

January 2, 2003

To: MPC (Cable TV Members)  
From: Milo Mecham  
Re: Update on discussions with ATT Broadband

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## **Introduction**

During the summer, ATT requested approval by the local franchise authorities of a proposed transfer of control of the local cable system from ATT to Comcast. As a part of the approval process, ATT agreed to hold discussions with the local franchise authorities concerning several outstanding issues of concern to the local franchise authorities. This report is intended to bring the MPC up to date on the substance of the discussions. The discussions continue, although no further changes of substance are likely in the near future.

There were four major issue areas of discussion. These concerned (1) the unsatisfactory customer service responses by ATT because all the customer support services had been consolidated in out-of-state centers; (2) a very restrictive set of dispute resolution policies imposed by ATT; (3) an ATT decision to not pay any franchise fees for revenue derived from sales of cable modem services; and (4) an ATT decision to not report and not pay franchise fees on revenue derived from ATT's lease of its facilities by other users.

### **(1) Customer Service**

ATT had consolidated its customer service centers, closing all the local customer service centers, and sending nearly all the calls nation-wide to a few centers outside Oregon. This resulted in very unsatisfactory service: long waits to be connected, service representatives who were completely ignorant concerning local conditions or service related matters, and so forth.

ATT has made changes in this area. ATT reopened and expanded its service center in Beaverton. Currently that center handles approximately 70 percent of the calls coming from Oregon, including the Lane County area. Most of the other 30 percent of the calls referred elsewhere concern billing matters. Comcast will not be moving the customer services back to the local areas.

The redirection of most of the customer service calls from the local area to an Oregon based locale has apparently resulted in improved response. The local franchise authorities are receiving fewer complaints about long waits or unresponsive customer service representatives. We do not have specific information about the degree of improvement, but we can make a general conclusion that customer service has improved.

**(2) Dispute Resolution**

Just prior to the merger announcement ATT Broadband sent all its subscribers a pamphlet describing the terms that ATT was setting for subscribers. In the area of dispute resolution ATT announced that it was imposing binding arbitration for the resolution of any dispute that a subscriber might have (except for issues where ATT wished to have more options). There was considerable concern about these policies.

ATT has just announced new dispute resolution policies which include some changes.

<b>Issue</b>	<b>Change</b>	<b>Concern</b>
Arbitration Mandatory and Binding for subscriber complaints	No change, except with regard to the type of complaints covered (see below).	Little. Arbitration is an acceptable dispute resolution process. It is, however, something that most people are not familiar with and the arbitration services listed are out of state. The practical effect probably will be that most subscribers will drop a complaint because it will seem too complicated to pursue.
Cost of Arbitration	ATT will now pay the cost of arbitration, except for the subscriber's attorney fees and individual costs.	None
Choice of Arbiters	Subscribers are offered a choice, to select from several professional arbitration services	Little. The geographic limitations of what arbitration programs are available may effectively limit the real choice
Limit on Damages	All limits on the types of damage claims have been removed	None
Limitation on Class or Group Claims	This limitation remains, with the proviso that if state laws provide otherwise, these laws prevail.	This has the practical effect of eliminating nearly all private claims against the cable company. Most disputes will have a very small individual value and are unlikely to be brought on an individual basis. Eliminating the possibility of a private representative seeking compensation on behalf of a

		large number of claimants means that significant, attention-getting claims will be unlikely unless they are brought by a franchise authority.
Limits on types of claims	Arbitration is now binding on disputes arising out of ATT policies and procedures or ATT services rather than on any and all disputes.	None. While it is a very small change, it moves some potentially significant claims (such as for employee activities) out of the realm of arbitration

The changes make the imposition of arbitration as the sole remedy for subscriber complaints less harsh, and therefore less objectionable. The previous, much more severe imposition of mandatory arbitration was found by some courts to be too much of a loss of subscriber rights and thus ineffective. It is not clear that these new policies go that far.

The franchise requires that the cable company provide advance notice of new policies such as the dispute resolution policies. ATT failed to provide that advanced notice. In other respects, these new policies do not create such an obvious conflict with the franchise. There is no direct reference to using the local franchise authority as a representative to resolve a dispute, but the indirect suggestion that this can be done is a little stronger.

**Conclusion:** ATT has reduced the severity of its dispute resolution policies, and has come closer to complying with the franchise requirements. The remaining conflicts with the franchise (primarily related to process) are technical and not substantive. If the MPC or the Franchise Authorities wish to play a role in providing more subscriber protection, the best course at this point would be the development of further consumer protection policies at the local level. In the absence of such a step, the most appropriate activity is probably to monitor future behavior in this regard, including any potential subscriber complaints to make certain that subscribers have the best possible opportunity to obtain satisfaction of their complaints.

### (3) Cable Modem fees

ATT announced that it would no longer include the revenue from cable modems in its calculation of gross revenues for the purposes of paying franchise fees. This decision came about because of an FCC interpretation of the 1996 federal Telecommunications Act, which makes a distinction between cable services and other telecommunications services.

Discussions with ATT on this matter have made no progress. ATT understands but does not accept the local position that the expectation that franchise fees will be paid on these revenues is based on the local franchise, which gives the cable company a franchise to provide all types of telecommunications services. ATT made its decision based on the FCC action and is unwilling to discuss the matter until the challenges to the FCC ruling are settled in court.

#### **(4) Leased Access**

ATT is leasing its infrastructure to another company so that company can provide telephone services to several local customers. ATT refuses to provide any information, other than referring inquiries about particular companies that might be lessees to those companies. This deprives the local franchise authorities of the fullest range of information concerning who might be using the local rights of way, and deprives the authorities of possible franchise fees based on revenues to ATT. ATT claims that all the facilities in the right of way were put in for the purpose of providing cable services under the franchise. Any other use that ATT makes of the facilities is ATT's concern and is not covered by the franchise. ATT understands but does not accept the local position that the franchise covers all types of uses of the infrastructure in the rights of way, and requires ATT to provide notice anytime it adds any service using the infrastructure.

ATT does not seem to be ready to accommodate local franchise authority concerns. We have started an audit of ATT revenues to measure, among other things, the potential scope of this problem. If ATT cooperates in allowing discovery of the scope of the issue, we will have more information to help evaluate further steps to pursue resolution of this issue.

#### **(5) Other issues**

There are other matters regarding ATT that the MPC has been concerned about.

**Audit** The MPC directed that an audit of ATT's revenue and franchise fee payments be done. The audit has been started, and so far has not encountered any problems. The auditors were requested to review revenues derived not only from local cable services, but also from local cable modem services and from ATT lease of its facilities. The review has not been completed, so there are no conclusions at this time.

**Name Change** During the transfer discussions the parties announced that the name of the new entity would be ATT/Comcast. Recently Comcast has announced that the name of the operation will be changed from ATT Broadband to Comcast. All references to ATT Broadband will disappear. Sometime early next year, the change will take effect.

**Price Increase** ATT announced that, starting with January bills (sent out in December) its prices will increase for its services except the basic cable service (the one service that every cable TV subscriber must purchase). Federal law deregulates all these services, preventing the local franchise authorities from reviewing any price changes. The number of complaints logged by the local franchise authorities concerning prices has increased as a result of the announcement. This fact has been communicated to ATT. Federal law limits changes in the basic tier cost to once a year. ATT has been making those changes locally in the middle of the year.

**Channel line-up Changes** ATT has restructured the channels on the basic cable tier. The most frequent complaints that the local franchise authorities have received concern the removal of a 24-hour news channel and the removal of a channel dedicated to weather, and their replacement by shopping channels. Federal law prevents local governments from any regulation of the content of the basic cable tier. ATT has been notified of the volume of customer complaints.

**Apparent Franchise Fee Increases** The local franchise requires ATT to pay a franchise fee of five percent on its gross revenues. Every subscriber bill includes a separate statement reflecting franchise fees that ATT is collecting from the subscribers to pay its franchise fees. There is no dispute that income included within the definition of gross revenues includes revenues that ATT gets from selling time to advertisers, and revenues that ATT gets from commissions on sales on shopping channels. A recent court ruling clarified that cable companies can, if they choose, pass the cost of paying franchise fees derived from non-subscriber revenues on to the subscribers. ATT has announced that it will be doing this. That means that subscribers will soon be seeing a change in their bill, suggesting that franchise fees have increased to approximately seven percent. Given past experience with such changes, it is likely that the local franchise authorities will see a significant increase in complaints concerning this apparent increase in franchise fees.