



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY
Cable Television Division**

_____)
In the Matter of:)
)
AT&T CSC, Inc.,)
AT&T Corp., and)
AT&T Comcast Corporation)
)
Appellants)
)
v.)
)
Board of Selectmen of the)
Town of Westford)
)
Appellee)
_____)

Docket No. CTV 02-5

Date Issued: October 25, 2002

RULING ON APPELLEE’S MOTION TO FILE OPPOSITION LATE

On October 17, 2002, the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy (“Department”) received Appellee’s Motion to File Opposition Late (“Appellee Motion”). In its Motion, Appellee asks the Cable Division for “seven days from the allowance of [its] motion in which to file its opposition” to Appellants’ Motion for Reconsideration (Appellee Motion at 1). On October 21, 2002, Appellants filed an Opposition to Appellee’s Motion to File Opposition Late (“Appellants Opposition”), and Appellee filed its Supplemental Memorandum in Support of Motion to File Opposition Late (“Appellee Supplemental Memorandum”).

All requests for extensions of time must be made “by motion before the expiration of

the original or next previous extended time period.” 801 C.M.R. § 1.01(4)(e);

§ 1.01 (7)(a)(1). Appellants filed their Motion for Reconsideration on October 2, 2002, but Appellee did not file this Motion until October 17, 2002. Appellee’s Motion is itself untimely. Pursuant to 801 C.M.R. § 1.01(7)(a)(1), responses to motions must be filed within seven days. Therefore, pursuant to 801 C.M.R. § 1.01(4)(e), Appellee’s request for an extension of time to file a response should have been filed by October 9, 2002. Even had Appellee been operating under the mistaken assumption that Appellants had filed an appeal with the full Commission, opposition briefs must be filed within seven days of the date of the filing of any such appeal.¹ Thus, even from Appellee’s mistaken perspective, an opposition would have been due on October 9, 2002,² and thus a motion to extend time to file the opposition should have been filed by this date.

In addition to the procedural error, Appellee’s motion fails on substantive grounds. The Cable Division may extend the time limit for a response to a motion for good cause shown. 801 C.M.R. § 1.01(4)(e). Here, Appellee states that it was not given specific notice that Appellants had not appealed to the Department. However, Appellee concedes that it received Appellants’ Motion for Reconsideration on October 2, 2002, but objects to the fact that “[n]owhere in [Appellants] cover letter does it state that the Appeal is not being filed or only submitted in support of AT&T’s Reconsideration Motion . . . [and] [t]he only reference to

¹ This has been the Department’s standard appellate procedure since G.L. c. 166A, § 2, was amended in 1997.

² Appellee seems to be under the assumption that a party has thirty days within which to respond to an appeal to the full Commission. Appellee may have confused the appellate procedure required under G.L. c. 25, § 5, with that required under G.L. c. 166A, § 2.

support the Appellants['] position is contained in the body of the Reconsideration Motion” (Appellee Supplemental Memorandum at 1). Indeed, Appellants’ Motion for Reconsideration states, on the first page, that Appellants “hereby move that the Cable Division reconsider its Interlocutory Order” (Appellants Motion for Reconsideration at 1). It further states in the same paragraph “Appellants incorporate by reference the legal and factual arguments raised in the enclosed appeal papers, which Appellants file in lieu of appealing at this time” (*id.*). Assuming, arguendo, that the language contained in the cover letter was ambiguous, the pleading itself is clear: Appellants requested reconsideration of the Interlocutory Order and, in support, incorporated the arguments contained in the appeal papers.

Appellee also contends that it believed there was no need to oppose Appellants’ Motion for Reconsideration since Appellants suggested that they were filing an appeal of the Cable Division’s Interlocutory Order and, according to Appellee, the Motion for Reconsideration would be moot (Appellee Motion at 1-2). Yet, Appellee does not explain how the filing of an appeal renders a motion for reconsideration moot. To the contrary, an appeal accompanied by a motion for reconsideration may, in some instances, toll the appeal period to allow the agency time to consider the motion for reconsideration. In fact, it is common Department practice to toll the period for filing an appeal when a motion for reconsideration is filed. See Housatonic Water Works Co., D.P.U. 90-284-A, at 5 (1992), citing Fall River Gas Company, D.P.U. 89-199-A, at 7 (1989); see also G.L. c. 25, § 5; 220 C.M.R. § 1.11(11) (Upon motion filed with the Department within twenty days of a Department Order, the Department may grant a reasonable extension of the appeal period upon showing of good cause).

Appellee submits that Appellants had notified the Cable Division by electronic mail that

they were proceeding with their Motion for Reconsideration and would not file an appeal, and that this information was not communicated to Appellee (Appellee Motion at 1-2). Under the Department's appellate procedure applicable to appeals taken from a Cable Division decision, a party filing such an appeal must submit a copy of that appeal to the Cable Division. Given this, it was reasonable, but not necessary, that Appellant clarified with the Cable Division that what was submitted was not filed with the Commission. Moreover, Appellants state that they communicated this clarification via a voicemail message to Appellee's counsel (Appellants Opposition at 2). Appellee admits to receiving the voicemail message, but argues that "nothing in the voice mail message . . . indicated that the Appeal was not being filed" (Appellee Supplemental Memorandum at 2). Nevertheless, even if, as Appellee alleges, Appellants' counsel did not explicitly state that the appeal would not be filed, it is clear by a plain reading of the document that a motion for reconsideration was filed with the Cable Division.

Finally, Appellee argues that it would be prejudiced if it is not permitted to file late because it would be denied the opportunity to respond to Appellants' filings (*id.* at 2). Appellee has had several opportunities to present its position on the issues at hand in its Cross Motion for Summary Decision, Opposition to Appellants' Motion for Summary Decision, its Motion for Reconsideration, and during the Procedural Conference. In our Interlocutory Order on Motion for Expedited Processing, Motion to Extend Time, and Preliminary Ground Rules, we stated we would proceed expeditiously. To grant this motion at this late date would unfairly extend this proceeding.

We determine that Appellee's Motion is not only untimely, but also fails to establish good cause for the Cable Division to permit Appellee to file an opposition to Appellants'

Docket No. CTV 02-5
October 25, 2002

Page 5

Motion for Reconsideration late. It is therefore

ORDERED: Appellee's Motion to File Opposition Late is hereby DENIED.

By Order of the
Department of Telecommunication and Energy
Cable Television Division

Alicia C. Matthews
Director