

SUMMARY OF PROCEEDINGS AND MAGISTRATE'S REPORT

**Re: Transfer of Control of Cable Television Licenses from
Cablevision of Massachusetts, Inc. to AT&T Corp.**

**Before: CHARLES J. BEARD, Esquire
SPECIAL MAGISTRATE
by appointment of the Cable Television Division of
Department of Telecommunications and Energy
Foley, Hoag & Eliot LLP
One Post Office Square
Boston, Massachusetts 02109**

**Also Present: WAYNE BARNETT, Esquire
Foley, Hoag & Eliot LLP**

August 25, 2000

I. Background

A. Summary of Proceedings

On April 18, 2000, Cablevision of Massachusetts, Inc. (“Cablevision”) announced that it was transferring all of its cable properties in Massachusetts to AT&T Corp. (“AT&T”). On June 16, 2000, AT&T filed an application for approval of a change in control (FCC Form 394, with exhibits) with the 37 cities and towns in Massachusetts that have granted cable licenses to Cablevision.¹ At the request of AT&T, the Cable Television Division of the Massachusetts Department of Telecommunications and Energy (the “Division”) scheduled three regional hearings to be conducted in the month of July. *Letter of May 24, 2000 from Michael J. Morrissey, Vice President for Law and Government Affairs of AT&T to Alicia C. Matthews, Director of the Division; Notice of Public Hearing promulgated by the Cable Television Division on June 30, 2000.* Absent these regional hearings, AT&T and Cablevision would have had to participate in 39 hearings in a span of only 60 days. See 207 CMR 4.03.

The Division conducted a series of informational sessions to assist Issuing Authorities contemplating the transfer proceedings. These sessions were held in Concord (June 7, 2000), Danvers (June 13, 2000) and Fitchburg (June 14, 2000). Subsequent to those informational sessions, the Division appointed Charles J. Beard to serve as a Special Magistrate to conduct the regional hearings, and to prepare a report for the participating cities and towns which analyzed the record developed at the hearings and to make non-binding recommendations as to whether the applications for change of control should be approved.² Cities and towns that preferred to hold separate hearings had the right to opt out of the regional hearing process. According to the records maintained by the Division, 27 of the 37 municipalities covered by the Division’s order agreed to participate in the regional hearings, which were held in Peabody (July 18, 2000), Maynard (July 25, 2000), and Fitchburg (July 27, 2000).

¹ For 37 of the 39 communities listed on Exhibit A, Cablevision holds its licenses under the name Cablevision of Massachusetts, Inc. Cablevision proposes to transfer control of these licenses through an asset sale. Cablevision proposes to transfer control of its licenses in the City of Boston and the Town of Brookline through an asset swap, acquiring in exchange certain cable licenses held by AT&T in Ohio. The license from the City of Boston is held by Cablevision of Boston, Inc., and the license from the Town of Brookline is held by Cablevision of Brookline, LP. Because of the size of Boston and Brookline, and their unique concerns, they elected not to take part in the regional hearing process.

² Mr. Beard is a partner in the firm of Foley, Hoag & Eliot LLP in Boston. He served as a member of the Cable Television Commission from 1972 to 1976, and has extensive experience in providing advice to cities and towns respecting cable television matters. In 1996, Mr. Beard served as a Special Magistrate to conduct hearings and make recommendations respecting U.S. West’s acquisition of Continental Cablevision, and in 1999 he served as Special Magistrate to conduct hearings and make recommendations respecting both the acquisition of Greater Media by Charter Communications Inc. and the merger of AT&T and MediaOne. Wayne Barnett, an associate at Foley, Hoag & Eliot LLP, assisted in the preparation of this report.

At each of the hearings, representatives from AT&T made a presentation in support of the transfer application. Representatives of cities and towns then made comments and asked questions, as did members of the general public. This report addresses the issues raised in the three regional hearings held to consider the applications for approval of the transfer of control of the cable licenses held by Cablevision to AT&T.

B. Criteria to be Considered

The criteria to be considered by Issuing Authorities in the license transfer process are set out in Mass. Gen. L. c. 166A, § 7, and the regulations promulgated thereunder. The statute states in pertinent part:

No license or control thereof shall be transferred or assigned without the prior written consent of the issuing authority, which consent shall not be arbitrarily or unreasonably withheld.

This statutory language provides very little guidance for issuing authorities weighing a transfer. It tells them what they may *not* do – act arbitrarily or unreasonably – but it fails to make clear how Issuing Authorities should conduct their review of a proposal to transfer control. The Division’s regulations provide the guidance that is lacking in the statute. 207 CMR 4.04 states in pertinent part:

[A]n issuing authority shall consider only the transferee’s

- (a) management experience,
- (b) technical expertise,
- (c) financial capability, and
- (d) legal ability to operate a cable system under the existing license.

This four-pronged analysis was first articulated by the Division when it decided *Bay Shore Cable TV Associates, v. Weymouth*, CATV Docket No. A-55 (November 13, 1985). The four-part test was reaffirmed by the Division in a decision issued on May 1, 2000 concerning challenges filed by Cambridge, North Andover, Somerville and Quincy to AT&T’s acquisition of licenses held by MediaOne. *Order on Motions for Summary Decision/Consolidation*, CTV-99-2, CTV-99-3, CTV-99-4, CTV-99-5, at 16. (“The Cable Division’s standard of review, announced in *Bay Shore* and codified in 207 C.M.R. § 4.04, furthers the purposes of Section 7 [of Chapter 166A] and thus is a valid exercise of our authority under Section 16 of Chapter 166A.”) As the Division stated when it amended the regulations governing the transfer process, the goal of the analysis is “to provide the issuing authority with the opportunity to determine whether the transferee can ‘step into the shoes’ of the transferor.” *Report and Order Amending 207 CMR 4.01-4.06* (Docket No. R-24, November 27, 1995), ¶ 58. While there is no reported court case interpreting either Mass. Gen. L. c. 166A, § 7 or the regulations promulgated thereunder, the Department of Telecommunications and Energy did affirm the Division’s analysis in the May 1, 2000 Order noted above. *Interlocutory Order on City of Cambridge’s*

Appeal and MediaOne's Appeal of Cable Television Division's Order on Motions for Summary Decision/Consolidation, DTE 00-49, DTE 00-50, at 12. (“We concur with the Cable Division’s analysis regarding the validity of its regulations.”)

The representatives of AT&T who presented the company’s case at the regional hearings did not limit themselves to a discussion of the reasons why AT&T met the four criteria. From the outset of the hearings, they made it clear that AT&T’s acquisition of the Cablevision licenses at issue was part of the company’s strategic initiative to change AT&T from a long distance company into a company that provides a full range of services, including voice, data and entertainment using not just a telephone but also televisions, computers, hand-held wireless phones, virtually any form in which one can receive data. (Peabody Transcript, at 13.) In this context, AT&T spent some time previewing the full range of services that they hope to develop and market to current Cablevision customers after the acquisition.

It is important to view the acquisition of the Cablevision licenses in context. AT&T’s merger with MediaOne was consummated only weeks before these regional hearings began. In acquiring MediaOne, AT&T faced an uphill battle in establishing that it had the managerial and technical ability to acquire cable licenses across the Commonwealth. Today, two things can be said. First, AT&T was at least aware of, and probably quite involved in, the operational decisions made by MediaOne between the time that the merger was announced and the time it was consummated. Second, MediaOne’s managerial and technical expertise now belongs to AT&T.

In fact, all of the human and technical resources that made MediaOne a formidable force in the Massachusetts cable market are now AT&T’s resources. AT&T serves more than 6 of every 10 cable subscribers in Massachusetts today, and if the acquisition of all of the Cablevision licenses are approved, AT&T will serve nearly 80 percent of Massachusetts’ cable subscribers. Massachusetts would be the company’s premiere “cluster” in the United States. (Maynard Transcript, at 11.)

This report cannot, and should not, address all of the issues raised during the public hearings. As Special Magistrate, I am charged with advising municipalities on whether or not AT&T has satisfied the four criteria. Accordingly, this report will focus primarily on the narrow question of whether AT&T has made a case that it meets the criteria set out in the Division’s regulations which provide a basis for a determination that the proposed transfer applications should be approved.

II. Analysis

A. Legal Ability

The starting point in this analysis is the legal capacity of AT&T to operate the cable systems under the existing licenses. 207 CMR 4.04(1)(d). There is but one major issue that

must be addressed in evaluating AT&T's legal capacity: Whether AT&T has assumed all of the obligations of each license.

1. The Agreement between Cablevision and AT&T

A brief discussion of the structure of Cablevision and AT&T, a description of the merger transaction and a brief explanation of the governing law show why AT&T will be as bound by the license agreements and other Cablevision obligations as was Cablevision itself.

a. The Parties

Cablevision of Massachusetts, Inc. is a Delaware corporation, as is its parent corporation, CSC Holdings, Inc. Cablevision serves 3.4 million customers, primarily in three core markets: New York, Cleveland, and Boston. More than one-tenth of those customers –350,000 – are located in Massachusetts (Maynard Transcript, at 8.) The cable licenses granted by cities and towns in Massachusetts are held in the name of Cablevision of Massachusetts.

AT&T was incorporated in 1885 under New York law. Following the company's acquisitions of Tele-Communications, Inc. ("TCI") in 1999 and MediaOne in 2000, AT&T went from having no presence in cable television to being the nation's largest cable television provider. In fact, AT&T serves so many cable customers that the Federal Communications Commission ("FCC") has ordered AT&T to either divest its interests in some of its cable holdings or terminate its involvement in Time Warner Entertainment's video programming by May of next year. *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne to AT&T*, CS Docket No. 99-251, Memorandum Opinion and Order, at ¶ 186. If these transfers are approved, AT&T will have 1.5 million cable customers in Massachusetts. (Fitchburg Transcript, at 12.)

AT&T is also among the world's communications leaders, providing voice, data and video communications services to large and small businesses, consumers and government entities. AT&T and its subsidiaries provide domestic and international long distance, regional, local and wireless telecommunications services, and cable television and Internet communications transmission services. AT&T also provides billing, directory, and calling card services to support its communications business.

b. The Form of the Acquisition

The acquisition may be summarized as follows: AT&T will create a wholly-owned subsidiary, AT&T CSC, Inc. The subsidiary will be incorporated in Delaware. That subsidiary will merge with Cablevision of Massachusetts, Inc., and the merged entity, still a subsidiary of AT&T, will continue to be called Cablevision of Massachusetts. Form 394, at Tab B, Exhibit 2.

Cablevision of Massachusetts will continue to hold the licenses in the Massachusetts communities impacted by this transaction. Accordingly, from the vantage point of the Issuing

Authorities, this transaction will look like an ordinary change of control proceeding. The licensee will not change; it will simply become a subsidiary of AT&T.

2. AT&T's Assumption of Cablevision's Cable License Obligations

I am satisfied that AT&T has assumed all of the obligations of Cablevision under the terms of the cable licenses for two reasons. First, section 2.01(b) of the Agreement of Plan and Merger entered into between Cablevision and AT&T on April 18, 2000, states that:

From and after the Effective Time, [the merged entity] shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of [Cablevision of Massachusetts], all as provided under the" Delaware General Corporation Law.

This language may be fairly read to mean that, as a matter of contract, AT&T, through its wholly-owned subsidiary, has "stepped into the shoes" of Cablevision as the parent corporation of the subsidiaries which hold the licenses in Massachusetts.

Second, and more importantly, this merger, as referenced in the Agreement and Plan of Merger, is governed by the laws of the State of Delaware. Even without the language in the contract quoted above, it is clear that AT&T will assume all of the obligations of MediaOne in this transaction by operation of law. *See* Del. Gen. Stat. §259(a) which states in pertinent part:

When any merger or consolidation shall have become effective under this chapter, for all purposes of the laws of this state the separate existence of all constituent corporations . . . [shall be] merged in one of such corporations . . . possessing all the rights, privileges, powers . . . and being subject to all the restrictions, disabilities and duties of each of such corporations so merged. . . and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation. . . .

AT&T's Form 394 contained a single troubling sentence which appeared inconsistent with the company's obligations under Delaware law and the Agreement and Plan of Merger. Tab B, Exhibit 4 read, in part: "AT&T does not have any specific plans at this time to change the service and operations of the cable system that is the subject matter of this transaction as a consequence of this transaction." In fact, representatives of Communications Advisory Committee for the Town of Lexington inquired about the meaning of the sentence.

I am satisfied by AT&T's response that the sentence was not intended to call into question the company's responsibility to comply with the Cablevision licenses. Instead, AT&T's response to the Lexington officials made clear that it was the company's intent only to state for the record that AT&T had no specific time frame for rolling out new services and would not otherwise make "precipitous changes to the system operations in areas like billing practices,

customer service facilities, studio facilities, channel line-ups, etc.” *AT&T’s Response to the Town of Lexington’s Request for Information*, p. 7. (August 10, 2000) I should also note that representatives of AT&T on several occasions during the regional hearings affirmed the company’s commitment to honor Cablevision’s license commitments. *See, e.g.*, Peabody Transcript, at 11 (“[A]s part of the agreement, we have agreed to – or committed to succeed to the license obligations currently agreed to by Cablevision.”); Maynard Transcript, at 12 (“I’d like to make very clear that [AT&T] will abide and meet all of the commitments that are in the licenses. That’s our pledge to you. We will take them as they are written and we will abide by them.”) In fact, Mr. David Grain, AT&T Broadband’s Regional Vice President for the Northeast Region, went so far as to suggest that AT&T would try to honor verbal commitments made by Cablevision as well as those commitments embodied in Cablevision’s licenses. *See* Fitchburg Transcript, at 64-65 (“We agree to take over all the licenses under the honor of the law as well as try to fulfill all the other commitments that [Cablevision] made that are beyond the scope of the licenses.”)

By contract and by operation of law, AT&T will assume all of the cable television license obligations of Cablevision. The statements made by AT&T personnel at the regional hearings indicate that the regional management is very familiar with the company’s commitments under the law, and is committed to maintaining good relations with Massachusetts communities by honoring the spirit as well as the letter of Cablevision’s license obligations. Accordingly, I have concluded that AT&T has the legal ability to step into the shoes of Cablevision, and to comply with Cablevision’s obligations under its licenses.

B. Management Experience

The second criterion to be considered by Issuing Authorities is AT&T’s managerial experience. AT&T, in the aftermath of the merger with MediaOne, has a strong roster of managers in the Northeast region. While significant personnel changes have admittedly occurred in the region in the wake of the consummation of the MediaOne merger³, the new team has substantial communications experience, most of it with MediaOne. Issuing Authorities must consider the management team as it exists, and determine whether or not that team has the experience to fulfill the obligations under the licenses.

AT&T chose not to devote much of their presentation to an explanation of the company’s management experience, but instead relied heavily on the material in the Form 394. Mr. David Grain, AT&T’s new Senior Vice President for the Northeast Region, did stress that his management team had more than 100 years of experience in the industry. *See* Peabody Transcript, at 40. Mr. Grain is himself a former Massachusetts resident who, prior to joining AT&T Broadband, spent years on Wall Street advising and financing domestic and international telecommunications, cable and industrial companies. The backgrounds of other senior managers

³ A comparison of a slide introduced by AT&T in last year’s hearings held to consider the company’s acquisition of MediaOne with a slide introduced this year reveals that nine of the 12 individuals who held leadership positions under MediaOne’s regional Vice President are not listed among the 12 leaders now working under Mr. Grain.

are outlined in the Form 394, and they all seem impressive. Mr. Grain adopted a “the buck stops here” attitude at the hearings that should be of comfort to Issuing Authorities concerned about whether key decisions will be made in the region or by corporate headquarters in Denver, Colorado or Basking Ridge, New Jersey. (Maynard Transcript, at 28.)

I am satisfied that AT&T has the managerial experience to fulfill the obligations under the Cablevision licenses for three additional reasons as well. First, the support for the acquisition raised at the regional hearings, and the paucity of complaints or criticisms of the acquisition, are strong evidence that AT&T is doing something right. It was a rare speaker who did not at some point during his or her comments state that they “welcomed AT&T to the area.” (For two examples of many, see the statements of Dean Mazzarella, Mayor of Leominster, and David Streb, Planning Coordinator for the City of Fitchburg, Fitchburg Transcript, at 42 and 44.) If Cablevision customers are eager to become customers of AT&T, I believe that constitutes an endorsement of the company’s management with which it would be difficult to quibble. It is no secret that MediaOne has for some time enjoyed a good reputation for cable service here in the Commonwealth, and that many residents of localities not served by MediaOne, now AT&T Broadband, have envied their neighbors’ cable modems and access to a competitive local telephone provider. Approximately 2,000 of AT&T Broadband’s 3,700 employees in the Northeast focus on customer care. (Maynard Transcript, at 24.)

Second, even with the execution of the merger agreement between MediaOne and AT&T last year, and the consummation of the transaction this summer, no evidence was introduced into the record of disruptions in service or customer care in MediaOne communities. In fact, as I will discuss in the next section, MediaOne continued to upgrade its systems at a furious pace after the announcement of the AT&T takeover. If AT&T had the capacity to absorb cable systems in 175 communities – having never before operated a single cable system in the Commonwealth – without incurring measurable or even noticeable public disapproval, then that is evidence of the company’s ability to bring its management experience to bear on behalf of the 39 Cablevision communities in the Commonwealth.

Third, the very fact that AT&T has moved so aggressively into the cable arena is itself evidence of sound management. AT&T anticipated falling revenues from long distance and diversified its product lines. This degree of foresight, coupled with a capacity to move quickly, is rarely seen in a company as large as AT&T.

AT&T is under no obligation to maintain the Cablevision managers responsible for the operation of the Cablevision system today. AT&T has represented that the top managers will be those for whom biographies are provided in the Form 394, but the company has been unwilling to elaborate in any concrete way on its plans for Cablevision managers now in place. *See* Response to Magistrate Beard’s Request for Information, at q. 7. Under the Agreement and Plan of Merger pursuant to which these licenses are to be transferred to AT&T, the company need not decide on the fate of Cablevision employees until 120 days before the close of the acquisition.

As I alluded to earlier, AT&T’s record for retaining management from MediaOne has so far proven mixed. While communities are sometimes eager to continue dealing with the same

representatives with whom they have dealt for years, there is simply no guarantee that this will be the case.⁴

I conclude that AT&T has the management experience needed to “step into the shoes” of Cablevision, even if there are significant changes in personnel at the local level. The top level managers in the region have a wealth of experience, and the MediaOne acquisition has proceeded more smoothly than could have been anticipated. For these reasons, I am satisfied that this criterion has been met.

C. Technical Expertise

The third criterion to be considered is the “technical expertise” of AT&T to operate a cable system under the existing licenses. 207 CMR 4.04(1)(b). While AT&T touted its ability to deliver local telephony, high speed Internet access, and other services over cable wires, cities and towns are charged with determining the fate of their cable licenses, and should confine their technical analysis to a review of AT&T’s expertise with regard to cable.

The record contains a significant amount of data supporting an affirmative finding on this criterion, and I therefore conclude that AT&T has the requisite technical expertise. At the hearings, AT&T pointed to its long history at the cutting edge of communications technology. It invented the transistor in 1947 and the computer modem only ten years later. In 1958 it invented the laser and only a decade ago AT&T invented the optical digital processor. While not a topic at the hearings, it should also be noted that AT&T has a well-known reputation for technical competence with its products. Its long distance services, wireless services, Internet services and data transmission services are widely perceived as extremely reliable, further evidence of its technical competence.

The technical expertise which Issuing Authorities are looking for is not the inventive genius of AT&T, however, but the technical expertise to handle the engineering and day-to-day maintenance problems in their cable systems. The expertise sought by Issuing Authorities is the expertise to handle failed amplifiers, or to make sure that the signal strength is appropriate at the end of an amplifier cascade, or to design and build the plant upgrade to hybrid fiber cable (“HFC”), or the expertise to manage the dozens of other engineering problems which arise in operating cable systems day in and day out.

Last year, AT&T was forced to rely on the expertise of MediaOne in order to prove its own expertise to Issuing Authorities. In essence, AT&T argued that it had the technical expertise to carry out MediaOne’s license obligations because after the merger MediaOne’s expertise would be AT&T’s expertise. AT&T’s task is an easier one this year, because the MediaOne merger is now history, and thus all of the technical expertise that MediaOne brought to bear on its system is now attributable to AT&T in these proceedings. To put this in human

⁴ AT&T did note at one of the hearings that “one of the great things that we’ve seen in the assets of Cablevision which made this an attractive acquisition is really the high-quality people, particularly in the front line where it really all happens.” (Maynard Transcript, at 51-52.)

terms, Paul D’Arcangelo has been an engineer with MediaOne for 20 years, rising from Assistant Designer to Project Coordinator, Construction Manager, Director of Construction, Director of Outside Plant and finally Vice President of Engineering and Technology. Today, Mr. D’Arcangelo is AT&T’s Vice President of Engineering and Technology.

The evidence is quite clear that MediaOne, now AT&T, has long possessed the technical expertise to operate and upgrade its systems. The company has spent between \$1 billion and \$2 billion on upgrades in the region since 1994. (Maynard Transcript, at 18.) That was the year in which MediaOne embraced 750 MHz technology, which it began deploying in 1995. (Peabody Transcript, at 34.)

Network reliability on AT&T’s upgraded plant is 99.95 percent, as opposed to 99.2 on plant that has yet to be upgraded. (Maynard Transcript, at 34-35.) While this may appear a small difference, to the customer it represents the difference between six hours of outage in a month and 20 minutes. *Id.* Moreover, barely more than two percent of AT&T’s customers served by upgraded facilities experience an outage on a monthly basis. *Id.* By year’s end, AT&T expects to have upgraded 95% of its facilities to two-way, 750 MHz service. *Id.* There is also some evidence that AT&T Broadband’s upgraded facilities will prove even more reliable than those upgraded by Cablevision. There is testimony in the record that while Cablevision strives to have 500 homes on a “node,” AT&T strives to have between 250 and 500 homes on a “node.” (Maynard Transcript, at 67.) When fewer homes are served by a single “node,” then fewer homes are impacted by an outage affecting that “node.” Finally, AT&T utilizes a network management system that allows the company to proactively monitor the network. (Fitchburg Transcript, at 21.) No longer must the company wait for an angry call from a customer to learn about a system outage. AT&T uses transponders to monitor the health of power supplies, nodes, set-top boxes, modems and residential service units. *Id.*

Another statistic that should be of significant interest to Cablevision customers is the fact 97% of the Time Warner and Cox properties acquired by MediaOne in August of 1999 have been upgraded to 750 MHz service. (Peabody Transcript, at 35.) At the time of the acquisition of those properties, only 64% of those properties had been upgraded.⁵ *Id.*

Cablevision customers are rightly focused on their pending upgrades. One of the few fears articulated by subscribers and community representatives at the regional hearings was that the acquisition of the Cablevision licenses by AT&T would push back the timetable for upgrades. (For an example, see the query posed by Mr. Jeff Winston, Chair of the Town of Sudbury’s Cable Committee, Maynard Transcript, at 42 *et seq.*) I am persuaded that AT&T has no intention of pushing back the timetable for upgrades. They have a record of moving quickly to upgrade newly acquired systems and they have a powerful incentive to do so. This is a new day in cable television. AT&T is not motivated solely by its license commitments, but by market forces. AT&T did not acquire TCI and MediaOne and now these Cablevision systems so that it could provide the same services that these companies have always provided. Instead, AT&T

⁵ As noted above, AT&T was at least aware of, and probably quite involved in, MediaOne’s operation of the system over the course of the last year. This is the time period in which these upgrades took place.

wants to deliver cable television, local telephony, high speed internet, and digital television services. See Maynard Transcript, at 58 (“Our goal is to offer all of our products to all of our customers. That’s the way this business is really going to hum for us. That’s our goal.”) Until facilities are upgraded, they are simply not capable of delivering all of the services that AT&T wants to sell. Without upgrades, AT&T’s “Broadband bet” is a losing proposition. I believe that Issuing Authorities can be rest reasonably easy that AT&T will not fall behind on Cablevision’s commitments to upgrade its facilities.

Notably, according to AT&T the company’s engineers have already visited the Cablevision headend facilities in mid-July in order to begin planning for the integration of the systems with AT&T’s. The fact that the evaluation process is underway is strong evidence that this acquisition is unlikely to set back Cablevision’s planned upgrades, and may even put those upgrades on an accelerated schedule.

As AT&T indicated at the hearings, it faces competition from other cable companies as well as satellite providers. It desperately wants to enter into competition with local telephone companies as well as high speed data providers. I am satisfied that AT&T possesses the technical expertise, together with the motivation to move quickly to integrate Cablevision customers, that should ensure that Cablevision customers are not injured by the transfer of the licenses to AT&T.

D. Financial Ability

The final criterion to be considered is whether AT&T has the financial capability to fulfill its obligations under the existing licenses. While AT&T clearly has great plans for its Massachusetts cable systems, the regulations speak of the financial *capability* of the acquiror, not its financial *plans*. Accordingly, I will set aside AT&T’s ambitious plans, and analyze the financial capability of AT&T to meet its obligations under the Cablevision licenses.

1. Analysis

While these proceedings are narrowly focused on cable television, the financial data provided by AT&T includes all of its services. I gather AT&T provided financial information this way for two reasons: (i) AT&T will not keep its books that way, and (ii) an AT&T analysis of all of the company’s resources and obligations is necessary to fairly assess its capabilities, since capital expenditures, for example, will build plant to provide broadband services, not just cable services. AT&T will have two sources of capital if the Cablevision merger is consummated: (a) cash generated by its operations (“Operating Cash Flow”) and (b) debt. Operating Cash Flow is similar to EBITDA⁶, and is frequently employed as a measure of a company’s performance and prospects. Like EBITDA, Operating Cash Flow excludes cash generated or used in financing or investing activities. Thus, it includes the payment of interest

⁶ EBITDA represents income (or loss), before interest expense, income taxes, depreciation, amortization, gain (or loss) on sale of assets and other income (or expense).

but not the repayment of principal on outstanding debt. Similarly, it includes maintenance charges for existing property, but does not include capital expenditures for new or improved equipment.

In a sense, “Operating Cash Flow” is more useful than EBITDA. Interest and taxes, after all, are amounts actually paid. Operating Cash Flow, unlike EBITDA, accounts for these costs. Operating Cash Flow is thus useful in analyzing the financial strength of a company because it measures the amounts of cash that the company has to spend after it has paid all of its bills.

Determining the financial strength of AT&T under this analysis requires two steps. First, one must determine if its Operating Cash Flow, after dividends, is greater than its capital expenditure requirements. Second, if its Operating Cash Flow is less than its capital expenditure requirements, then AT&T may need debt capacity adequate to cover the shortfall, and one must examine AT&T’s capacity to borrow funds.

a. AT&T’s Projected Capital Expenditures

AT&T has stated that it plans to spend \$13 billion on capital expenditures each year between 2000 and 2004. See Exhibit B, AT&T’s Response to Record Requests, Attachment 3. This figure is based not on AT&T’s obligations under the cable licenses that it hopes to acquire, but on its analysis of what investments will be necessary to compete against other providers of telecommunications services.

b. AT&T’s Projected EBITDA, Operating Cash Flow and Dividends

AT&T has provided a projection of its company-wide EBITDA through 2004. AT&T’s EBITDA for the year ended December 31, 1999 was \$18.6 billion. The company anticipates EBITDA growing steadily over the course of the next five years, when it expects EBITDA to total \$37.6 billion. AT&T’s specific projections of EBITDA are:

2000	\$23.6 billion
2001	\$26.8 billion
2002	\$29.4 billion
2003	\$33.4 billion
2004	\$37.6 billion

AT&T has also supplied its Operating Cash Flow figures for 1997 through 1999. Operating Cash Flow was: \$8.501 billion in 1997; \$10.217 billion in 1998, and \$11.635 billion in 1999. It measured 75%, 76% and 63% of EBITDA, respectively, for each of those three years. Below, I will rely on these historical ratios to estimate the company’s operating cash flow through 2004. So that the analysis will be conservative, I will use the figure of 63 percent — which is well below the average for the three year period.

It is also necessary, in evaluating financial ability, to keep in mind other obligations of the company. AT&T paid dividends of \$3 billion in 1999, which reflected a dividend of \$.88 per share. I will assume a two percent increase in the company's dividend each year between 2000 and 2004. This, too, should produce a conservative analysis, since AT&T has maintained a steady dividend for years.

c. Combined Projections

The figures listed above are summarized in Table 1 below.

Table 1 (Dollars in Billions)

	2000 ⁷	2001	2002	2003	2004
1. EBITDA	23.6	26.8	29.4	33.4	37.6
2. Operating Cash Flow	14.9	16.9	18.5	21.0	23.7
3. Dividends	3.0	3.1	3.1	3.2	3.2
4. Cash Flow Available to Reinvest	11.9	13.8	15.4	17.8	20.5
5. Capital Expend.	13.0	13.0	13.0	13.0	13.0
6. Excess or Deficit	(1.1)	0.8	2.4	3.2	6.5

A brief description of the table is warranted. Line 1 is the EBITDA projections supplied by AT&T. I am satisfied that, though ambitious, the figures are consistent with the company's recent performance.⁸ Line 2 represents 63 percent of the EBITDA projections. Line 3 represents dividend growth of two percent per year, above the 1999 level of \$3 billion. Line 4 is calculated as Line 2 minus Line 3 and represents the pool of money available to AT&T after it has paid dividends. Line 5 is the projected capital expenditures of AT&T, and Line 6 is the difference

⁷ The projected figures for 2000 are included for context. Since the transaction is unlikely to be finalized until near the end of the year, the results for 2001 and beyond are more relevant.

⁸ I note approvingly that these projections are below the projections supplied in last year's hearings relating to the MediaOne merger, and appear to reflect (i) the company's declining revenues from long-distance service over the course of the past year, and (ii) the likelihood that this decline will be permanent.

between those projected capital expenditures and the projected cash available to fund them (Line 4 - Line 5).

As the analysis indicates, only in the year 2000 would AT&T have to resort to its debt capacity in order to meet its capital expenditure goals, and the transaction is unlikely to be completed until late in the year. Several comments are in order. First, Issuing Authorities should keep in mind that the Social Contract remains in effect until the end of 2000. Thus cities and towns have protection (a) to be sure that rates are not increased precipitously to cover any shortfall, and (b) to be sure that upgrades get completed. Second, this pro forma has several very conservative assumptions. It is certainly possible that AT&T's performance will be better than these projections, in which case there will be no need to borrow funds even in 2000. Obviously, though, Issuing Authorities should not rule out the possibility that AT&T's performance could also decline more than is shown here.

At least for the next four years, AT&T should be able to finance its capital expenditures out of Operating Cash Flow. This is a fact that should give comfort to Issuing Authorities,, and is strong evidence of the company's financial ability.

d. Debt Capacity

Should the company need to borrow money to meet its capital expenditure goals in future years, it will almost certainly be able to do so. AT&T has a debt facility of \$40 billion, the largest in the United States. (Peabody Transcript, at 25. In addition, and as discussed at the hearings, AT&T last summer executed what was, at the time, the largest corporate bond offering in history, selling \$8 billion in bonds on the open market. (Peabody Transcript, at 25.) It has also, since then, sold another \$6 billion worth of bonds. According to the company, Standard & Poor's still maintains a short term debt rating of the company of AA-, which is higher than the rating for most cable companies, including Time Warner, Cox, Comcast and Cablevision. In addition, AT&T has received an A1 debt rating from Moody's. (AT&T Powerpoint Slide Presentation.)

Accordingly, and based on the information available to me, I have little doubt that AT&T is capable of meeting its financial obligations under its Massachusetts cable licenses.

III. Conclusion

I was charged with the duty of helping cities and towns to assess whether AT&T has the legal ability, the management experience, the technical expertise, and the financial capability to fulfill all of the obligations under the Cablevision licenses. As the discussion above indicates, I believe that all of these questions should be answered in the affirmative. Therefore, I make the non-binding recommendation to the cities and towns that participated in the regional hearing process that they approve AT&T's transfer application.

EXHIBIT A

List of communities in Massachusetts that have granted cable licenses to Cablevision of Massachusetts, Inc.:

*Acton
Ashburnham
Ashby
Ayer
*Bedford
*Belmont
*Boston
Boxborough
Braintree
*Brookline
Carlisle
*Concord
*Danvers
Fitchburg
*Framingham
Gardner
Georgetown
Groveland
Hanscom AFB
*Haverhill
Hudson
Leominster
Lexington
*Lincoln
Littleton
Lunenburg
*Lynnfield
Maynard
Norwood
Peabody
Shirley
Stow
Sudbury
Templeton
Townsend
Tyngsborough
Westford
Westminster
*Westwood

*Towns which are not participating in the regional hearing process.