

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION**

MEDIAONE OF MASSACHUSETTS, INC.,
MEDIAONE GROUP, INC., and AT&T CORP.

CTV 99-3

Appellants,

v.

MAYOR OF THE CITY OF QUINCY

Appellee.

**APPEAL FROM CITY OF QUINCY CONDITIONAL APPROVAL
OF LICENSE TRANSFER**

MediaOne Group, Inc. (“MediaOne”), MediaOne of Massachusetts, Inc. (“Licensee”) and AT&T Corp. (“AT&T”) (collectively herein the “Appellants”) hereby submit this appeal pursuant to MASS. GEN. LAWS ch. 166A, §§ 7 and 14 and 207 C.M.R. § 4.06 seeking relief from the imposition on the Licensee by the Mayor of the City of Quincy, Massachusetts (the “Mayor”) of an unlawful condition on the transfer of Licensee’s cable television license for the City of Quincy (“Quincy”).

Parties

1. Licensee is a corporation organized under the laws of the State of Delaware, with a principal place of business in Andover, Massachusetts. The Licensee provides cable television

services in Quincy pursuant to a cable renewal license granted on February 12, 1994 (the “License”). Licensee is a wholly owned subsidiary of MediaOne Group, Inc.

2. MediaOne is a corporation organized under the laws of the State of Delaware, with its principal place of business in Englewood, Colorado. MediaOne and AT&T jointly applied to the Mayor seeking consent to the transfer of control of Licensee from MediaOne to AT&T. MediaOne wholly owns and controls Licensee.

3. AT&T is a corporation organized under the laws of the State of New York with its principal place of business in New York, New York. AT&T jointly applied to the Mayor to acquire control of Licensee from MediaOne.

4. The Mayor of the City of Quincy is the cable television license Issuing Authority for the City of Quincy, pursuant to MASS. GEN. LAWS ch. 166A, § 1.

I. Factual Allegations

5. On July 13, 1999, MediaOne and AT&T filed applications on FCC Form 394 with 175 cities and towns in Massachusetts, including Quincy, seeking consent to the transfer of control of MediaOne-controlled cable television licensees to AT&T. The communities had 120 days to act upon the applications or they would have been deemed granted. *See* 47 U.S.C. § 537, 47 C.F.R. § 76.502; 207 C.M.R. § 4.02. Following the filing of the applications, the Cable Television Division of the Massachusetts Department of Telecommunications and Energy (the “Cable Division”) appointed a Special Magistrate to conduct eleven regional hearings in August and September, 1999 concerning the applications and to prepare a report for participating communities analyzing the hearing record and making non-binding recommendations regarding whether to approve the transfer applications. Most of the towns and cities (165 of 175 municipalities), including Quincy, participated in the hearings.

6. On September 24, 1999 the Magistrate's Report was issued recommending that the transfer applications be granted because the hearing record established that AT&T had satisfied the legal requirements applicable in Massachusetts to the transfer of cable licenses. The Magistrate's Report noted that the hearings included discussions concerning the "open or forced access issue" that while "interesting and important" were not relevant to the criteria to be considered under Massachusetts law.

7. The License provides no agreement by the parties giving the Mayor the right to unilaterally amend the terms of the License to require forced access during the course of a transfer proceeding or otherwise. Section 8.2 of the License states that: "This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by instrument in writing executed by the parties." In addition, Section 2.3 of the License provides that it is subject to all applicable Massachusetts and federal law including "regulations of the Massachusetts Cable Television Commission" as amended from time to time.

8. On November 10, 1999, the Mayor approved the transfer of the License to AT&T, but conditioned that approval upon AT&T providing "nondiscriminatory access to its cable system by any requesting Internet service provider, such access to be on rates, terms and conditions that are at least as favorable as those on which it provides such access to itself, to its affiliates, or to any other person" (i.e. "forced access"). See *Letter to Alicia Matthews, Director, Cable Division, from James A. Sheets, Mayor of Quincy, November 10, 1999* ("Quincy Letter"). The Quincy Letter specifically adopted the findings and recommendations of the Magistrate's Report, however, it conditioned the transfer grant on a forced access requirement. The condition conflicts with the recommendation

adopted from the Magistrate's Report, with the relevant legal criteria under Massachusetts law and with the Quincy cable television license.

II. Statement of Claims on Appeal

Count 1

9. Appellants reallege and incorporate herein the facts set forth in Paragraphs 1 - 8 of this Appeal.

10. The Mayor's conditional approval of the license transfer constitutes arbitrary and unreasonable action in direct violation of the Commission's regulation 207 C.M.R. § 4.04. In its Letter of November 10, 1999, the Mayor failed to confine his considerations to the management experience, technical expertise, financial capability, or legal ability of AT&T to operate a cable system under the existing license, as expressly required by the Cable Division.

Count 2

11. Appellants reallege and incorporate herein the facts set forth in Paragraphs 1 - 10 of this Appeal.

12. The Mayor's conditional approval imposing forced access on the Licensee was arbitrary and unreasonable and in violation of the Cable Division's regulations because the action purports to amend the License in violation of 207 C.M.R. § 3.07. The License sets forth the terms and conditions agreed upon by Licensee and Quincy concerning the provision of services to Quincy subscribers and these terms cannot be amended without Licensee's consent and in accordance with the procedures in 207 C.M.R. § 3.07.

III. Request for Relief

WHEREFORE, Appellants request that the Cable Division summarily reject the attempt by the Mayor to interject forced access as a condition of the approval of license transfers from MediaOne to AT&T, and declare the condition to be illegal and unenforceable.

Respectfully submitted,

AT&T CORP.

**MEDIAONE GROUP, INC.
MEDIAONE OF MASSACHUSETTS, INC.**

By: _____
Michael Morrissey
Katherine P. White
AT&T Corp.
99 Bedford Street
Boston, MA 02111
617-574-3162

By: _____
Bartlett F. Leber
Jeff Fialky
MediaOne Group, Inc.
6 Campanelli Drive
Andover, MA 01810
978-683-5500

By: _____
Paul Glist
James F. Ireland
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
202-659-9750

By: _____
Kenneth Ira Spigle
246 Walnut Street
Newton, MA 02460
617-964-7000

November 23, 1999