

**Before the
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Ave., #704
Portland, OR 97204**

KBL Portland Cablesystems, Limited)	
Partnership and TCI Cablevision of)	Order 2001-01
Oregon, Inc., Providing Services as)	
AT&T Broadband)	
)	
Franchise Violations)	Findings of Fact and
)	Conclusions of Law
Customer Telephone Answering Standards)	Passed by the Commission:
)	February 26, 2001

Section 1. Process.

- 1.1 The Mt. Hood Cable Regulatory Commission (“MHCRC” or “Commission”) was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Fairview, Gresham, Portland, Troutdale, and Wood Village (“the Jurisdictions”). Among other things, the Commission oversees compliance with the cable franchise agreements, subject to discretionary review by the Jurisdictions. IGA, § 4.A.
- 1.2 As provided under § 6.6 of the MHCRC’s Rules of Procedure, the MHCRC sent out notice of the intent to schedule a formal hearing. At the regularly scheduled MHCRC meeting of December 18, 2000, MHCRC staff asked the Commission to schedule a Formal Hearing for January 22, 2001 on potential AT&T franchise violations of customer service standards. At the meeting, the MHCRC set a Formal Hearing date for January 22, 2001.
- 1.3 At its regularly scheduled meeting on January 22, 2001, the MHCRC convened a formal hearing, as provided under § 6.8 of the MHCRC’s Rules of Procedure, to consider whether KBL Portland Cablesystems, Limited Partnership and TCI Cablevision of Oregon, Inc., providing services as AT&T Broadband (also known as AT&T Broadband and Internet Services or AT&T Cable Services) (“AT&T”) had violated franchise requirements regarding Customer Telephone Answering Standards.
- 1.4 At the January 22, 2001 hearing, the MHCRC heard a presentation from MHCRC staff. The MHCRC accepted documents submitted by staff into the record (the “Record”). The MHCRC also heard a presentation by representatives from AT&T.

- 1.5 Having considered the record developed at the formal hearing, and the presentations from MHCRC staff and AT&T's representatives, the MHCRC adopts the following Findings of Fact and Conclusions of Law, as provided under § 6.9 of the MHCRC's Rules of Procedure.

Section 2. Findings of Fact

- 2.1 In 1993 the Federal Communications Commission, (the "FCC") adopted customer service standards for cable operators nationwide. These standards are codified at 47 C.F.R. §76.309. The FCC standards provided that local franchising authorities may elect to enforce the standards. 47 C.F.R. §76.309(a).
- 2.2 On October 18, 1993, the Consolidated Cable Communications Commission (the "CCCC"), commonly referred to as the Mt. Hood Cable Regulatory Commission (MHCRC), passed Resolution 93-15, authorizing the local authority to enforce the cable customer service standards set forth in 47 C.F.R. §76.309. Record, Exhibit 1. The resolution also authorized staff to notify all current cable franchisees in writing of the intent to locally enforce the FCC's customer service standards. Id.
- 2.3 On October 27 and 28, 1993, the CCCC sent written notice by certified mail, addressed to the franchised cable operators advising them of the CCCC's intent to locally enforce the FCC's customer service standards beginning February 1, 1994. Record, Exhibits 2, 3 and 4.
- 2.4 AT&T is the successor in interest to the franchisees who received the written notice from the CCCC.
- 2.5 Within Multnomah County, AT&T operates under five cable television franchises, issued by Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village. All five franchises require AT&T to comply with the FCC customer service standards set forth in 47 C.F.R. §76.309. The franchises incorporate these standards by reference. TCI-West Multnomah County Franchise Sections 10 and 21.1; TCI-Portland Franchise Sections 11 and 22.1; TCI-Hayden Island Section 15.1 ("TCI," "TCI franchises," or "TCI franchise areas"); and Paragon Portland and Multnomah County Franchises Sections 13 and 24.1 ("Paragon," "Paragon franchises," or "Paragon franchise areas"). The TCI franchises are sometimes referred to as the "West Portland" or "west side" franchises. The Paragon franchises are sometimes referred to as the "East Portland" or "east side" franchises.
- 2.6 Under 47 C.F.R. §76.309(c)(1)(i)(A), AT&T is required to have trained company representatives available to respond to customer telephone inquiries during normal business hours. Normal business hours are those hours during which most similar businesses in the community are open to serve customers. In all cases, normal business hours must include some evening hours at least one night per week and/or some weekend hours. 47 C.F.R. §76.309(c)(4)(i).

- 2.7 47 C.F.R. §76.309(c)(1)(ii) requires that AT&T meet the following telephone answering standards: Under normal operating conditions, telephone answer time by a customer representative, including wait time, must not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time must not exceed thirty (30) seconds. These standards must be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
- 2.8 The MHCRC Office telephone number is printed on subscriber bills to enable subscribers to voice complaints. MHCRC staff tracks subscriber complaints on a quarterly and annual basis. Total complaints specific to AT&T telephone answering issues increased from 116 in the second quarter of 1999, to 130 in the third quarter of 1999, to 179 in the fourth quarter of 1999, to 266 in the first quarter of 2000. Record, Exhibits 5 and 6.
- 2.9 In the fourth quarter of 1999, the MHCRC Office began receiving an increasing number of complaint calls from subscribers regarding difficulty reaching AT&T's call centers. Complaints focused on long hold times, being cut off or disconnected while on hold, being repeatedly transferred and being kept on hold for long periods of time even after finally reaching a "live" customer service representative. Record, MHCRC staff presentation, January 22, 2001.
- 2.10 On February 22, 2000, MHCRC staff requested information from AT&T on telephone answering times by month and by the five franchise areas from October 1999 and on a continuing basis thereafter until further notice. Record, Exhibit 7.
- 2.11 Prior to March, 2000, AT&T's call centers in east Portland and Beaverton, Oregon, served the Paragon and TCI franchise areas in Oregon. They did not serve the Vancouver and Clark County, Washington franchise areas. In March 2000 the Vancouver/Clark County call center was closed and the calls were routed to the Beaverton call center. Record, MHCRC staff presentation, January 22, 2001.
- 2.12 On April 10, 2000, AT&T provided information on telephone answering times for October 1999 through March 2000. Despite staff's request for the information by franchise, AT&T aggregated the information for its Paragon and TCI franchise areas. For the Paragon franchises the information showed that AT&T answered the phones within 30 seconds less than 90% of the time for the first quarter of 2000. Record, Exhibit 8. For the TCI franchises the information showed that AT&T answered the phones within 30 seconds less than 90% of the time for the fourth quarter of 1999 and first quarter of 2000. Record, Exhibit 9.
- 2.13 On June 8, 2000, MHCRC staff issued a Notice of Alleged Franchise Violations and Opportunity to Cure, (the "Notice"), to AT&T regarding compliance with Customer Telephone Answering Standards. Record, Exhibit 10. The Notice was received by AT&T on June 9, 2000. Id.

- 2.14 On June 30, 2000, AT&T provided information on telephone answering times for April and May 2000. The information was again aggregated by the Paragon and TCI franchise areas. On August 29, 2000, AT&T provided information on telephone answering times for April through July 2000, again aggregated by Paragon and TCI franchise areas. For both the Paragon and TCI franchise areas the information showed that AT&T answered the phones within 30 seconds less than 90% of the time for the second quarter of 2000. Record, Exhibits 11, 15.
- 2.15 On July 7, 2000, AT&T provided its 1999 Annual Reports for the East Portland/East Multnomah County (Paragon) and West Portland/West Multnomah County (TCI) franchise areas to the MHCRC. The Reports contained telephone answering statistics by month for 1999. The Paragon Report indicated AT&T answered the phones within 30 seconds less than 90% of the time in the first and fourth quarters of 1999. Record, Exhibit 13. The TCI Report indicated AT&T answered the phones within 30 seconds less than 90% of the time in the third and fourth quarters of 1999. Record, Exhibit 14.
- 2.16 The 1999 Annual Paragon Report indicates that annual customer service calls totaled 583,770, with a high of 64,530 calls in March and a low of 38,144 calls in December. The average monthly call volume was 48,686. Record, Exhibit 13. The 1999 Annual TCI Report indicates that annual customer service calls totaled 571,958, with a high of 53,366 calls in June and a low of 40,647 calls in January. The average monthly call volume was 47,663. Record, Exhibit 14.
- 2.17 On August 29, 2000, October 11, 2000, and October 12, 2000 AT&T provided information on telephone answering times from July through September 2000. Once more the information was aggregated by the Paragon and TCI franchise areas. For the Paragon franchises the information showed that AT&T answered the phones within 30 seconds more than 90% of the time for the third quarter of 2000. For the TCI franchises the information showed that AT&T answered the phones within 30 seconds less than 90% of the time for the third quarter of 2000. Record, Exhibits 15, 16 and 17.
- 2.18 On October 25, 2000, AT&T sent a letter to MHCRC staff acknowledging that it had violated the customer service standard pertaining to a 30 second customer telephone answer time for its TCI franchises. AT&T's letter did not address past performance in the Paragon franchises. AT&T only stated that it was then currently in compliance in the Paragon franchise areas. Record, Exhibit 18.
- 2.19 In its October 25, 2000 letter, AT&T notified the MHCRC that it was unable to cure the TCI violations within the thirty (30) day cure period under the franchises, and as set forth in the Notice to Cure. AT&T's letter proposed a Curative Plan including steps it intended to take to cure the violations. Id.
- 2.20 The Vancouver/Clark City-County Cable Television Commission ("CCTV") is the regulatory commission overseeing the franchises granted by the jurisdictions within Clark County, Washington. On November 1, 2000, the CCTV held a

- hearing regarding AT&T violations of the FCC telephone answering standards. At the hearing AT&T representatives stated that AT&T had violated telephone answering standards in the Oregon franchises served by the its existing Beaverton, Oregon, call center since the Fourth Quarter of 1999. Record, Exhibit 20. AT&T representatives also confirmed that there had been trouble with call center performance in both Beaverton and throughout the area prior to acquisition by AT&T. Id.
- 2.21 The Metropolitan Area Cable Commission (“MACC”) is the regulatory commission overseeing the franchises granted by the jurisdictions within Washington County and Tualatin Valley in Oregon. The TCI franchises within the MHCRC are served by the same call center as the Washington County and Tualatin Valley jurisdictions. MACC found AT&T in violation of comparable customer telephone answering standards in those franchise areas. Record, MHCRC staff presentation, January 22, 2001. MACC fined AT&T in the amount of \$1,000 per week for each week it was out of compliance with the telephone answering standards in the Washington County franchise. MACC separately fined AT&T in the amount of \$10,000 for the fourth quarter of 1999, \$20,000 for the first quarter of 2000 and \$30,000 for the third quarter of 2000, for being out of compliance with the telephone answering standards of the Tualatin Valley franchise.
- 2.22 On December 6, 2000, in response to an MHCRC staff inquiry, an AT&T representative confirmed that the Curative Plan dates and targets identified in the October 25, 2000 letter were still considered valid and binding on the company. Record, Exhibit 19.
- 2.23 AT&T made a business decision to convert to a regional call center system. AT&T decided to consolidate call center functions for the entire region in the Beaverton call center. AT&T began development of an enhanced regional call system in a building on the former Tektronix campus in Beaverton, Oregon. The building is known as “Tech 48.” AT&T originally anticipated moving into the Tech 48 call center on May 1, 2000, but encountered difficulties with implementing the consolidation due to the discovery of hazardous materials including asbestos, the lease, and remodeling difficulties. Record, MHCRC staff presentation and presentation by AT&T representatives, January 22, 2001.
- 2.24 AT&T closed its compliant call center serving the Vancouver/Clark County franchise areas without having sufficient resources in place to maintain compliance with the customer service standards and despite: (a) a recent history of violations and penalty assessments under telephone answering standards in the franchise areas served by the non-compliant Beaverton call center; and, (b) a business plan that would generate greater call loads from customers. Record, MHCRC staff presentation, January 22, 2001.
- 2.25 During at least a portion of the time AT&T had problems complying with the telephone answering standards, AT&T made and implemented ongoing business

- decisions to: engage in roll out of new services; offer special promotions for its services; increase rates; change channel line-ups; continue with a system upgrade work within Multnomah County and the neighboring franchise areas; and merge the Vancouver/Clark County call center into the Beaverton call center. Record, MHCRC staff presentation and presentation by AT&T representatives, January 22, 2001. Any of these factors alone may have contributed to increase customer call loads.
- 2.26 MHCRC staff brought customer concerns about sub-standard telephone answering to AT&T's attention as early as February, 2000. Staff relied upon statements from AT&T representatives that the company was working to correct the problem.
- 2.27 Under the TCI and Paragon franchises the MHCRC may require AT&T to prepare and furnish, at the times and in the form prescribed by the MHCRC, reports with respect to its operations and affairs. The MHCRC, after consultation with AT&T, may specify the form and details of all reports required under the Franchises. TCI-Portland franchise Sections 18.3 and 18.4; TCI-West Multnomah County franchise Sections 17.3 and 17.4; TCI-Hayden Island Section 14.2.E, 14.3 and 14.5; and Paragon franchises Sections 20.3 and 20.4.

Section 3. Conclusions of Law

- 3.1 AT&T is required, under its franchises with the MHCRC jurisdictions and by FCC administrative rules, to comply with the customer service standards contained in 47 C.F.R. §76.309.
- 3.2 AT&T violated and failed to comply with the telephone answering standards of the TCI franchises and 47 C.F.R. §76.309(c)(1)(ii) from at least the third quarter of 1999 through the third quarter of 2000. Record, Exhibits 8, 9, 11, 14, 15, 16, 17, 21 (telephone statistics provided by AT&T to the MHCRC from January, 1999 through September, 2000).
- 3.3 AT&T violated and failed to comply with the telephone answering standards of the Paragon franchises and 47 C.F.R. §76.309(c)(1)(ii) in the first quarter of 1999 and from at least the fourth quarter of 1999 through the second quarter of 2000. Record, Exhibits 8, 9, 11, 13, 15, 16, 17, 21 (telephone statistics provided by AT&T to the MHCRC from January, 1999 through September, 2000.)
- 3.4 AT&T has a historical record of both telephone related complaints logged by the MHCRC Office and failure to meet telephone answering response standards, from at least the first quarter of 1999 through and including the third quarter of 2000. Record, Exhibits 5, 6, 8, 9, 11, 13, 14, 15, 16, 17, 18, 20, 21.
- 3.5 At all times during which AT&T violated and failed to comply with the telephone answering standards, AT&T operated under normal operating conditions.

- 3.6 The MHCRC has the authority to order AT&T to correct or remedy the violation within a reasonable timeframe, as the MHCRC may determine. The MHCRC also has authority to review and determine the reasonableness of AT&T's proposed curative plan and timeline.
- 3.7 AT&T's proposed Curative Plan for the TCI franchises, as set forth in AT&T's letter dated October 25, 2000, is reasonable in light of AT&T's commitment to cure the violation no later than April 30, 2001.
- 3.8 For any franchise violation, the franchises authorize remedies including but not limited to: (a) the imposition of penalties of up to one thousand dollars (\$1,000) per day, incident or other measure of violation; (b) the reduction of the duration of the term of the franchise for the affected jurisdictions on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or (c) revocation of the franchise for the affected Jurisdiction. TCI-West Multnomah County Franchise Section 20; TCI-Portland Franchise Section 21; TCI-Hayden Island Section 8; and Paragon Portland and Multnomah County Franchises Section 23.
- 3.9 In determining which remedy or remedies are appropriate for any franchise violation, the MHCRC may consider, among other things, the nature and extent of the violation, the persons burdened by the violation, the remedy required in order to deter further violations, damage suffered by the public, and the cost of remedying the violation. Id.
- 3.10 During these time periods, the franchise violations were substantial and continuous in nature. For the TCI franchises, AT&T answered the telephone within 30 seconds about 89 percent of the time in the third and fourth quarters of 1999, about 76 percent of the time in the first quarter of 2000, about 43 percent in the second quarter of 2000, and then about 40 percent in the third quarter of 2000. Record, Exhibits 14, 21. For the Paragon franchises, AT&T answered the telephone within 30 seconds about 86 percent of the time in the first quarter of 1999, about 89 percent of the time in the fourth quarter of 1999, about 86 percent of the time in the first quarter of 2000, and about 83 percent in the second quarter of 2000. Record, Exhibits 13, 21.
- 3.11 Based on average monthly call volumes of 48,000 in each call center (Record, Exhibits 13, 14), when AT&T answered the phone within 30 seconds 89 percent of the time about 5,000 subscriber calls were not answered within 30 seconds. When AT&T answered the phone within 30 seconds 83 percent of the time about 8,000 subscriber calls were not answered within 30 seconds. When AT&T answered the phone within 30 seconds 76 percent of the time about 11,000 subscriber calls were not answered within 30 seconds. When AT&T answered the phone within 30 seconds 40 percent of the time about 29,000 subscriber calls were not answered within 30 seconds.

- 3.12 The substantial and continuous nature of the violations was also reflected in complaints to the MHCRC Office. In the fourth quarter of 1999, the MHCRC Office began receiving an increasing number of complaint calls from subscribers regarding difficulty reaching AT&T's call centers. Complaints focused on long hold times, being cut off or disconnected while on hold, being repeatedly transferred and being kept on hold for long periods of time even after finally reaching a "live" customer service representative. Record, MHCRC staff presentation, January 22, 2001.
- 3.13 As a result of these franchise violations, the subscribers within these franchise areas have suffered substantial harm in the aggregate due to their inability to reach a company representative. Subscribers must contact company representatives to respond to their individual needs and concerns including but not limited to billing issues, repair needs, programming inquiries, service requests and general inquiries within the average time frames required by federal regulations and incorporated under the applicable local franchise agreements.

Section 4. Order

Based upon the Findings of Fact and Conclusions of Law set forth above, the Commission now orders as follows:

- 4.1 AT&T shall implement and comply with the proposed actions outlined in its Curative Plan set forth in Exhibit 2 to this Order, attached hereto and incorporated by reference as if set forth in full. The cure shall be completed by April 30, 2001. AT&T shall provide monthly written reports to the Commission of its progress in implementing the curative measures.
- 4.2 AT&T is fined One Hundred Twenty Thousand dollars (\$120,000) for violations of the telephone answering standards in the TCI franchise areas based on the following calculations: \$10,000 for the third quarter of 1999; \$20,000 for the fourth quarter of 1999; \$30,000 for the first quarter of 2000; \$30,000 for the second quarter of 2000; and \$30,000 for the third quarter of 2000.
- 4.3 AT&T is fined Sixty Thousand dollars (\$60,000) for violations of the telephone answering standards in the Paragon franchise areas based on the following calculations: \$10,000 for the fourth quarter of 1999; \$20,000 for the first quarter of 2000 and \$30,000 for the second quarter of 2000. No fine is assessed for violations of the telephone answering standards for the first quarter of 1999.
- 4.4 If AT&T meets or exceeds all of the terms and conditions set forth in Exhibit 1 to this Order, attached hereto and incorporated by reference as if set forth in full, then MHCRC staff shall prepare an Order to the effect that all fines contained in Sections 4.2 and 4.3 shall be waived, and the MHCRC staff shall adopt such Order at its next regularly scheduled hearing.

- 4.5. If AT&T fails, refuses or neglects to perform any or all of the conditions set forth in Section 4.4 above, the entire amount of the fines stated in Sections 4.2 and 4.3 above, shall be immediately due and payable. AT&T shall tender complete and total payment of the fines within thirty (30) days thereafter.
- 4.6 AT&T shall provide ongoing monthly and quarterly written reports of telephone answering responsiveness to the MHCRC staff until further notice. The reports shall be in a format acceptable to the Commission. Commission acceptance of the form of the reports shall not be unreasonably withheld.
- 4.7 If AT&T fails, refuses or neglects to perform any or all of the conditions of this Order, the Commission reserves any and all rights to impose further remedies.
- 4.8 The Commission reserves the right to make such further recommendations to the franchising jurisdictions as it deems just and proper.
- 4.9 The Commission directs Commission staff to forward copies of this Order to the various Affected Jurisdictions, as provided under § 4.A. of the IGA.

PASSED BY THE COMMISSION on February 26, 2001

Norman D. Thomas, Chair

Reviewed by:

Ben Walters, Legal Counsel

Attachments: Form of AT&T's Acceptance
Exhibit 1, Terms and Conditions
Exhibit 2, October 25, 2000 letter from AT&T (the "Curative Plan")