



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

Cable Television Division

ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3580

In the Matter of)		
AT&T Broadband)		
formerly Cablevision of)		
Boston, Inc. and	)	Docket No. CTV 00-8	
Cablevision of	)	Date Issued: October 1, 2001	
Massachusetts, Inc.)		
)		
AT&T CSC, Inc.)		
formerly	)	Acton, CUID MA 0196	Hudson, CUID MA 0139
Cablevision of	)	Ashburnham, CUID MA 0337	Leominster, CUID MA 0017
Massachusetts, Inc.	)	Ayer, CUID MA 0257	Lexington, CUID MA 0140
	)	Bedford, CUID MA 0210	Lincoln, CUID MA 0324
MediaOne of	)	Belmont, CUID MA 0316	Littleton, CUID MA 0294
New York, Inc.	)	Boston, CUID MA 0182	Lunenburg, CUID MA 0077
formerly	)	Boxborough, CUID MA 0289	Lynnfield, CUID MA 0167
Cablevision of Boston, Inc.	)	Braintree, CUID MA 0217	Maynard, CUID MA 0146
	)	Brookline, CUID MA 0219	Norwood, CUID MA 0148
UACC Midwest, Inc.	)	Carlisle, CUID MA 0293	Peabody, CUID MA 0119
formerly	)	Concord, CUID MA 0270	Stow, CUID MA 0256
Cablevision of Brookline	)	Danvers, CUID MA 0279	Sudbury, CUID MA 0255
Limited Partnership	)	Fitchburg, CUID MA 0015	Templeton, CUID MA 0127
	)	Framingham, CUID MA 0094	Townsend, CUID MA 0296
all d/b/a AT&T Broadband	)	Gardner, CUID MA 0016	Tyngsborough, CUID MA 0232
	)	Georgetown, CUID MA 0133	Westford, CUID MA 0192
For a Determination of	)	Groveland, CUID MA 0071	Westminster, CUID MA 0230
Cable Television Rates)	Haverhill, CUID MA 0031	Westwood, CUID MA 0204

RATE ORDER

APPEARANCES: William P. Leahy
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Limited Participant

I. INTRODUCTION

On October 2, 2000, Cablevision Systems Corporation (“Cablevision”) 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 1240s, for all of the above-captioned communities.¹ In addition, pursuant to 47 C.F.R. § 76.923(n)(3), Cablevision proposed equipment and installation rates on two FCC Form 1205s; one for its Boston and Brookline franchises (the “Boston/Brookline system”), and one for all other communities (the “suburban Massachusetts system”). On January 5, 2001, Cablevision transferred its cable licenses for all of the above communities to AT&T Corp., who now provides cable services in these communities under the name AT&T Broadband (“AT&T Broadband” or “the Company”).² Pursuant to 47 C.F.R. § 76.933(g), the rates proposed in the FCC Form 1240s and FCC Form 1205s became effective on February 1, 2001.

The Cable Division held a public hearing on the pending filings in Boston on February 27, 2001. The City of Boston and the Towns of Concord, Danvers and Lexington intervened in this proceeding, and the Towns of Boxborough and Brookline were admitted as Limited Participants. The evidentiary record includes 16 AT&T Broadband exhibits, 14 Cable Division exhibits consisting of AT&T Broadband’s responses to our information requests, and responses to record requests posed by the Cable Division and the City of Boston.

Subsequent to the public hearing, but before the close of the record,³ the FCC issued a Memorandum Opinion and Order, wherein the FCC granted Cablevision’s request for a determination that effective competition exists in the City of Boston and thereby revoked our certification to regulate the BST rate for Boston, Cablevision of Boston, Inc.; Petition for Determination of Effective Competition, CSR 5048-E, DA 01-1731 (July 20, 2001), (the “Effective Competition Order”).

On August 20, 2001, the City of Boston filed with the FCC an Application for Review of Determination of Effective Competition, asking the FCC to reverse its determination that effective competition exists in Boston. The City also filed with the FCC a Petition to Stay Determination of Effective Competition.⁴ As of the date of issuance of this Rate Order, the FCC has not ruled on either the City’s Application for Review or Petition to Stay the Effective Competition Order. Further, on September 13, 2001, the City of Boston filed with the Cable Division a Motion to Stay the Issuance of a Rate Order.

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 Cable Television Consumer and Competition Act of 1992 as amended (the “Cable Act”). 47 C.F.R. § 76.922(a). The Cable Division may

1 Cablevision filed 14 FCC Form 1240s. Combined FCC Form 1240s were filed for: (i) Acton, Hudson, Maynard, Stow and Sudbury; (ii) Ashburnham, Ayer, Boxborough, Carlisle, Concord, Lincoln, Littleton, Townsend, Tyngsborough and Westford; (iii) Bedford and Lexington; (iv) Boston and Brookline; (v) Gardner, Templeton and Westminster; (vi) Georgetown, Groveland and Haverhill; (vii) Leominster and Lunenburg; (viii) Lynnfield and Peabody; and (ix) Norwood and Westwood. Individual FCC Form 1240s were filed for Belmont, Braintree, Danvers, Fitchburg and Framingham.

2 Following the transfer, the former Cablevision franchises are owned by different legal entities. The Boston franchise is now owned by MediaOne of New York, Inc; the Brookline franchise is now owned by UACC Midwest, Inc.; and all other franchises are now owned by AT&T CSC, Inc.

3 The record in this proceeding remained open for several months, because AT&T Broadband and the City of Boston indicated that they were attempting to negotiate a settlement of issues raised by two record requests. While they were negotiating, AT&T Broadband did not file substantive responses to these record requests.

4 On August 27, 2001, AT&T Broadband filed with the FCC an Opposition to the City’s Petition to Stay, and on September 4, 2001, AT&T Broadband filed with the FCC an Opposition to the City of Boston’s Application for Review.

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) 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 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)(ii)(A); 47 C.F.R. § 76.922(e)(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)(ii)(A).

III. DISCUSSION AND ANALYSIS

Upon review of the record, the Cable Division determines that the Company’s proposed programming rate filings for the suburban communities comply with applicable law and the rates are deemed reasonable. An issue, however, did arise with the rate the Company is charging in the Town of Danvers. A discussion of the issue follows in section B. In addition, the Cable Division addresses the calculation of the digital equipment rates on the FCC Form 1205s, and whether certain franchise related costs are properly included in the Boston/Brookline filing.

A. Accumulated Depreciation on Digital Equipment

On both FCC Form 1205s, the Company included a separate category on Schedule C to establish monthly lease Maximum Permitted Rates (“MPR”) for digital converters and digital remote controls (Exhs. AT&T Broadband-15 and -16, at 3). For this digital equipment, the Company entered identical amounts on the lines reporting the accumulated depreciation and the current provision for depreciation (Exhs. AT&T Broadband-15 and -16, at 3, Schedule C, Lines E and J). Since the digital equipment had already been placed into service and included on previous filings, the Cable Division expected that the accumulated

depreciation total should include both this year's depreciation as well as any amounts taken in prior years. The Company reviewed the filings and conceded that the accumulated depreciation total should indeed have included the depreciation reported on last year's filings (Exh. CTV-8). On February 26, 2001, in response to a Cable Division request, AT&T Broadband submitted revised FCC Form 1205s that included the previous year's depreciation for converters and remote controls (Exh. CTV-14, at 3). For the Boston/Brookline system, the monthly MPR for the digital converter decreased by \$0.20, from \$6.58 to \$6.38; while the MPR for the digital remote control remained unchanged at \$0.21 (Exhs. AT&T Broadband-15, at 3; CTV-14 (Boston/Brookline) at 3). For the suburban Massachusetts system, the MPR for the digital converter decreased by \$0.10, from \$7.18 to \$7.08; while the MPR for the digital remote control remained unchanged at \$0.23 (Exhs. AT&T Broadband-16, at 3; CTV-14 (Suburban Massachusetts) at 3). The Cable Division has reviewed these revised filings and finds them in compliance with applicable law and that the rates proposed therein reasonable.

B. Danvers Cable Access Fee

The Cable Division asked AT&T Broadband to indicate whether a cable access fee had been added to cable bills in the Town of Danvers, and if this fee had been added, how it is related to the franchise related cost amount of \$93,222 reported on the Danvers FCC Form 1240 (RR-CTV-5). AT&T Broadband explained that on April 17, 2001, the Company and the Town of Danvers entered into a new ten-year license (*id.*). Under this license, the Danvers Access Corporation became responsible for public access programming, while the Company became responsible for biannual payments equivalent to three percent of the Company's gross revenues in the Town of Danvers (*id.*). The Company began charging a three percent access fee on June 24, 2001 (*id.*).

In addition to the biannual payments under the license, the Company is to continue to operate, maintain and staff the access studio with a minimum budget of \$93,222 for the nine-month period between April 2001 and January 2002 (*id.*). The Company stated that it did not propose to line itemize this amount on customers' bills, but rather to continue to recover this amount through its BST programming rates (*id.*) The Company explained that the portion of the \$93,222 applicable to the Projected Period from April through December 20015 would be removed from future rates through the true-up mechanism on the next Danvers FCC Form 1240 (*id.*).

Under the FCC Form 1240 rate-setting procedures, a cable operator is permitted to increase BST rates during the year to reflect the imposition of, or increase in, franchise fees, such as the three percent gross revenue payment requirement. 47 C.F.R. § 76.933(g)(5). Unlike other franchise related costs, franchise fees are not included within the FCC Form 1240 computation of permitted charges. 47 C.F.R. § 76.922(f)(4) and (5). Those franchise related costs that are reported on FCC Form 1240 may only be adjusted annually. 47 C.F.R. § 76.922(e)(1). AT&T Broadband is not required to adjust its BST MPR because of changes in its financial obligation to the public access studio arising out of a license renewed during the projected period. Therefore, the Company's proposal to adjust the true-up calculation on the next FCC Form 1240 is not only appropriate but required by the FCC's rules. 47 C.F.R. § 76.922(2)(ii)(B).

C. Boston/Brookline Franchise Related Costs

On AT&T Broadband's FCC Form 1240 for Boston and Brookline, the Company included \$750,000 in franchise related costs associated with the Boston Network Fund (Exh. AT&T Broadband-5, Worksheet 7-External Costs, Projected Period, Line 707). The Company initially stated that it had included this amount on the form because it was a reasonably certain and reasonably quantifiable franchise related

5 The record request response incorrectly states December 2002 (EE-CTV-5). The correct termination date for the Projected Period is December 31, 2001. See Exh. AT&T Broadband-7 at 1.

cost (RR-CTV-1). In a later response, the Company stated that it continues to make the money in the Network Fund available to the City, and will disburse the money as soon as the City will accept payment (RR-CTV-1, revised, at 3). AT&T Broadband reported that as of September 14, 2001, the City has declined to accept payment (id. at 2,n.3).

The FCC's rate regulations provide, with respect to projected changes in external costs, including franchise related costs:

Permitted charges for a tier may be adjusted annually to reflect changes in external costs experienced but not yet accounted for by the cable system, as well as for projections in these external costs for the 12-month period on which the filing is based. ... Operators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable.

47 C.F.R. § 76.922(e)(2)(ii)(A).

The FCC has explained that “[c]ertain changes in franchise requirement costs may not be reasonably certain and reasonably quantifiable because determining the types of costs and implementation dates can be more difficult than with other types of external costs. ... Nevertheless, to the extent that operators demonstrate that such franchise requirement costs are reasonably certain and reasonably quantifiable, such costs may be projected.” Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration, MM Docket No. 92-266, FCC 95-397, 11 FCC Rcd. 388 (released September 22, 1995) at 439, ¶ 76.

At the time Cablevision prepared the FCC Form 1240, the amount of the payment was quantifiable. The Network Fund was established by the Boston Renewal License, dated May 13, 1998, at Section 6.12.6 The License states that the Network Fund “will permit the City to purchase equipment and services which would be used to provide Internet access to Boston Public Schools, libraries, and other Public Institutions....” Boston Renewal License, Section 6.12. Cablevision would make specific Network Fund amounts available to the City during the first four years of the license; any funds not used during a year may be used in subsequent years up to the expiration of the License. Id. However, no payments were made during the first two years of the license. A-R Cable Investments, Inc., Y-00 INC, Y 00-EQU (2000), at 4. AT&T Broadband understood that Cablevision had established \$750,000 on its books in anticipation of payment of three-quarters of the total funds due (RR-CTV-1).

At issue is whether the payment of this franchise related cost is “reasonably certain.” At the hearing, the City of Boston asked the Company to explain how the Network Fund could be included on the FCC Form 1240 “if the services for which the funds are intended are not yet available” (RR-Boston-2). Initially, on March 23, 2001, AT&T Broadband merely referred the City to the license provisions, and stated that it was discussing the rate treatment of the Network Fund with the City (id.). However, in response to our request that the Company provide a substantive response, on September 14, 2001, the Company admitted that “AT&T is *currently* offering ‘the services for which the funds are intended’ in portions of the City and expects to be offering those services in more sections of the City by later this year” (RR-CTV-1; RR-Boston-2, revised, at 2,n.3.) AT&T Broadband reported that it has offered to disburse the moneys to the City, but the City has declined to accept payment (id.). The Company also stated that it continues to work with the City to address the concerns the City has regarding the Network Fund (id. at 6).

6 The City of Boston Renewal License is filed as a public document 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, § 1(15) and 801 C.M.R. § 1.01(10)(h).

The FCC Form 1240's Projected Period in this matter extends until December 31, 2001 (Exh. AT&T Broadband-5). Therefore, in theory, Boston may still request the Network Fund payment during the Projected Period. AT&T Broadband presented no evidence to suggest that the City would make that request. Indeed, the Company concedes that there is not widespread availability of the services for which the Network Fund is intended. Moreover, AT&T Broadband failed to present evidence that those services would be available during the Projected Period, making the franchise related cost payment reasonably certain. Therefore, the Cable Division concludes that AT&T Broadband has not met its burden of establishing that the increase in its franchise related costs associated with the Network Fund is reasonably certain. The Cable Division finds that substantial uncertainty exists concerning whether the City will request the Network Fund payment by the end of the Projected Period (*id.*). Accordingly, we direct AT&T Broadband to refile the FCC Form 1240 for Boston and Brookline with the \$750,000 Network Fund payment removed from Worksheet 7-External Costs, Projected Period, Line 707, and with the consequential adjustments made elsewhere on the FCC Form 1240.

We note that AT&T Broadband argues that the Effective Competition Order prevents the Cable Division from issuing any rate order affecting Boston's BST rates, even for the period prior to July 20, 2001 (RR-CTV-1, revised, at 5-6). The City of Boston moved the Cable Division to stay the issuance of our Rate Order for an additional 120 days, arguing that its appeal of the Effective Competition Order is pending before the FCC, AT&T Broadband has not fully complied with several record requests, and the City and AT&T Broadband continue to negotiate over issues raised in this proceeding.

The FCC's rate regulations provide:

If a proposed rate goes into effect before the franchising authority issues its rate order, the franchising authority will have 12 months from the date the operator filed for the rate adjustment to issue its rate order. In the event that the franchising authority does not act within this 12-month period, it may not at a later date order a refund or a prospective rate reduction with respect to the rate filing.

47 C.F.R. § 76.933(g)(2).

The only exception to this rule is if the operator has submitted a facially incomplete filing, when the deadline for issuing a decision will be tolled. 47 C.F.R. § 76.933(g). The FCC Form 1240 filing for Boston and Brookline was facially complete, and thus does not fall under this exemption.

The Boston/Brookline FCC Form 1240 under review in this current proceeding was filed with the Cable Division on October 2, 2000. Accordingly, under the FCC's regulations, the Cable Division must issue our Rate Order on this filing on or before October 1, 2001. We determine that the timely issuance of this Rate Order will have no harmful impact on Boston's position. First, given our conclusions in this Rate Order, we need not reach the question of when our authority to adjust the Company's rates in Boston ceased. Our references to "Boston and Brookline" in this Rate Order should not be construed to imply a specific conclusion on our jurisdiction; rather, these references are necessary because we are reviewing a joint form containing Boston and Brookline information. Regardless of our jurisdiction over Boston's BST rates, our jurisdiction over Brookline's rates continues. Any finding regarding jurisdiction over Boston's rates would not be appropriate until after the compliance filing is made. Second, AT&T Broadband has been provided ample time to respond to the record requests, and indeed did so respond on September 14, 2001. AT&T Broadband, not Boston, suffers the consequences of less than persuasive responses. Finally, given that the Company must now make a compliance filing, an opportunity exists to continue whatever negotiations the parties deem appropriate. Accordingly, the Motion to Stay of the City of Boston is denied.

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, the FCC Form 1240s as filed on October 2, 2000, for Acton, Ashburnham, Ayer, Bedford, Belmont, Boxborough, Braintree, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood.

Upon due notice, hearing and consideration, the Cable Division hereby rejects the FCC Form 1240 as filed on October 2, 2000, for Boston and Brookline. The Cable Division hereby directs AT&T Broadband to file a revised FCC Form 1240 for Boston and Brookline in accordance with this Rate Order, on or before November 1, 2001.

Further, upon due notice, hearing and consideration, the Cable Division hereby rejects the FCC Form 1205s as filed on for October 2, 2000, for Acton, Ashburnham, Ayer, Bedford, Belmont, Boston, Boxborough, Braintree, Brookline, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood. The Cable Division accepts as reasonable and in compliance with applicable statutes and regulations, the FCC Form 1205s as filed on February 26, 2001 as Exhibit CTV-14, for Acton, Ashburnham, Ayer, Bedford, Belmont, Boston, Boxborough, Braintree, Brookline, Carlisle, Concord, Danvers, Fitchburg, Framingham, Gardner, Georgetown, Groveland, Haverhill, Hudson, Leominster, Lexington, Lincoln, Littleton, Lunenburg, Lynnfield, Maynard, Norwood, Peabody, Stow, Sudbury, Templeton, Townsend, Tyngsborough, Westford, Westminster and Westwood.

The attached schedule provides the proposed and approved maximum permitted 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, 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.