

# City of Cambridge

## **CABLE TV, TELECOMMUNICATIONS AND PUBLIC UTILITIES COMMITTEE MEMBERS**

Marjorie C. Decker, Chair  
Councillor Anthony D. Galluccio  
Councillor David P. Maher

In City Council January 27, 2003

The Cable TV, Telecommunications and Public Utilities Committee held a public meeting on Tuesday, January 14, 2003 at four o'clock and seventeen minutes P.M. in the Sullivan Chamber.

The purpose of the meeting was to discuss the issue of franchise fees paid to Cambridge by AT&T Broadband for the use of its public ways in light of the Federal Communication Commission's (FCC) ruling dated March 15, 2002 that cable modem service is not a cable service and the possibility of seeking an alternative revenue source.

Present at the meeting were Councillor Marjorie C. Decker, Chair of the Committee, Councillor David P. Maher, Mayor Michael A. Sullivan, Councillor Kenneth E. Reeves, City Manager Robert W. Healy, City Solicitor Donald Drisdell, Deputy City Solicitor Nancy Glowa, Cable Director, Calvin Lindsay, Director of Consumer Council Paul Schlaver and Deputy City Clerk Donna P. Lopez. Also present were Susan Fleishman, Director of CCTV and Tim Murnane, Manager of Government Affairs AT&T.

Councillor Decker convened the meeting and explained the purpose. As Chair of the committee she has learned that the city is no longer receiving the cable modem fees. She requested Ms. Fleishman to explain the impact that the loss of this revenue has had on CCTV. She also requested Mr. Murnane to explain AT&T's rationale.

Ms. Fleishman stated that on March 15, 2002 the FCC ruled that cable modems are no longer subject to pay fees to the city. CCTV, she stated, was never officially notified of this ruling. The fees have provided an area of growth for CCTV. Eighteen percent of the budget is being lost with the elimination of the fees. Cable revenues resulting from Internet service allowed CCTV to expand its computer access. Cambridge Inside/Out will not be able to be produced. CCTV is a nationally recognized model for public access. It is ranked number one in the state.

Councillor Decker asked Ms. Fleishman the importance of having a well-funded community access channel. Ms. Fleishman responded that Cambridge has no daily newspaper and no daily television channel. CCTV has an extensive video training program and provides computer skills training. Participation in CCTV allows the general public to become active in democracy. Councillor Decker stated that CCTV has an impact in this community affecting people of all social and ethnic backgrounds.

Councillor Decker asked Mr. Murnane to explain the position of AT&T.

Mr. Murnane praised the programming of CCTV. He sent a letter to Mr. Healy notifying him that cable modems were designated an information service by the FCC. The FCC also ruled that cable modem fees could not be provided. During negotiations the city did have foresight about the fees. He cited the contract, which allows the city to collect a fee on fee over the 5% franchise fee.

Councillor Decker asked the Law Department to state the challenge the city faces. ~~City Manager Healy stated that he was notified by AT&T of the FCC ruling in October.~~ He sent a letter to AT&T outlining the city's position. (ATTACHMENT A) There is an appeal to the FCC ruling. The National League of Cities is also involved in this issue. The FCC declaratory ruling is not staid and no fees have been paid to the city since March. FCC ruled that Broadband service is an information service and not subject to the franchise fees. This is a legal matter. Until a decision is made neither party can do anything, he said. City Solicitor Drisdell stated that there is a provision in the contract to increase the fees, but that would lead only to a small increase over the 5% franchise fee.

Councillor Decker asked Mr. Healy if the city is seeking fee-on-fee. Mr. Healy stated his concern because this is a fee on the customer's monthly cable bill. This represents \$28,000 - \$30,000 and will not close the budget gap. He stated that he would review this issue and bring the calculations back to the City Council. Mr. Drisdell stated that the television cable subscriber would pay the fee-on-fee.

Councillor Decker stated that the city has requested AT&T to continue paying the modem fee and it has declined. She asked Mr. Murnane if this is because of the FCC ruling. Mr. Murnane responded in the affirmative. Until a final determination is made the franchise fees will not be paid. Councillor Decker asked if AT&T had supported this position of the FCC prior to the ruling. Mr. Murnane responded in the affirmative.

Councillor Decker asked what has AT&T done to make up for this and what will AT&T do to remedy this, seeing that AT&T continues to make a profit. Mr. Murnane stated that AT&T is investing further in the infrastructure in Cambridge. AT&T is not willing to forgo the fees for cable modems, he said. Councillor Decker stated that more cable subscribers mean more money for AT&T; this does not address the cable modem fees. Mr. Murnane stated that information versus cable service was a gray area in the negotiations.

Councillor Decker stated that the city is involved with a suit against AT&T for renegeing on its contract commitment for a senior citizens discount. She does not feel that AT&T should have a public access use for its cable modem service without a fee. [She asked if there is any other alternative to restore the loss of revenue to CCTV. She asked if AT&T could show good faith to continue programming to CCTV.] Mr. Murnane stated that the five percent gross revenue pays for access to public ways. Alternative revenue will encumber the existing license.

(4)

Mr. Healy stated that the right-of-way issue is still being reviewed. Broadband Internet is an additional service, using new technology, using the right-of-ways, and now no fee is being paid. The city is looking into mechanisms for an additional fee. CCTV is paid three-fifths of the 5% franchise fee, or \$240,000. State and federal laws both come into play in this matter. The city may need to develop this option to see if it will survive a legal challenge. Councillor Decker stated that she has confidence in the city and the legal department that all avenues are being pursued.

AT&T is supporting the ruling by the FCC, stated Councillor Decker. This is an additional use and AT&T is making a profit. Due to the FCC ruling that this service is an information use AT&T does not have to pay the franchise fees. She has not seen good faith displayed from AT&T. She cited the elimination of the senior discount, removing channels from the service under the guise of better service when the city has not asked for additional service and now the reduction in payment of the franchise fees. This action has had a serious impact on the city. The public ways, she stated, belong to the citizens of Cambridge. (5)

Councillor Maher informed Mr. Murnane that the city is frustrated with AT&T. Municipalities are getting fed up with this company. He stressed his concern for the way that AT&T has treated the senior citizens. There may be a boycott against AT&T. The letter that appeared on the City Manager's Agenda for January 13, 2002 regarding a report on the suspension of Turner Classic Movies from the basic cable package, made no sense to the City Council. (ATTACHMENT B). The City Council and consumers are upset because there is no competition.

Mr. Murnane stated that he was unhappy that the City Council and consumers were unhappy with AT&T. AT&T, he said, wants to be a good corporate citizen. Customer service improvements have been made over the last year. AT&T wants to make a commitment to the city, but has restraints. Councillor Decker stated that AT&T would be viewed as a good corporate citizen when it acts like a good corporate citizen. AT&T lobbied for the ruling made by the FCC. She suggested that AT&T not lobby for regulations that have a negative effect on communities. She believes that AT&T should pay for access to Cambridge public ways.

Councillor Decker informed the committee that Councillor Toomey informed the City Council that he does not have cable and further encouraged the public to discontinue their cable service. CCTV.

Councillor Decker asked Ms. Fleishman for ways that AT&T could show good faith to the community. Ms. Fleishman responded that in 1985 the original cable license was negotiated by the City Manager. During the last negotiations good faith and in-kind service efforts were eliminated. She stated that she would like AT&T to support CCTV's programming and community involvement. Mr. Murnane stated that he would sit down with Ms. Fleishman and discuss this issue.

recognition. He stressed his hope that this hearing will improve the cooperation between AT&T and the city.

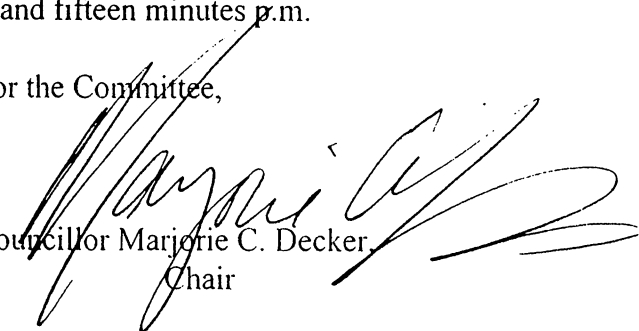
At five o'clock and ten minutes p. m. Councillor Decker opened the meeting to public comment.

Roy Bercaw stated that there is a great opportunity to use cable for information. CCTV is the best cable access station and has been honored twice, but he has had problems with CCTV. CCTV needs to have oversight for the funds received from the city. He asked what is CCTV doing with the money. Councillor Decker informed Mr. Bercaw that there is oversight given by the city. Mr. Bercaw further stated that CCTV should solicit funds from its viewers.

Councillor Decker thanked all attendees and the city staff.

The meeting adjourned at five o'clock and fifteen minutes p.m.

For the Committee,

  
Councillor Marjorie C. Decker,  
Chair



ATTACHMENT A.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager

Richard C. Rossi, Deputy City Manager

October 3, 2002

*By Certified Mail*

Mr. Timothy G. Murnane  
Manager of Government Affairs  
AT&T Broadband  
6 Campanelli Drive  
Andover, Massachusetts 01810

**RE: City of Cambridge Cable Modem Fees**

Dear Mr. Murnane:

I am writing to you today in my role as statutory Issuing Authority for the City of Cambridge, Massachusetts (the "City"). On March 28, 2002, I received a letter from you stating that AT&T Broadband ("AT&T") intended to cease including cable modem revenues in its calculations of Gross Annual Revenues, for purposes of making the Renewal License Section 7.1 Telecommunications Funding payments to the City. Your withholding of cable modem revenues from Gross Annual Revenues violates the express provisions of the Renewal License.

As I understand it, AT&T is basing its decision on its interpretation of the last Spring's FCC Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-185, dated March 15, 2002. While the FCC initially classified cable modem service as an "interstate information service" and not a Cable Service, I do not agree that cable modem revenues should not continue to be included as part of Gross Annual Revenues for the present time. There are several basic reasons for this, among others:

First, the FCC Rulemaking is an initial decision only. The FCC has also adopted a Notice of Proposed Rulemaking, in which many of the same issues the FCC has discussed in its Rulemaking will be taken up again. The FCC stated:

Having determined that cable modem service is an interstate Information service, we now address the regulatory implications of our determination. We note that the record in the Notice contains extensive comments on the Commission's authority to regulate cable modem service.....We initiate a rulemaking proceeding to examine these issues in light of the Commission's recent initiation of the Wireline Broadband NPRM. *We also seek to further examine the scope of the Commission's jurisdiction to regulate cable modem service, including whether there are any Constitutional limitations on the*

Mr. Timothy Murnane  
October 3, 2002  
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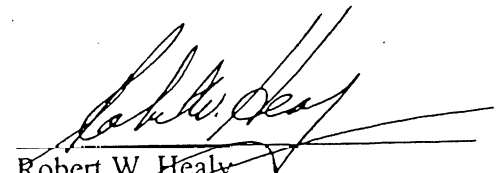
*exercise of that jurisdiction....We also seek comment on the role of state and local franchising authorities in regulating cable modem service. (emphasis added)(See GN Docket No. 00-185, at paragraph 72)*

Second, I understand that a number of organizations, including the National League of Cities and the National Association of Telecommunications Officers and Advisors (NATOA), filed lawsuits in this matter, challenging the FCC's initial decision.

7 Third, the City's Cable Television Renewal License (the "Renewal License"), dated December 30, 2000, defines Gross Annual Revenues to include, among other things: "...revenues received from all Cable Modem Services, unless a court of competent jurisdiction or a regulatory body of appropriate jurisdiction makes a final ruling that such Cable Modem Service is not legally deemed to constitute a Cable Service...." (See Renewal License, page 9, Section 1.1[28])(emphasis added). To date, there has very clearly been no final ruling in connection with this matter. Given this straightforward definition and a lack of a final ruling on the matter, I believe that AT&T is required to continue to include Cable Modem revenues as one component of Gross Annual Revenues, for purposes of calculating the Telecommunications Funding payments to the City.

Given these reasons, any action on AT&T's part to change this requirement is clearly premature at the present time and is a violation of the Renewal License. Should the FCC or a court of law issue a *final* decision that municipalities cannot collect cable modem revenues, then it may be appropriate at that time to amend the Renewal License accordingly. AT&T is still required to include Cable Modem revenues as part of its Gross Annual Revenues payments to the City. AT&T is also responsible for including all such Cable Modem revenues as part of its Telecommunications Funding payments, dating back to April 1, 2002.

Very Truly Yours,

  
Robert W. Healy  
City Manager

cc: Donald A. Drisdell, Esquire  
Nancy E. Glowa, Esquire  
Peter J. Epstein, Esquire

Mark Reilly, Esquire  
General Counsel, AT&T Broadband  
6 Campanelli Drive  
Andover, MA 01810 (By Certified Mail)

Certified Mail: Return Receipt #: 7099 3400 0008 5127 0430



ATTACHMENTS 6.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

*Robert W. Healy, City Manager*

*Richard C. Rossi, Deputy City Manager*

January 13, 2003

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 02-115, regarding a report on the suspension of Turner Classic from the basic cable package, received from AT&T Broadband Director of Government and Community Relations Timothy G. Murnane.

Very truly yours,

Robert W. Healy  
City Manager

RWH/mec  
Attachment

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2003 JAN -6 AM 11:08



OFFICE OF THE CITY MANAGER

28 Travis Street  
Boston, MA 02134

December 27, 2002

Mr. Robert Healy  
City of Cambridge  
795 Massachusetts Avenue  
Cambridge, MA 02139

Dear Mr. Healy:

I am writing in response to your December 12, 2002 letter requesting explanation as to the recent channel move of Turner Classic Movies.

Over the last several years, AT&T Broadband has been continually working to align rates, packages and channel line ups through Massachusetts such that we can further improve customer service and bring Cambridge customers new products faster. To that end, in November, AT&T Broadband notified customers regarding the move of Turner Classic Movies on the Cambridge line-up. This channel move was made as part of this regional effort to provide consistency for our customers. As part of the programming change notification, customers were informed to contact AT&T Broadband if they wanted to change to the new service.

I hope you find this correspondence explains AT&T Broadband's reason as to the move Turner Classic Movies to the Digital Line up. As always if you have any questions please do not hesitate to call me at (617) 562-4306.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Timothy G. Murnane".

Timothy G. Murnane, Esq.  
Director of Government and  
Community Relations



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2003 JAN 29 2 45:51

RECEIVED  
JANUARY 29 2003

**ENOUGH ROOM**  
**ROY BERCAW, EDITOR**  
**PO BOX 400297, CAMBRIDGE, MA 02140 USA**  
**617-491-0433 *bercaw@justice.com***

Honorable Cambridge City Council  
795 Mass Avenue  
Cambridge MA 02139

January 29, 2003

Correcting Committee Report

On January 27, 2003 the City Council accepted a Committee Report from the Cable TV Committee, about a hearing held on January 14, 2003, chaired by Councilor Decker. Several comments reported by the Chair are not accurate.

When I spoke at that meeting, I had not heard the prior testimony by the Executive Director of CCTV. After reading the reported comments, I am impelled to correct the record.

Councilor Decker stopped my comments about abuses by the Executive Director, saying that my statements were not within the subject being discussed. The Chair stated the subject of that meeting as "franchise fees paid to Cambridge by AT&T Broadband."

The Chair asked the Executive Director "to explain the impact that the loss of this revenue has had on CCTV." I believe that the misuse of funds is an appropriate subject for discussion at that hearing. But the Chair stopped me twice. I believe it was an attempt to protect the Executive Director from public criticism because the Executive Director shares the special interests of the Chair. I believe that the censorship was a violation of the First Amendment to the US Constitution, and an abuse of the Chair's power.

The first reported deceptive statement made by the Executive Director was, "Cambridge Inside/Out will not be able to be produced." MediaOne produced and edited that show until the franchise was sold to AT&T. MediaOne paid for crew and editors. It is not known if the on air talent was paid.

Currently several shows are produced at CCTV. Some with paid crew and editors, some with volunteer crew and editors. Some members of CCTV would like to produce shows at CCTV but cannot gather a crew or editors, to shoot the performances. I am one of those members.

One of the complaints I made in my two letters (Dec. 11, 2002, and Jan. 8, 2003) to the City Council about abuses at CCTV, was that a favored few were permitted use of staff for recruitment, for

Letter to City Council from R Bercaw January 29, 2003

producing, and for editing their shows. Others are simply left to their own resources to get a crew and editors.

This is only one example of cronyism at CCTV -- for Cambridge Inside/Out. The truth is that the show can be produced. But the talent need to recruit crew and a producer. They expect this to be done for them as MediaOne did previously. Here is the Executive Director lobbying on their behalf when she openly insults persons who she disagrees with due to her perception of a disability. This is a violation of state and US law. I think it is an appropriate subject for discussion at a hearing on franchise fees.

The report states that "Ms. Fleischman responded that Cambridge has no daily newspaper and no daily television channel." This is obviously untrue. CCTV broadcasts three channels (9, 10, and 22) 7 days per week. The Municipal channel 8, also broadcasts 7 days per week. Two School channels are usually unused most of the week.

As for a news show, two years ago I mentioned to two staff members my desire to create and to produce a daily news show in cooperation with one of the local college's journalism departments. I submitted a formal proposal to do this. When CCTV obtained a grant for a public affairs show, I asked if that could be used for a news show. Instead the staff broadcasts propaganda, with one sided presentations for MIT, Harvard, and City advocates.

The Executive Director suggested that CCTV allows "the general public to become active in democracy." But democracy allows for criticism and disagreement. Democracy requires a strong opposition. At CCTV there is no opposition among the staff. The staff openly harasses persons who disagree with them on social, economic and political issues. The staff uses their expertise, their equipment and their city funds to promote one side of issues; for selected favored persons. That is not democracy. That is totalitarianism.

"Councilor Decker stated that CCTV has an impact in this community affecting people of all social and ethnic backgrounds." But as I've seen and experienced for several years, the staff openly harasses persons they believe to be disabled. Complaints about this abuse were ignored by the staff, the Executive Director, the Board of Directors and the City Council for three years. This too is an appropriate subject for discussion by the Cable TV committee on franchise fees. But the Chair did not allow it.

Though CCTV staff act as if they are private citizens in the scope of their duties, the City Manager stated, "State and federal laws both come into play on this matter."

"The public ways [Councilor Decker stated] belong to the citizens of Cambridge." You would not know that from the way that CCTV is run. Several members of the Board of Directors and some staff members believe that CCTV is owned and operated by the Executive Director.

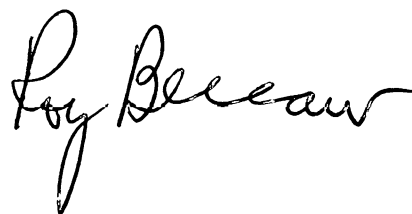
Councilor Maher "stressed his concern for the way that AT&T has treated senior citizens." He appears to be unconcerned for the

Letter to City Council from R Bercaw January 29, 2003

abuses of disabled citizens by the staff, the Board of Directors and the Executive Director of CCTV.

The report states, "The City Council and consumers are upset because there is no competition." Why is there so little concern that there is only one view allowed for the staff at CCTV? Why grants obtained and City funds are used by the staff for propaganda, rather than to encourage expression of all views?

Councilor Toomeys' suggestion to citizens "to discontinue their cable service," makes moot the reduced fees. Why then were allegations of misuse of funds, potential theft of City funds not allowed at the hearing?

A handwritten signature in cursive script, reading "Roy Bercaw". The signature is written in dark ink and is positioned in the lower right quadrant of the page.

S-39

**Communication #3**

A communication was received from Roy Bercaw, regarding the Cable TV, Telecommunications and Public Utilities committee report.

**In City Council February 3, 2003**

**PLACED ON FILE.**