCC Form 1240, and will result in the Company’s improper accrual of interest on this true-up over a second Projected Period. The “discretion” in the Instructions to Line H14 merely gives cable

¹⁰ Lines H1 and H2 contain the same amount of true-up, because of the way true-up is incorporated into both the BST MPR and the operator’s actual BST rate. First, on this year’s FCC Form 1240, the Line H14 true-up would have been carried over to Line I8 and been incorporated into both the BST MPR on Line I9, and the operator-selected BST actually charged subscribers on Line I10. Because only true-up charged subscribers on Line I10 would be included on Line I9, the MPR and the actual BST contain an identical amount of true-up. Second, Lines H1 and H2 are both calculated by multiplying together three numbers. Two of them – the number of subscribers and the number of months in the true-up period – are the same for both lines; only the third numbers are different. On Line H1, the actual BST rate charged is employed, whereas Line H2 employs the BST MPR; both of them containing the same true-up.

operators the discretion of not passing on to subscribers the entire true-up during the Projected Period; it does not imply that true-up can be claimed and included in the MPR but not passed through to subscribers. Further, we determine that AT&T Broadband's calculation of true-up is not in the subscribers' interest, because the subscribers would be required to pay two years' interest on the same true-up, as well as interest on interest.

Accordingly, AT&T Broadband should remove the excessive true-up from Line H14, and record it on Line H15, "Remaining True-Up Adjustment."¹¹ This adjustment will reduce its BST MPR, but will have no effect on the Company's revenues during the Projected Period, because the Company chose not to charge its initial MPR. We note that under the FCC's regulations, the Company is legally prohibited from raising its rates later in the Projected Period. 47 C.F.R. § 76.922(e)(1). Nevertheless, the Company is not prejudiced by this adjustment, because the unused true-up, now on Line H15, will be available on its next filing, and could be passed on to subscribers during the next Projected Period. This process "ensures that where an operator makes a business decision to delay a rate increase, subscribers are not required to pay for the cost of the delay." Thirteenth Order at 422, ¶ 80.

The Cable Division concludes that neither AT&T Broadband's original or revised FCC Form 1240s for all of its communities except Dover, Erving, Holliston and Montague are in compliance with the applicable statutes and regulations and are therefore unreasonable as filed. The Company is therefore directed to file further amended FCC Form 1240 filings for every community except Dover, Erving, Holliston and Montague, to remove true-up which is claimed but not passed through to subscribers from Line H14, and report this true-up on Line H15. Lines I8 and I9 must also be changed to conform with Line H14, as amended.

G. AT&T Broadband's nationwide FCC Form 1205

AT&T Broadband filed its nationwide FCC Form 1205 for the year ending December 31, 2000 with the Cable Division to justify its equipment and installation rates in all of its Massachusetts communities (Exh. AT&T Broadband-165). AT&T Broadband is specifically permitted to file a nationwide FCC Form 1205 by the Communications Act and FCC regulations. 47 U.S.C. § 543(a)(7); 47 C.F.R. § 76.923(c)(1). The Company filed this FCC Form 1205 in conjunction with its FCC Form 1240s in conformity with the FCC's rate regulations. 47 C.F.R. § 76.922(e)(1); 47 C.F.R. § 76.923(n)(3). The Cable Division has reviewed AT&T Broadband's FCC Form 1205, and concludes that the equipment and installation rates established by the FCC Form 1205 are just and reasonable.

¹¹ Obviously, if the FCC were to ultimately reject the Cable Division's conclusions in the Cox Order with respect to the interest on true-up issue, cable operators would be able to adjust their true-up calculations to be consistent with the FCC's order.

IV. CONCLUSION AND ORDER

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, 2001 for Acushnet, Agawam, Amherst, Ashland, Attleboro, Avon, Bellingham, Berkley, Bernardston, Beverly, Billerica, Blackstone, Boxford, Bridgewater, Brockton, Buckland, Burlington, Cambridge, Canton, Chelmsford, Chelsea, Chester, Clinton, Cohasset, Conway, Dartmouth, Dedham, Deerfield, Dighton, Dover, East Bridgewater, Eastham, Easton, Erving, Everett, Fairhaven, Fall River, Foxborough, Franklin, Freetown, Gill, Granby, Granville, Greenfield, Hamilton, Hanover, Hanson, Hardwick, Hatfield, Hingham, Holbrook, Holliston, Holyoke, Hopedale, Hopkinton, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence, Longmeadow, Lowell, Lynn, Malden, Mansfield, Marblehead, Marion, Marlborough, Mattapoisett, Medfield, Medford, Medway, Melrose, Mendon, Methuen, Middleborough, Milford, Millis, Milton, Monson, Montague, Nahant, Natick, Needham, New Bedford, Newbury, Norfolk, North Andover, North Attleborough, Northampton, Northfield, Norton, Norwell, Orleans, Palmer, 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, Sunderland, Swampscott, Taunton, Tewksbury, Topsfield, Truro, Upton, Wakefield, Walpole, Ware, Wareham, Warren, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westhampton, Weston, Weymouth, Whitman, Williamsburg, Wilmington, Winchendon, Winchester, Winthrop and Wrentham.

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 April 1, 2001 for Andover, Barnstable, Chatham, Dennis, Dracut, Harwich, Middleton, Nantucket, North Reading, Waltham and Yarmouth.

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 1240s as filed on March 1, 2001 for Erving and Montague.

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 1240s as presented on December 21, 2001 as CTV-RR-1-38 and CTV-RR-1-61 for Dover and Holliston.

Further, the Cable Division hereby rejects AT&T Broadband's originally proposed or revised FCC Form 1240s as filed on March 1, 2001, April 1, 2001, April 9, 2001, November 30, 2001 or December 21, 2001, for Acushnet, Agawam, Amherst, Andover, Ashland, Attleboro, Avon, Barnstable, Bellingham, Berkley, Bernardston, Beverly, Billerica,

Blackstone, Boxford, Bridgewater, Brockton, Buckland, Burlington, Cambridge, Canton, Chatham, Chelmsford, Chelsea, Chester, Clinton, Cohasset, Conway, Dartmouth, Dedham, Deerfield, Dennis, Dighton, Dracut, East Bridgewater, Eastham, Easton, Everett, Fairhaven, Fall River, Foxborough, Franklin, Freetown, Gill, Granby, Granville, Greenfield, Hamilton, Hanover, Hanson, Hardwick, Harwich, Hatfield, Hingham, Holbrook, Holyoke, Hopedale, Hopkinton, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence, Longmeadow, Lowell, Lynn, Malden, Mansfield, Marblehead, Marion, Marlborough, Mattapoissett, Medfield, Medford, Medway, Melrose, Mendon, Methuen, Middleborough, Middleton, Milford, Millis, Milton, Monson, Nahant, Nantucket, Natick, Needham, New Bedford, Newbury, Norfolk, North Andover, North Attleborough, North Reading, Northampton, Northfield, Norton, Norwell, Orleans, Palmer, 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, Sunderland, Swampscott, Taunton, Tewksbury, Topsfield, Truro, Upton, Wakefield, Walpole, Waltham, Ware, Wareham, Warren, Watertown, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westhampton, Weston, Weymouth, Whitman, Williamsburg, Wilmington, Winchendon, Winchester, Winthrop, Wrentham and Yarmouth. The Cable Division hereby directs AT&T Broadband to refile its FCC Form 1240s for these communities in accordance with this Rate Order, on or before March 20, 2002.

The attached schedule provides the current, proposed and approved basic service tier programming and equipment rates for each community.

**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. 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.

Equipment and Service Charges

	A	B	C	D
	Previous	Current Rate	Proposed	Cable Division
	Rate	Effective	Maximum	Approved
		July/Aug	Permitted	Maximum
		2001	Rate	Permitted Rate
Remote Controls	**	\$0.35	\$0.39	\$0.39
Addressable Converters	**	\$3.95	\$6.62	\$6.62
Addressable Converters*	**	\$2.95	\$6.62	\$6.62
Basic-Only Converters	**	\$1.85	\$3.21	\$3.21

Notes: * Converter Rate in Attleboro, Rehoboth, Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren.

** Previous rates were not subject to the Division's regulation and varied by systems.

**AT&T (Original Continental)
Basic Service Tier Programming Rates**

	A	B	C	D
	Previous	Current Rate	Proposed	Cable Division
	Rate	Effective	Maximum	Approved
		July/Aug	Permitted	Maximum
		2001	Rate	Permitted Rate
Agawam	\$3.86	\$3.90	\$4.47	
Avon	\$7.94	\$7.98	\$8.51	
Berkley	\$7.09	\$7.79	\$9.13	
Bernardston	\$5.05	\$5.09	\$5.32	
Beverly	\$7.11	\$7.15	\$7.76	
Billerica	\$7.25	\$7.37	\$8.39	
Boxford	\$5.89	\$5.93	\$6.45	
Brockton	\$9.69	\$9.73	\$10.69	
Burlington	\$7.32	\$7.36	\$8.50	
Cambridge	\$6.89	\$6.93	\$7.39	
Chester	\$4.53	\$4.57	\$5.52	
Clinton	\$5.98	\$6.02	\$6.60	
Cohasset	\$7.43	\$7.47	\$7.96	
Conway	\$4.77	\$4.81	\$5.78	
Dedham	\$6.10	\$6.14	\$7.14	

	A	B	C	D
	Previous	Current Rate	Proposed	Cable Division
	Rate	Effective	Maximum	Approved
		July/Aug	Permitted	Maximum
		2001	Rate	Permitted Rate
Deerfield	\$4.77	\$4.81	\$5.78	
Dighton	\$6.87	\$7.59	\$8.83	
East Bridgewater	\$7.57	\$8.31	\$10.04	
Eastham	\$7.55	\$7.59	\$8.30	
Easton	\$8.43	\$8.47	\$8.94	
Freetown	\$7.22	\$7.96	\$9.39	
Granby	\$6.15	\$6.19	\$6.93	
Granville	\$3.86	\$3.90	\$4.44	
Hamilton	\$6.70	\$6.74	\$7.18	
Hanover	\$7.22	\$7.26	\$7.89	
Hanson	\$7.88	\$7.92	\$8.59	
Hatfield	\$4.61	\$4.65	\$5.61	
Hingham	\$7.29	\$7.33	\$7.95	
Holbrook	\$7.72	\$7.76	\$8.72	
Holyoke	\$3.85	\$3.89	\$4.50	
Hopkinton	\$5.68	\$5.72	\$6.19	
Hull	\$7.25	\$7.29	\$7.88	
Huntington	\$4.53	\$4.57	\$5.51	
Ipswich	\$8.40	\$8.44	\$9.01	
Lakeville	\$7.58	\$8.03	\$8.88	
Lancaster	\$5.84	\$5.88	\$6.50	
Lawrence	\$7.30	\$7.34	\$7.70	
Longmeadow	\$6.98	\$7.02	\$7.80	
Marblehead	\$6.07	\$6.11	\$6.72	
Marion	\$9.59	\$9.63	\$10.36	
Marlborough	\$6.22	\$6.26	\$6.79	
Mattapoisett	\$9.35	\$9.39	\$10.31	
Methuen	\$6.66	\$6.70	\$7.31	
Middleborough	\$7.38	\$7.82	\$9.05	
Milford	\$5.45	\$5.49	\$5.94	
Milton	\$7.19	\$7.23	\$7.95	
Nahant	\$6.54	\$6.58	\$7.15	
Natick	\$6.07	\$6.11	\$6.52	
Needham	\$5.78	\$5.82	\$6.33	
Newbury	\$7.95	\$7.99	\$8.66	
North Andover	\$9.71	\$9.75	\$10.74	
Northampton	\$5.14	\$5.18	\$5.96	

	A Previous Rate	B Current Rate Effective July/Aug 2001	C Proposed Maximum Permitted Rate	D Cable Division Approved Maximum Permitted Rate
Northfield	\$5.05	\$5.09	\$5.32	
Norwell	\$7.33	\$7.37	\$7.86	
Orleans	\$5.69	\$5.73	\$6.26	
Phillipston	\$5.20	\$5.24	\$5.65	
Provincetown	\$7.43	\$7.89	\$9.09	
Quincy	\$6.49	\$6.53	\$7.11	
Randolph	\$6.27	\$6.31	\$6.82	
Raynham	\$7.60	\$7.64	\$8.00	
Reading	\$7.69	\$7.73	\$8.35	
Revere	\$7.12	\$7.16	\$7.77	
Rochester	\$9.19	\$9.23	\$10.06	
Rowley	\$7.96	\$8.00	\$8.60	
Saugus	\$6.58	\$6.62	\$9.04	
Scituate	\$7.54	\$7.58	\$8.24	
Sherborn	\$5.76	\$5.80	\$6.30	
South Hadley	\$3.86	\$3.90	\$4.43	
Southwick	\$6.37	\$6.41	\$7.10	
Springfield	\$5.08	\$5.12	\$6.56	
Stoneham (ex-MO)	\$8.32	\$8.36	\$8.83	
Stoughton	\$8.41	\$8.45	\$9.12	
Sunderland	\$4.77	\$4.81	\$5.78	
Topsfield	\$6.47	\$6.51	\$7.06	
Truro	\$7.22	\$7.56	\$8.53	
Upton	\$5.45	\$5.49	\$5.94	
Wareham	\$9.08	\$9.12	\$9.95	
Watertown	\$5.56	\$5.60	\$6.13	
Wayland	\$5.98	\$7.09	\$8.19	
Wellesley	\$6.03	\$6.07	\$6.52	
Wellfleet	\$7.55	\$7.65	\$8.50	
Wenham	\$6.66	\$6.70	\$7.02	
West Bridgewater	\$7.74	\$7.78	\$8.29	
West Newbury	\$7.93	\$7.97	\$8.63	
West Springfield	\$3.86	\$3.90	\$4.46	
Westfield	\$3.86	\$3.90	\$4.43	
Westhampton	\$4.53	\$4.57	\$5.51	
Weston	\$6.16	\$6.20	\$6.65	
Whitman	\$7.77	\$7.81	\$8.52	

	A Previous Rate	B Current Rate Effective July/Aug 2001	C Proposed Maximum Permitted Rate	D Cable Division Approved Maximum Permitted Rate
Williamsburg	\$4.87	\$4.91	\$5.83	
Wilmington	\$7.87	\$7.91	\$8.54	
Winchendon	\$6.49	\$6.53	\$7.09	
Winchester	\$7.15	\$7.34	\$7.99	

AT&T (Former Colony)
Basic Service Tier Programming Rates

Chelmsford	\$8.94	\$8.98	\$9.96
Dartmouth	\$7.23	\$7.27	\$7.94
Fall River	\$8.06	\$8.10	\$8.87
Lowell	\$9.41	\$9.45	\$10.51
New Bedford	\$7.69	\$7.73	\$8.45
Tewksbury	\$8.68	\$8.72	\$9.72

AT&T (Former TCI)
Basic Service Tier Programming Rates

Andover	\$6.62	\$6.66	\$8.43
Barnstable	\$8.95	\$8.99	\$10.50
Chatham	\$8.76	\$8.80	\$9.73
Dennis	\$8.89	\$8.93	\$9.96
Dracut	\$6.55	\$6.59	\$8.61
Harwich	\$8.70	\$8.74	\$9.07
Middleton	\$7.28	\$7.32	\$9.44
Nantucket	\$7.27	\$7.31	\$8.20
North Reading	\$6.31	\$6.35	\$8.60
Waltham	\$6.53	\$6.57	\$6.98
Yarmouth	\$9.06	\$9.10	\$10.20

A	B	C	D
Previous	Current Rate	Proposed	Cable Division
Rate	Effective	Maximum	Approved
	July/Aug	Permitted	Maximum
	2001	Rate	Permitted Rate

AT&T (Former Cox)
Basic Service Tier Programming Rates

Blackstone	\$8.82	\$8.86	\$9.50
Franklin	\$9.10	\$9.14	\$9.38
Millis	\$9.11	\$9.15	\$9.37
North Attleborough	\$10.54	\$8.54	\$11.18
Norton	\$11.70	\$8.84	\$9.94
Plainville	\$8.76	\$8.80	\$8.85
Somerset	\$10.59	\$8.54	\$9.99
Taunton	\$10.54	\$8.54	\$10.63

AT&T (Former Times Mirror)
Basic Service Tier Programming Rates

Amherst	\$8.08	\$8.12	\$8.85	
Buckland	\$9.26	\$9.30	\$10.15	
Erving	\$10.33	\$8.38	\$8.38	\$8.38
Gill	\$7.82	\$7.86	\$7.98	
Greenfield	\$8.25	\$8.29	\$8.38	
Hardwick	\$8.17	\$8.21	\$8.99	
Monson	\$8.23	\$8.35	\$9.28	
Montague	\$10.43	\$9.11	\$9.11	\$9.11
Palmer	\$8.05	\$8.12	\$9.03	
Pelham	\$8.32	\$8.36	\$9.12	
Shelburne	\$9.45	\$9.49	\$10.23	
Ware	\$8.24	\$8.28	\$9.05	
Warren	\$8.45	\$8.49	\$9.31	
Weymouth	\$7.19	\$7.23	\$7.98	

AT&T (Former Inland)
Basic Service Tier Programming Rates

Attleboro	\$7.66	\$7.70	\$8.46
Rehoboth	\$7.76	\$7.80	\$8.58

A	B	C	D
Previous	Current Rate	Proposed	Cable Division
Rate	Effective	Maximum	Approved
	July/Aug	Permitted	Maximum
	2001	Rate	Permitted Rate

**AT&T (Former Time Warner)
Basic Service Tier Programming Rates**

Acushnet	\$9.59	\$9.63	\$9.95	
Ashland	\$9.07	\$9.11	\$12.39	
Bellingham	\$9.38	\$9.46	\$12.58	
Bridgewater	\$6.37	\$6.41	\$16.04	
Canton	\$9.06	\$9.10	\$11.55	
Chelsea	\$8.81	\$8.85	\$10.05	
Dover	\$9.27	\$9.31	\$9.31	\$9.29
Everett	\$9.60	\$9.64	\$10.46	
Fairhaven	\$10.00	\$10.04	\$10.29	
Foxborough	\$8.91	\$8.95	\$11.81	
Holliston	\$10.09	\$10.13	\$10.13	\$10.13
Hopedale	\$8.25	\$8.29	\$14.85	
Lynn	\$9.52	\$9.56	\$10.35	
Malden	\$9.71	\$9.75	\$10.58	
Mansfield	\$9.20	\$9.24	\$11.45	
Medfield	\$9.89	\$9.93	\$10.48	
Medford	\$9.57	\$9.61	\$10.40	
Medway	\$9.35	\$9.39	\$13.66	
Melrose	\$9.40	\$9.44	\$10.10	
Mendon	\$8.33	\$8.37	\$16.66	
Norfolk	\$9.29	\$9.33	\$10.52	
Salem	\$9.65	\$9.69	\$10.37	
Seekonk	\$8.44	\$8.48	\$14.91	
Sharon	\$10.83	\$10.87	\$13.54	
Stoneham (ex TW)	\$9.51	\$9.55	\$10.23	
Swampscott	\$8.53	\$8.57	\$9.12	
Wakefield	\$9.51	\$9.55	\$10.59	
Walpole	\$11.55	\$11.59	\$11.85	
Winthrop	\$9.78	\$9.82	\$10.95	
Wrentham	\$9.29	\$9.33	\$9.29	