

**Commonwealth of Massachusetts
Department of Telecommunications and Energy
Cable Television Division**

In the Matter of AT&T Broadband	)	Docket Nos. Y-00A, CTV 00-2, CTV 00-3, CTV 00-4			
	)	Date Issued: May 31, 2001			
)				
MediaOne of Massachusetts, Inc.	)	Acushnet	Foxborough	Mendon	Sherborn
	)	Agawam	Freetown	Methuen	South Hadley
	)	Amherst	Gill	Middleborough	Southwick
MediaOne Enterprises, Inc.	)	Ashland	Granby	Milford	Springfield
	)	Attleboro	Granville	Milton	Stoneham
MediaOne of Brockton, Inc.	)	Avon	Greenfield	Monson	Stoughton
	)	Bellingham	Hamilton	Montague	Sunderland
MediaOne of Milton, Inc.	)	Berkley	Hanover	Nahant	Swampscott
	)	Bernardston	Hanson	Natick	Tewksbury
MediaOne of Needham, Inc.	)	Beverly	Hardwick	Needham	Topsfield
	)	Billerica	Hatfield	New Bedford	Truro
	)	Boxford	Hingham	Newbury	Upton
MediaOne of Ohio, Inc.	)	Brockton	Holbrook	Norfolk	Wakefield
	)	Bridgewater	Holliston	North Andover	Walpole
	)	Buckland	Holyoke	Northampton	Ware
MediaOne of Southern New England, Inc.	)	Burlington	Hopedale	Northfield	Wareham
	)	Cambridge	Hopkinton	Norwell	Warren
	)	Canton	Hull	Orleans	Watertown
MediaOne of Virginia, Inc.	)	Chelmsford	Huntington	Palmer	Wayland
	)	Chelsea	Ipswich	Pelham	Wellesley
	)	Chester	Lakeville	Phillipston	Wellfleet
MediaOne of Western New England, Inc.	)	Clinton	Lancaster	Provincetown	Wenham
	)	Cohasset	Lawrence	Quincy	West Bridgewater
	)	Conway	Longmeadow	Randolph	West Newbury
all d/b/a AT&T Broadband	)	Dartmouth	Lowell	Raynham	West Springfield
	)	Dedham	Lynn	Reading	Westfield
	)	Deerfield	Malden	Rehoboth	Westhampton
	)	Dighton	Mansfield	Revere	Weston
	)	Dover	Marblehead	Rochester	Weymouth
	)	East Bridgewater	Marion	Rowley	Whitman
	)	Eastham	Marlborough	Salem	Williamsburg
	)	Easton	Mattapoisett	Saugus	Wilmington
For a Determination of Cable Television Rates	)	Erving	Medfield	Scituate	Winchendon
	)	Everett	Medford	Seekonk	Winchester
)	Fairhaven	Medway	Sharon	Winthrop
)	Fall River	Melrose	Shelburne	Wrentham

RATE ORDER

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I. INTRODUCTION

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., now collectively offering services as AT&T Broadband (“AT&T Broadband” or “the Company”),¹ proposed basic service tier (“BST”) programming rates on Federal Communications Commission (“FCC”) Form 1210 for most of the above-captioned communities.² The Company proposed equipment and installation rates on FCC Form 1205 on March 1, 2000 for Attleboro and Rehoboth. At the request of the Cable Division, MediaOne of Ohio, Inc. (also now offering services as AT&T Broadband) filed the FCC Form 1205 for 30 communities in Massachusetts acquired from Time Warner on July 31, 1999 (the “Time Warner FCC Form 1205”).³ Pursuant to federal rate regulations,

¹ On July 15, 2000, MediaOne Group, Inc., the ultimate parent corporation of the MediaOne companies, was acquired by a subsidiary of AT&T Corp. On August 21, 2000, the MediaOne companies adopted the name “AT&T Broadband,” although their actual corporate names remained unchanged. The phrase “offering services as AT&T Broadband” is the company’s own.

² FCC Form 1210s were filed on November 24, 1999 for the communities of Agawam, Amherst, Attleboro, Avon, Berkley, Bernardston, Beverly, Billerica, Boxford, Brockton, Burlington, Cambridge, Chester, Clinton, Cohasset, Conway, Dedham, Deerfield, Dighton, East Bridgewater, Eastham, Easton, Freetown, Granby, Granville, Hamilton, Hanover, Hanson, Hardwick, Hatfield, Hingham, Holbrook, Holyoke, Hopkinton, Hull, Huntington, Ipswich, Lakeville, Lancaster, Lawrence, Longmeadow, Marblehead, Marion, Marlborough, Mattapoisett, Methuen, Middleborough, Milford, Milton, Monson, Nahant, Natick, Needham, Newbury, North Andover, Northampton, Northfield, Norwell, Orleans, Palmer, Pelham, Phillipston, Provincetown, Quincy, Randolph, Raynham, Reading, Rehoboth, Revere, Rochester, Rowley, Saugus, Scituate, Sherborn, South Hadley, Southwick, Springfield, Stoneham, Stoughton, Sunderland, Topsfield, Truro, Wareham, Watertown, Ware, Warren, Wayland, Wellesley, Wellfleet, Wenham, West Bridgewater, West Newbury, West Springfield, Westfield, Westhampton, Weston, Weymouth, Whitman, Williamsburg, Wilmington, Winchendon and Winchester. Revised FCC Form 1210s were filed on January 25, 2000 for Avon, Brockton, Burlington, Clinton, Cohasset, Dedham, Eastham, Easton, Granby, Hamilton, Hanover, Hanson, Hingham, Holbrook, Holyoke, Hull, Ipswich, Lancaster, Lawrence, Longmeadow, Marion, Marlborough, Mattapoisett, Milton, Natick, North Andover, Northampton, Norwell, Provincetown, Quincy, Randolph, Raynham, Reading, Revere, Rowley, Saugus, Scituate, Southwick, Springfield, Stoneham, Stoughton, Wareham, Wellfleet, Wenham, West Bridgewater, West Newbury, Weston, Whitman, Williamsburg and Wilmington. FCC Form 1210s were filed on April 18, 2000 for the communities of Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury. FCC Form 1210s were filed on May 19, 2000 for the communities of Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren.

³ This FCC Form 1205 covers the communities of 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 has put all of the proposed rates into effect, subject to review and refund.⁴ 47 C.F.R. § 76.933(c).

The Cable Division held a public and evidentiary hearing on the pending filings in Burlington on September 5, 2000 and in Hopkinton on September 6, 2000. The City of Agawam and the Towns of Burlington, Foxborough, Medway, Stoneham, Ware and Winchester intervened in this proceeding. The evidentiary record consists of the Company's rate forms admitted as Company Exhibits 1 through 124, AT&T Broadband's responses to our information requests admitted as Cable Division Exhibits 1 through 14, and responses to record requests posed by the Cable Division and the Towns of Burlington, Stoneham and Ware. The Town of Stoneham filed a brief on October 20, 2000 (the "Stoneham Brief"). AT&T Broadband filed a brief on November 2, 2000 (the "AT&T Broadband Brief"). Stoneham filed further comments on November 10, 2000 (the "Stoneham Reply"), to which AT&T Broadband filed a response on November 13, 2000 (the "AT&T Broadband Reply"). On February 16, 2001, AT&T Broadband responded to supplemental record requests posed by the Cable Division. Based on AT&T Broadband's response, Stoneham filed a supplemental brief on February 26, 2001 that included a supplemental record request.⁵ AT&T Broadband responded to the record request on March 1, 2001. Thereafter, Stoneham filed a supplemental reply brief on March 2, 2001. AT&T Broadband filed a supplemental reply brief on March 12, 2001.

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

⁴ MediaOne's proposed BST programming rates were put into effect in all of the above-captioned communities on January 1, 2000, except in Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury, where the proposed programming rates became effective on June 1, 2000, and in Amherst, Attleboro, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Rehoboth, Shelburne, Ware and Warren, where the proposed programming rates became effective on July 1, 2000. Because of its revised FCC Form 1210s filed on January 25, 2000, MediaOne changed its BST rates effective May 1, 2000 in the following communities: Avon, Clinton, Cohasset, Dedham, Easton, Hamilton, Hanover, Hanson, Hingham, Hull, Ipswich, Lancaster, Lawrence, Marion, Marlborough, Mattapoisett, Natick, Norwell, Randolph, Raynham, Revere, Scituate, Stoneham, Stoughton, Wareham, Wenham, West Bridgewater, West Newbury, Weston and Wilmington (RR-CTV-1; RR-CTV-6). MediaOne's proposed FCC Form 1205 rates for equipment and installations for Attleboro and Rehoboth became effective on July 1, 2000, and its FCC Form 1205 rates in the MediaOne of Ohio, Inc. communities became effective on January 1, 2000.

⁵ Stoneham's supplemental brief contained factual questions in addition to legal argument. AT&T Broadband did not object to responding to Stoneham's questions. We consider these questions to be in the nature of record requests, and thus, AT&T Broadband's factual responses are extensions of the sworn testimony provided at the hearing. AT&T Broadband's responses are cited as RR-Stoneham-4. To the extent AT&T Broadband's responses contain legal argument, we will give those arguments due weight.

rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the “Cable Act”). 47 C.F.R. § 76.922(a). 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 under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether the 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 BST 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 Cable Act. 47 C.F.R. §§ 76.922, 76.923, 76.930.

The FCC Form 1205 allows a cable operator to establish 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. A cable operator is required to prepare FCC Form 1205 on an annual basis using information from the company’s previous fiscal year. Id. at 2. A cable operator may not establish subscriber charges for equipment that exceed charges based on actual costs as calculated in accordance with the FCC’s regulatory requirements. 47 C.F.R. § 76.923(a)(2).

The FCC Form 1210 allows a cable operator to update its BST programming rates on a quarterly basis to account for inflation, changes in external costs, and changes in the number of regulated channels. A cable operator’s adjustments on FCC Form 1210 for inflation and changes in external costs must satisfy the requirements of 47 C.F.R. § 76.922(d)(2) and (3).

III. DISCUSSION AND ANALYSIS

A. Stoneham Franchise Related Costs

Stoneham raised an issue with respect to the Company’s calculation of Stoneham’s franchise related costs (“FRC”). In particular, Stoneham argued that AT&T Broadband

inappropriately included certain costs in its calculation of the FRC, and as a result proposed an excessive basic service tier rate. In the course of developing a record on this issue, Stoneham identified a second issue related to the Company's FRC calculation. Stoneham contended that AT&T Broadband miscalculated its studio staffing expenses so that the FRC adjustment included in the rate was overstated.

1. Appropriate Treatment of Pre-Regulation Franchise Related Costs

Stoneham questioned AT&T Broadband's treatment of pre-regulation FRC, particularly whether AT&T Broadband had inappropriately included these costs in its FRC calculation (Stoneham Brief at 1). Stoneham argued that under the FCC's regulations a cable operator is permitted to adjust its BST rate as a result of changes in external costs that occurred only after the BST became subject to regulation (*id.* at 2). For Stoneham, the BST rate did not become subject to regulation until October 22, 1993.⁶ Stoneham asserted that because its license was entered into on April 6, 1992, before the beginning of regulation, the BST rate cannot now be adjusted for changes in external costs attributable to the pre-regulation FRC, but must be presumed to include these costs in its underlying benchmark calculation (*id.*).⁷ Stoneham conceded that AT&T Broadband might be justified in allowing for changes in external costs during the period between September 30, 1992, the date when rate regulation became effective generally, and October 22, 1993, the actual date on which the reasonableness of the Company's rates for Stoneham was being adjudged (*id.*, citing Time Warner Entertainment Co. v. FCC, 56 F. 3d 151 (1995)). However, Stoneham maintained that since the current license was executed before September 30, 1992, all FRC are included in the BST calculation (Stoneham Brief at 2).

Stoneham specifically contended that the Company had inappropriately included \$0.71 in pre-regulation costs in its FRC calculation (Stoneham Reply at 1). Stoneham contested the Company's statement that the pre-regulation costs are not included in the FRC calculation, but are subtracted from the total FRC of \$1.96 to arrive at the final separately-charged FRC of \$1.25 per customer per month (Stoneham Reply at 1, citing

⁶ On October 18, 1993, the Cable Division notified the Company (then Continental Cablevision) that Stoneham had requested rate regulation. This notice initiated rate regulation upon its receipt by the Company on October 22, 1993, pursuant to 47 C.F.R. § 76.930. The Cable Division subsequently received a certified mail return receipt signed by the Company. The letter and receipt are filed as public documents with the Cable Division pursuant to G.L. c. 166A, § 15. The Cable Division hereby takes administrative notice of this letter and receipt pursuant to G.L. c. 30A, § 11(5) and 801 C.M.R. § 1.01(10)(h).

⁷ The benchmark formula, created by the FCC, created average cable rates for similar systems around the country based on a number of variables, such as the number of channels, the number of subscribers, and satellite-delivered signals. Rate Order at 5770, ¶ 213; FCC Form 1200 Instructions at 27-29. These variables are then processed through the FCC rate forms to arrive at the specific BST MPR for that community.

AT&T Broadband Brief at 2). In support, Stoneham noted that the Company's January 25, 2000 FCC Form 1210 reports monthly "Franchise Related Costs" of \$14,177.00 on Line D6, which is equivalent to \$1.96 per subscriber (Stoneham Reply at 1).⁸ Stoneham concluded that because the pre-regulation costs should not be included in the FRC, AT&T Broadband must subtract \$0.71 from the BST maximum permitted rate ("MPR"), reducing the BST MPR from \$8.32 to \$7.61 (*id.* at 2).

In response, AT&T Broadband stated that it has not improperly increased the FRC for Stoneham by \$0.71 per customer per month (AT&T Broadband Reply at 1). In support, AT&T Broadband explained that the current separately-charged FRC for Stoneham is \$1.25, as reflected on the rate card (*id.*) According to AT&T Broadband, this figure represents the capital costs and increased operating costs under the current license, and does not include pre-regulation costs associated with operating and I-net maintenance costs (*id.*). The Company argued that these latter costs were being incurred in 1992 when rate regulation became effective and are still being incurred today, and thus were and continue to be treated as embedded in the BST rate (*id.*). The Company stated that its approach is fully consistent with the FCC's rules, which permit cable operators using FCC Form 1210 to adjust rates quarterly to reflect changes in external costs as they occur (AT&T Broadband Brief at 2, citing 47 C.F.R. § 76.922(d)(3)(i)).

In addressing whether AT&T Broadband has appropriately accounted for pre-regulation costs in its preparation of Stoneham's FCC Form 1210, we note that Stoneham's FRC consists of three payment categories (RR-Stoneham-1). First, there are six capital payments, all made between December 31, 1993 and June 30, 1999 pursuant to the current renewal license (*id.*). These capital payments result in a proposed monthly FRC amount per subscriber of \$0.82 (*id.*). Second, there are three annual payments: an inflation adjustment equal to three percent of the prior operating costs of \$0.02 per month per subscriber; an I-Net maintenance payment of \$0.01 per month per subscriber, and the cost of the public, educational or governmental ("PEG") access studio staff of \$0.39 per month per subscriber, which together result in a proposed monthly FRC amount per subscriber of \$0.42 (*id.*). Third, there are two expenses, identified as a "prior operating" cost of \$0.64 per month per subscriber, and a "prior I-Net maintenance" cost of \$0.07 per month per subscriber, which together result in a proposed monthly FRC amount per subscriber of \$0.71 (*id.*).

We first determine which, if any, of the cost categories were incurred before October 22, 1993, when rate regulation began in Stoneham. With respect to the first category, consisting of capital payments required under the new license, no payments were made until December 31, 1993, when a payment was made to construct the new PEG access studio shared with Woburn (*id.*). With respect to the second payment category, the Stoneham

⁸ The monthly figure of \$14,177, when divided by 7,249, the number of subscribers in Stoneham, yields the \$1.96 in FRC per subscriber (RR-Stoneham-1).

FRC calculation reports that the studio expense payment was first incurred on December 31, 1996 (*id.*). With respect to the increases in operating and I-Net expenses, we note that these costs were first specifically authorized by the Franchise Related Costs Settlement Agreement we approved in 1997 (MediaOne of Massachusetts, Inc., et al., Y-96 INC at 6, 7 (1997)). Under the Settlement Agreement, the Company can add to its prior operating costs a three percent adjustment for inflation and incremental I-Net maintenance cost increases (*id.*). The Cable Division finds that the first two categories of expenses include only costs that were incurred after rate regulation became effective, resulting in a proposed monthly charge per subscriber of \$1.25.⁹ However, with respect to the third payment category, identified as “prior operating” and “prior I-Net maintenance” costs, and resulting in a proposed monthly charge per subscriber of \$0.71, AT&T Broadband’s own calculations and filings demonstrate that these costs were first incurred before the beginning of rate regulation, and are being incurred by the Company at the present time (*id.*, AT&T Broadband Reply at 1).

We next address AT&T Broadband’s ratemaking treatment of these payment categories. On the FCC Form 1210, the prior costs were combined with the new capital costs and the increases in operating, I-Net and studio costs and reported at Lines C15 and D6 (Exh. AT&T Broadband-78). As Stoneham observed, the resulting FRC on Line D6 amounts to \$1.96 per subscriber (Stoneham Reply at 1). Line D6, however, is titled “Franchise Related Costs” and is intended to include all current FRC, whether they be pre-regulation costs embedded in the rate or post-regulation costs that may be passed through. FCC Form 1210 Instructions at 12. Moreover, we note that the FCC did not design the FCC Form 1210 to separately identify those portions of the FRC that are embedded within the BST rate and those that are passed through to subscribers. To assess the accuracy of AT&T Broadband’s calculation, we must compare the FCC Form 1210’s BST rate with a rate card or billing statement that itemizes the rates the Company is charging subscribers, and also determine when the post-regulation FRC were first reported on FCC Form 1210. We have examined the Stoneham rate card, which reports a separately charged FRC amount of \$1.25, in addition to the BST MPR rate of \$7.09 (Exh. AT&T Broadband-78). The rate card was attached to the original FCC Form 1210 filed on November 24, 1999, which establishes a BST MPR of \$8.35 (*id.*)¹⁰ We also find that the post-regulation FRC was first reported on the FCC Form 1210 filed for the year 1997, which increased external costs by \$1.03 (AT&T Broadband Reply at Attachment B), and the BST MPR by \$1.14. MediaOne of Massachusetts, Inc., et al., Y-96 INC at 5 (1997).

⁹ The total is \$1.25, not \$1.24, because the monthly costs, when carried out to four decimal places, are \$0.8238 and \$0.4230, which total \$1.2468, rounded to \$1.25.

¹⁰ The refiled January 25, 2000 FCC Form 1210 for Stoneham reduced Stoneham’s BST MPR to \$8.32 (Exh. AT&T Broadband-78). Accordingly, effective May 1, 2000, AT&T Broadband reduced its Basic Service rate in Stoneham to \$7.07 (RR-CTV-6).

We now consider the rate consequences of the inclusion of \$0.71 in prior costs on the rate calculation on FCC Form 1210. Because the previous FRC on Line C15 (which includes the prior costs) is subtracted from the rate at Line J3, and the current FRC on Line D6 (which also includes the prior costs) is then added into the rate computation at Line J7, the inclusion of the \$0.71 in costs on the form has no material impact on the BST rate. The result is that the third category of expenses remains within the BST rate shown on the rate card, while only the \$1.25 in post-rate regulation costs is passed through to subscribers as a separate FRC charge on the Company's Stoneham rate card (*id.*).

The Cable Division concludes that AT&T Broadband has properly treated the \$0.71 in FRC, consisting of \$0.64 in prior operating costs and \$0.07 in prior I-Net maintenance costs, that were incurred after the Stoneham license was renewed, but prior to regulation, as being embedded in the BST. We further find that AT&T Broadband's categorization of post-regulation FRC is appropriate. Nevertheless, as discussed below, AT&T Broadband's calculation of its FRC requires further analysis.

2. Operating and Studio Staff Expenses

As noted above, AT&T Broadband's proposed total monthly FRC per Stoneham subscriber is \$1.96. The Cable Division concluded above that AT&T Broadband has properly included \$0.71 of this FRC as embedded within the rate. We now consider the reasonableness of the remaining \$1.25 of FRC post-regulation costs. This amount includes monthly per subscriber amounts of \$0.82 as capital costs, \$0.02 as the three percent inflation adjustment, and \$0.01 as I-Net maintenance payments, none of which have been questioned by Stoneham. Upon review of the evidence, the Cable Division accepts these costs as reasonable.

The remaining \$0.39¹¹ per subscriber per month consists of studio staffing costs (RR-Stoneham-1). According to AT&T Broadband, its FRC, when annualized, includes \$150,000 for prior operating costs and \$91,578 for studio staffing costs, which together total \$241,578 (AT&T Broadband Brief at 2, 3).¹² Stoneham questioned the accuracy of AT&T Broadband's studio staffing costs, noting that the studio had been understaffed during most of

¹¹ The difference is \$0.39, rather than \$0.40, because the monthly costs, when carried out to four decimal places, are \$0.8238 for capital costs, \$0.0192 for the inflation adjustment, and \$0.0139 for I-Net maintenance costs, resulting in a total of \$0.8569, rounded to \$0.86. When subtracted from \$1.25, the difference is \$0.39.

¹² AT&T Broadband derived the monthly per-subscriber Stoneham FRC amounts from the total annual payments using the following calculation (RR-Stoneham-1). Using the studio staffing costs as an example, the payment is first allocated between Stoneham and Woburn on a percentage of total subscribers in Stoneham. Stoneham's percentage is 37.03 percent (*id.*). The resulting annual Stoneham-only payment is divided by 12 to convert it into a monthly amount and is then divided by the number of subscribers in Stoneham to arrive at the monthly per-subscriber amount of \$0.39 (*id.*).

1999 (Stoneham Brief at 3). AT&T Broadband suggested that its studio expenses of \$91,578 were reasonable because its costs of staffing the studio during 1999 were actually \$116,097 (AT&T Broadband Brief at 3). The Company further reported that its \$150,000 in operating costs had increased in 1999 to over \$190,000 (*id.* at 2).

AT&T Broadband's assertion that the FRC costs on the FCC Form 1210 were reasonable because its actual costs were allegedly higher could not be accepted by the Cable Division without supporting documentation. Accordingly, the Cable Division requested that the Company provide back-up support for its studio staffing costs, and verify that the same studio personnel costs were not included within both its operating and studio staffing cost categories (RR-CTV-5). In response, AT&T Broadband reported that the two cost categories were separate, and both included studio staffing expenses (*id.*). The Company claimed that it had included the salary of the program director in its operating costs, and the salaries for two and a half staff persons in its studio staffing costs (*id.*). However, in response to Stoneham's supplemental record request, AT&T Broadband provided financial information showing that in its actual operating expense budget for 1999, the \$116,097 in studio staffing costs was not an additional cost, but instead was included within its total operating cost figure of \$190,235 as one of the expenses (RR-Stoneham-4). This financial information further reported that the \$116,097 amount included staffing costs for both the program director and the staff personnel. *Id.* We conclude that AT&T Broadband has double counted its post renewal studio staffing costs. Accordingly, we find that AT&T Broadband's operating costs include all the studio staffing costs, with an actual total of \$190,235. AT&T Broadband's actual amount is less than the annualized expense payments of \$241,578 reported on the FRC calculation. While AT&T Broadband has flexibility in the amount of the FRC it includes in the rate, it may not pass through to subscribers an FRC larger than its actual costs. 47 C.F.R. § 76.922(f)(4). The Cable Division directs AT&T Broadband to refile its FCC Form 1210 adjusting its FRC calculation to include its actual operating costs of \$190,235.¹³ We further direct AT& T Broadband to file a refund plan for any overcharges in Stoneham.

B. The Nahant Access Channel Addition

In Nahant, AT&T Broadband did not adjust its BST rate to account for the addition of an access channel (Exh. CTV-10). In response to an information request, AT&T Broadband indicated that due to an oversight, it had not taken an adjustment for the addition of the access channel to the BST (*id.*). This adjustment would increase the BST MPR by several cents. While the Company would have been entitled to make this adjustment, we will accept the Nahant filing as proposed. See Charter Communications Entertainment I, L.L.C., CHA Y-00 (Phase I) at 4-5 (2000). We note, however, that the Company may account for this adjustment on its next Nahant rate filing.

¹³ While these findings would apply equally to Woburn, that community has not required that its rates be regulated, and therefore we lack jurisdiction to require the Company to adjust its rates there.

C. The FCC Form 1205 for the Former Time Warner Communities

The Cable Division has reviewed the FCC form 1205 filed for the communities that AT&T Broadband acquired from Time Warner Cable on July 31, 1999, and docketed on August 3, 2000. We find the equipment and installation rates established by this FCC Form 1205 to be reasonable and in compliance with FCC regulations.

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 1210s as filed on November 24, 1999 for Agawam, Amherst, Attleboro, Berkley, Bernardston, Beverly, Billerica, Boxford, Cambridge, Chester, Conway, Deerfield, Dighton, East Bridgewater, Freetown, Granville, Hardwick, Hatfield, Hopkinton, Huntington, Lakeville, Marblehead, Methuen, Middleborough, Milford, Monson, Nahant, Needham, Newbury, Northfield, Orleans, Palmer, Pelham, Phillipston, Rehoboth, Rochester, Sherborn, South Hadley, Sunderland, Topsfield, Truro, Watertown, Ware, Warren, Wayland, Wellesley, West Springfield, Westfield, Westhampton, Weymouth, Winchendon and Winchester.

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 1210s as filed on January 25, 2000 for Avon, Brockton, Burlington, Clinton, Cohasset, Dedham, Eastham, Easton, Granby, Hamilton, Hanover, Hanson, Hingham, Holbrook, Holyoke, Hull, Ipswich, Lancaster, Lawrence, Longmeadow, Marion, Marlborough, Mattapoisett, Milton, Natick, North Andover, Northampton, Norwell, Provincetown, Quincy, Randolph, Raynham, Reading, Revere, Rowley, Saugus, Scituate, Southwick, Springfield, Stoughton, Wareham, Wellfleet, Wenham, West Bridgewater, West Newbury, Weston, Whitman, Williamsburg and Wilmington.

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 1210s as filed on April 18, 2000 for Chelmsford, Dartmouth, Fall River, Lowell, New Bedford and Tewksbury.

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 1210s as filed on May 19, 2000 for the communities of Amherst, Buckland, Erving, Gill, Greenfield, Hardwick, Monson, Montague, Palmer, Pelham, Shelburne, Ware and Warren.

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, 2000 for Attleboro and Rehoboth.

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 docketed on August 3, 2000 for 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, Swampscott, Wakefield, Walpole, Winthrop and Wrentham.

Further, the Cable Division rejects AT&T Broadband's FCC Form 1210 as filed on November 24, 1999 and as refiled on January 25, 2000 for Stoneham. The Cable Division directs AT&T Broadband to refile its FCC Form 1210 for Stoneham, and to file a refund plan for any overcharges in Stoneham, in accordance with this Rate Order, on or before June 11, 2001.

The attached schedule provides the current and permitted basic service tier programming and/or equipment rates for each community approved herein.

**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.