

**Before the
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Avenue, Room 1305
Portland, OR 97204**

Establish format for quarterly reports)	
of cable modem fee revenue; direct)	Order 2002-09
AT&T Broadband to provide reports in)	
format specified)	September 23, 2002

Section 1. Findings.

- 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 Gresham, Fairview, Portland, Troutdale, and Wood Village (“the Jurisdictions”). Among other things, the Commission has the authority to act on behalf of the Jurisdictions to oversee and regulate franchisee cable communications systems and has full authority to take any action necessary to enforce or administer Jurisdiction franchise agreements.
- 1.2 AT&T Broadband , operator of three franchises under Commission jurisdiction, sent a letter dated March 29, 2002 to the MHCRC advising that, based on AT&T’s interpretation of a Declaratory Ruling of the Federal Communications Commission (“FCC”) (FCC No. 02-77) the franchisees would cease paying franchise fees on cable modem services, effective March 15, 2002. The MHCRC replied to AT&T Broadband in a letter to Jeanne Benecke dated May 9, 2002.
- 1.3 Among other things, the MHCRC’s May 9 letter required that future AT&T Broadband quarterly reports under the MHCRC-administered franchise agreements should include an accounting for gross revenues earned from cable modem services, and the amount of franchise fees which AT&T Broadband has chosen to exclude from such revenues, stated both on a quarterly basis and on a calendar year basis, going forward. The MHCRC also required an annual accounting of such cable modem revenues to be included in the Annual Report required under §20.2 of the East Portland franchise agreement and the parallel provision(s) in the other MHCRC-administered franchise agreements. The MHCRC letter pointed out that these reporting requirements were based upon the significant implications of AT&T Broadband’s stance to the Jurisdictions’ financial and policy interests, and the need to make reconciliation of past underpayments more readily ascertainable in the event AT&T Broadband’s position turns out to be incorrect.

- 1.4 AT&T replied to the MHCRC's May 9 letter in a letter dated June 11, 2002. Among other things, AT&T declined to provide the quarterly information regarding cable modem revenues requested by the MHCRC.
- 1.5 The MHCRC sent a further letter to AT&T dated June 19, 2002, directing AT&T to submit a revised quarterly report, including cable modem revenues, for the period January-March, 2002, and directing that all future quarterly reports should show cable modem fee revenues in the same format as prior reports.
- 1.6 AT&T on July 18, 2002 replied to the June 19 MHCRC letter and again declined to provide cable modem revenues in quarterly reports. Among other things, AT&T asserted that the quarterly report requirement was set forth in the franchise fee section of the franchises, and that AT&T believed it could not comply with the request since AT&T took the view that cable modem revenues were no longer part of the revenue base for franchise fees and that including cable modem fee revenue in the quarterly franchise fee reports would render such reports "needlessly complex" and "possibly confusing."
- 1.7 After due consideration of AT&T's concern regarding the complexity of this matter to AT&T, and the possible confusion caused to AT&T, the MHCRC should specify a simple quarterly reporting format for cable modem fee revenues and require AT&T to provide quarterly reports in such format on the same schedule as its ongoing franchise fee reports. In this manner, the complexity of this issue to AT&T and AT&T's possible confusion may be reduced and eliminated.
- 1.8 Authority for this requirement is contained in Section 20.3 of the AT&T East Portland and East Multnomah franchises, and Section 18.3 of the west Portland franchise. These sections require AT&T Broadband, on behalf of the franchisees, to prepare and furnish to the MHCRC on behalf of the Jurisdictions, at the times and in the form prescribed, such reports with respect to its operation, affairs, transactions or property as the MHCRC on behalf of the Jurisdictions may deem reasonably necessary or appropriate to the performance of the Jurisdictions' rights, functions or duties under the applicable franchises. Section 20.4 of the AT&T East Portland and East Multnomah franchises, and Section 18.3 of the west Portland franchise further provide that the MHCRC on behalf of the Jurisdictions, after consultation with Grantee, may specify the form and details of all Grantee's reports required under the franchises.
- 1.9 The issue of collection of cable modem fee revenue and inclusion in the franchise fee base is of significant concern to the Jurisdictions and the MHCRC on legal, policy and fiscal grounds. Among other things, MHCRC projections indicate a potential loss of more than \$7.5 million over the next five years in franchise fee revenues that would otherwise be available to the Jurisdictions.

- 1.10 After consultation with the Commission's financial consultant KFA Services, MHCRC staff has developed a simplified quarterly report format for use by AT&T Broadband in providing quarterly modem fee reports. The recommended format is attached hereto as Exhibit A.

Now, therefore, the Commission directs:

Section 2.

- 2.1 Within 30 days of the date of this order, AT&T Broadband shall submit a quarterly report for cable modem revenue using the format specified in Exhibit A (attached hereto) for the period January – March, 2002, and the period April – June, 2002.
- 2.2 AT&T Broadband shall submit quarterly reports for cable modem revenue, using the format specified in Exhibit A, for all future quarters on the same schedule as the franchise fee reports required under the franchises.
- 2.3 The franchise provisions cited in this Order are considered material provisions of the franchise by the MHCRC. Failure, refusal, or neglect by AT&T Broadband to comply with this Order shall be considered violation of such provisions, and the MHCRC reserves all rights under the franchise agreements, without limitation, to exercise remedies as provided under the franchise agreements for such material violations.

PASSED BY THE COMMISSION on September 23, 2002

Sue Dicile, Chair

Reviewed by:

Ben Walters, Legal Counsel

ATTACHMENT:

Exhibit A: Format for Quarterly Supplemental Gross Revenue Report