

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

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| Establishing Penalties for AT&T |) | Stipulated Order 2002-01 |
| Broadband's Failure to Meet |) | |
| Customer Telephone Answering |) | |
| Standards for Third and Fourth Quarters |) | Passed by the Commission: |
| 2001 |) | January 28, 2002 |

Section 1. Findings of Fact

- 1.1 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 MHCRC Jurisdictions”). Among other things, the Commission oversees compliance with the cable services franchise agreements, subject to discretionary review by the Jurisdictions as provided under § 4.A. of the IGA.
- 1.2 For purposes of this Order, there are five cable services franchises from the MHCRC Jurisdictions issued to: TCI Cablevision of Oregon, Inc. aka AT&T Broadband operates under franchises issued by Multnomah County and the City of Portland; AT&T Broadband of Ohio, LLC aka AT&T Broadband operates under franchises issued by the City of Portland and Multnomah County for unincorporated East Multnomah County and the cities of Fairview, Gresham, Troutdale and Wood Village; and TCI of Southern Washington aka AT&T Broadband operates under franchises issued by Multnomah County and City of Portland for Hayden Island (hereinafter TCI Cablevision of Oregon, Inc., AT&T Broadband of Ohio, LLC, and TCI of Southern Washington are collectively referred to as “AT&T Broadband”).
- 1.3 Under its franchises with the MHCRC Jurisdictions and by FCC administrative rules, AT&T Broadband is required to comply with the Federal Communications Commission customer service standards set forth in 47 C.F.R. §76.309 and in resolutions adopted by the Cities of Gresham, Troutdale, Fairview and Wood Village and Multnomah County in June 2001 (Standards).
- 1.4 The Standards require that AT&T Broadband 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 shall be met no less than ninety (90)

percent of the time under normal operating conditions, measured on a quarterly basis. (Customer Telephone Answering Standards).

- 1.5 AT&T Broadband has submitted its quarterly reports on telephone answering times for the periods of July 2001 through September 2001 (Third Quarter) and October 2001 through December 2001 (Fourth Quarter) to the Commission's staff for review. The Third and Fourth Quarter reports documented that AT&T Broadband answered the phones within 30 seconds less than 90% of the time for both quarters (Exhibit 1).
- 1.6 On Nov. 8, 2001, MHCRC staff issued a Notice of Alleged Franchise Violations and Opportunity to Cure to AT&T Broadband regarding compliance with Customer Telephone Answering Standards for Third Quarter 2001 (Exhibit 2).
- 1.7 On Dec. 7, 2001, AT&T Broadband sent a letter to MHCRC staff acknowledging that it had not met Customer Telephone Answering Standards for Third Quarter 2001, and stated that AT&T Broadband would cure the violation by the end of Fourth Quarter 2001 (Exhibit 3).
- 1.8 On Jan. 7, 2002, MHCRC staff issued a Notice of Alleged Franchise Violations and Opportunity to Cure to AT&T Broadband regarding compliance with Customer Telephone Answering Standards for Fourth Quarter 2001. (Exhibit 4).
- 1.9 As provided under § 6.6 of the MHCRC's Rules of Procedure, on Jan. 10, 2002, MHCRC staff sent AT&T Broadband a notice of the intent to request that the MHCRC schedule a formal hearing regarding potential violations of the franchises.
- 1.10 On Jan. 23, 2002, AT&T Broadband contacted MHCRC staff and stated that AT&T Broadband for this instance only would forego the formal violation and penalty processes, as provided in the MHCRC Jurisdiction franchises and the MHCRC's Rules of Procedure, and agree to a penalty in the total amount of \$120,000 for violations related to AT&T Broadband's failure to meet Customer Telephone Answering Standards for Third and Fourth Quarter 2001. AT&T Broadband acknowledged that by doing so, the company was knowingly and voluntarily waiving its right, in this instance, under Section 6 of the MHCRC Rules of Procedure and under the applicable provisions of the above referenced franchises of the MHCRC Jurisdictions, to only a formal hearing before the Commission or the MHCRC Jurisdictions to contest the determination of alleged franchise violations or the fine set out in this Order.
- 1.11 For any franchise violation, the franchises of the MHCRC Jurisdictions 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.

- 1.12 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.
- 1.13 MHCRC Order 2001-01, passed by the Commission Feb. 26, 2001, found that AT&T Broadband has a historical record of failure to meet Customer Telephone Answering Standards; that AT&T Broadband had violated the Standards dating back to the first quarter of 1999; and established penalty fines for the violations.

Section 2. Conclusions of Law

- 2.1 AT&T Broadband has violated and failed to comply with the Customer Telephone Answering Standards of the franchises of the MHCRC Jurisdictions in Third Quarter and Fourth Quarter 2001.
- 2.2 At all times during which AT&T Broadband violated and failed to comply with the telephone answering standards, AT&T Broadband operated under normal operating conditions.
- 2.3 AT&T Broadband's failure to meet the Standards has been substantial and continuous in nature.
- 2.4 A fine in the total amount of \$120,000 for these franchise violations is appropriate, and is in keeping with the most recent fines for similar violations as provided under MHCRC Order 2001-01.

Section 3. Order

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

- 3.1 AT&T Broadband is fined a total of One Hundred Twenty Thousand dollars (\$120,000) for violations of the Customer Telephone Answering Standards under the franchises based on the following calculations: \$60,000 for the Third Quarter of 2001 and \$60,000 for the Fourth Quarter of 2001. AT&T Broadband shall tender complete and total payment of the fine within thirty (30) days of passage of this Order by the MHCRC.
- 3.2 This Order is subject to AT&T Broadband's one-time waiver of its right in this instance under Section 6 of the MHCRC Rules of Procedure and the applicable provisions of the franchises of the MHCRC Jurisdictions, to only a formal hearing before the Commission or the MHCRC Jurisdictions to contest the determination of alleged franchise violations or the fine set out in this Order. Except as otherwise provided in this Order, nothing hereunder shall be deemed or construed to waive or

affect any other rights or remedies AT&T Broadband may have either at law or in equity.

- 3.3 On or before five business days after this Order becomes effective, Grantee shall file with the MHCRC a written acceptance of this Order duly executed by the Grantee, in the form provided in Exhibit 5 to this Order. Such acceptance shall be unqualified and shall be an acceptance of all the terms, conditions and requirements contained in this Order. Any failure on the part of the Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred by this Order, and this Order shall thereupon be null and void.
- 3.4 If AT&T Broadband 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.
- 3.5 The Commission reserves the right to make such further recommendations to the Jurisdictions as it deems just and proper.
- 3.6 The Commission directs Commission staff to forward copies of this Order to the MHCRC Jurisdictions, as provided under § 4.A. of the IGA.

PASSED BY THE COMMISSION on January 28, 2002

Sue Dicile, Chair

Reviewed by:

Ben Walters, Legal Counsel

Attachments: Exhibit 1, AT&T Broadband Third and Fourth Quarter Reports, 2001
Exhibit 2, MHCRC Letter to AT&T Broadband, dated Nov. 5, 2001
Exhibit 3, AT&T Broadband Letter to MHCRC, dated Dec. 7, 2001
Exhibit 4, MHCRC Letter to AT&T Broadband, dated Jan. 7, 2002
Exhibit 5, Form of AT&T Broadband's Acceptance