



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL  
TEN FRANKLIN SQUARE  
NEW BRITAIN, CT 06051

**DOCKET NO. 06-05-05    JOINT APPLICATION FOR APPROVAL TO TRANSFER  
CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY AND OTHER ASSETS OF EASTERN  
CONNECTICUT CABLE TELEVISION, INC. TO  
METROCAST COMMUNICATIONS OF CONNECTICUT,  
LLC**

August 21, 2006

By the following Commissioners:

Anthony J. Palermino  
Anne C. George  
Donald W. Downes

**DECISION**

## DECISION

### I. INTRODUCTION

#### A. SUMMARY

In this Decision, the Department of Public Utility Control approves the joint application of Eastern Connecticut Cable Television, Inc. and MetroCast Communications of Connecticut, LLC, whereby the assets of Eastern and the Certificate of Public Convenience and Necessity under which it operates a community antenna television system in Connecticut are transferred to MetroCast. The Department grants MetroCast a nine-year franchise term, provided that the Company modifies its proposed franchise agreement to commit to complete no later than March 1, 2009, a system-wide upgrade to no less than 860 MHz.

#### B. APPLICANTS' PROPOSAL

By application (Application) filed with the Department of Public Utility Control (Department) on May 9, 2006, pursuant to §§ 16-43(a) and 16-331(a), (b) and (d) of the General Statutes of Connecticut (Conn. Gen. Stat.) and 47 U.S.C. § 537, Eastern Connecticut Cable Television, Inc. (Eastern or Seller) and MetroCast Communications of Connecticut, LLC (MetroCast or Buyer, collectively, the Applicants), jointly requested Department approval of the transfer to MetroCast of Eastern's assets, including its Certificate of Public Convenience and Necessity (Certificate) to offer community antenna television (CATV or cable) service. Eastern's 550 MHz 1,144 plant mile hybrid fiber coaxial (HFC) cable system serves approximately 36,000 subscribers in the franchise area comprising the towns of East Lyme, Griswold, Killingly, Montville, New London, Plainfield, Putnam, Sterling and Waterford. Application, p. 5. Eastern provides service pursuant to a franchise agreement with the Department renewed in accordance with Department Decisions dated May 19, 1999, and June 16, 1999, in Docket No. 96-07-23, Application of Eastern Connecticut Cable Television, Inc. for Franchise Renewal. Application, Exhibit No. 5. Eastern's current franchise agreement expires June 30, 2009.

MetroCast is a Delaware limited liability company established for the purpose of operating cable systems in Connecticut. Its parent company, Harron Communications, L.P. (Harron) owns and operates cable television systems in Maine, New Hampshire, Pennsylvania, Maryland and Virginia. Application, p. 5, Exhibit No. 11. Harron cable systems currently pass over 173,000 homes, serving approximately 110,000 cable customers through networks consisting of over 4,800 miles of plant. Application, p. 6.

If the instant Application is approved, the assets and Certificate of Eastern would be transferred to MetroCast pursuant to an Asset Purchase Agreement (Agreement) dated April 14, 2006, upon closing scheduled for September 1, 2006. Application, p. 4; Application, Exhibit No. 7. Eastern plans to exit the cable television business upon consummation of the proposed transaction. Application, pp. 5 and 7.

### **C. CONDUCT OF THE PROCEEDING**

By Notice of Hearing dated June 1, 2006, a public hearing was held on June 26, 2006, at the offices of the Department, Ten Franklin Square, New Britain, Connecticut 06051, to consider the Applicants' request, at which time it was closed. On July 24, 2006, the Department issued a draft Decision in this proceeding. All parties and intervenors were afforded the opportunity to file written exceptions and present oral argument concerning the draft Decision.

### **D. PARTIES AND INTERVENORS**

The Department recognized the following as parties to the proceeding: Eastern Connecticut Cable Television, Inc., 61 Myrock Avenue, Waterford, Connecticut 06385; MetroCast Communications of Connecticut, LLC and Harron Communications, L.P., 70 East Lancaster Avenue, Frazer, Pennsylvania 19355; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051. The Department designated the Eastern Cable Television Advisory Council (Advisory Council) as an intervenor.

## **II. DEPARTMENT ANALYSIS**

### **A. LEGAL REQUIREMENTS**

The transfer of a cable franchise is governed by both state and federal law. 47 U.S.C. § 537 requires that the franchising authority act upon an application for transfer within 120 days from the receipt of a request for approval of such sale or transfer, unless the applicants waive the deadline.<sup>1</sup> In addition, Connecticut law requires examination of several other key aspects of a transfer proposal prior to approval. Under Conn. Gen. Stat. § 16-331(b), when determining whether to transfer an existing Certificate, the Department shall only take into consideration "the suitability of the applicant or if the applicant is a corporation, of its management, the financial responsibility of the applicant, and the ability of the applicant to perform efficiently the service for which authority is requested." Additionally, the Department is required, pursuant to Conn. Gen. Stat. § 16-331(b) to "consult with the advisory council established by regulation for the franchise area specified in the certificate." If the applicant or an affiliate thereof is the holder of one or more other certificates in the state, the Department shall also consider the possible adverse effects of increasing the concentration of ownership of CATV systems and related services that would result from granting the Application.

The Department must also determine the appropriate length of the franchise term in a transfer. Pursuant to Conn. Gen. Stat. § 16-331(d)(4), the transfer term of the certificate "shall be the remaining duration of the franchise term originally granted unless the department grants a different term, the appropriate length of which shall be determined by the department under this subsection." As noted in Section I.B., Eastern's current term expires June 30, 2009. However, Conn. Gen. Stat. § 16-331(d)(1) sets a franchise term of not less than five years for CATV certificates of public

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<sup>1</sup> See also 47 C.F.R. § 76.502.

convenience and necessity transferred after June 1, 1988. In determining whether a term greater than five years is warranted, the Department is required to consider a number of specific items listed in state statute, including, but not limited to, the ability of the operator's management to properly operate the facility, the applicant's provision of innovative services, and the quality of the operator's public, educational and governmental (PEG) access programming. Conn. Gen. Stat. § 16-331(d)(1)(A)-(N). Considerations regarding the franchise term are made after the determination of whether the Certificate should be transferred to the applicant.<sup>2</sup>

By letter dated May 26, 2006, the Department notified the Applicants that the Application may also invoke Conn. Gen. Stat. § 16-47, which requires Department approval of the exercise of control over a CATV company by a holding company. In response, the Applicants filed additional information on May 30, 2006, as requested by the Department, based on regulations applicable to applications filed under Conn. Gen. Stat. § 16-47. Upon review, the Department finds that the Application is most properly considered under Conn. Gen. Stat. §§ 16-331(a) and 16-43(a).<sup>3</sup>

## **B. PROPOSED TRANSACTION**

Pursuant to an Asset Purchase Agreement (Agreement), dated April 14, 2006, the Applicants propose that Eastern's assets and Certificate be transferred to MetroCast upon closing, subject to the Department's approval. Application, p. 4. Under the terms of the Agreement, the Applicants have designated September 1, 2006, as the closing date. *Id.* Upon consummation of the proposed transaction, Eastern will exit the cable television business. *Id.*, pp. 5 and 7.

MetroCast was organized as a limited liability company under the laws of Delaware on September 22, 2005, and filed for registration as a foreign limited liability company with the Connecticut Secretary of State on April 27, 2006. Application, p. 5, Exhibit No. 12. MetroCast was established for the purpose of operating cable systems in Connecticut. Tr. 6/26/06, pp. 27 and 28. MetroCast is a stand alone, wholly-owned subsidiary of parent Harron Communications, L.P. (Harron) which owns and operates cable television systems in Maine, New Hampshire, Pennsylvania, Maryland and Virginia. Application, p. 5; Response to Interrogatory CATV-3. Harron's two other subsidiaries are MetroCast Cablevision of New Hampshire, LLC, and Gans Communications, LP. Response to Interrogatory CATV-4.

Since the proposed transaction is an asset transfer, the physical assets of the cable system that is being acquired would be transferred from Eastern to MetroCast. Response to Interrogatory CATV-3. In this regard, the name of the service provider

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<sup>2</sup> See also Conn. Gen. Stat. § 16-331(b), 16-331a(k), and the Regulations of Connecticut State Agencies (Conn. Agencies Regs.) §§ 16-333-38, 16-333-40, 16-333-45, and 16-1-87.

<sup>3</sup> Conn. Gen. Stat. § 16-43 states, in part: (a) A public service company shall obtain the approval of the Department of Public Utility Control to directly or indirectly (1) merge, consolidate or make common stock with any other company, or (2) sell, lease, assign, mortgage, except by supplemental indenture in accord with the terms of a mortgage outstanding May 29, 1935, or otherwise dispose of any essential part of its franchise, plant, equipment or other property necessary or useful in the performance of its duty to the public.

from a customer perspective would change as soon as practicable following the close of the transaction. Response to Interrogatory CATV-7.

Upon the close of the proposed transaction, MetroCast will have assets, liabilities, equity income and cash flow. Response to Interrogatory CATV-1. MetroCast will exist and operate as an independent subsidiary of Harron with support from Harron and its other cable operations. Response to Interrogatory CATV-7.

Under the proposed transaction, MetroCast will purchase both the tangible and intangible assets of Eastern in exchange for cash. Response to Interrogatory CATV-8. Additionally, under the proposed transferred franchise agreement, MetroCast would make capital investment to modernize the present cable system. Response to Interrogatory CATV-27. The financing for the transaction would be provided by Harron. Response to Interrogatory CATV-14. Harron currently maintains cash on deposit for the acquisition and the remainder of the purchase price will be financed with Harron's consolidated \$300 million credit facility with SunTrust Bank. Response to Interrogatory CATV-13. After the acquisition date, the assets of Harron and MetroCast will increase by the final purchase price, less the deposit, and the total amount of debt on the consolidated entity will increase by the amount drawn on the credit facility. Response to Interrogatory CATV-9. The results of MetroCast and the other Harron subsidiaries will be consolidated for financial reporting purposes with Harron. Response to Interrogatory CATV-2.

The purchase price for the transaction was determined through an arms-length negotiation between the Buyer and the Seller. Response to Interrogatory CATV-11. Eastern considered several potential suitors for the system, but elected to enter into the Agreement with MetroCast based in part on the reputation of Harron in the cable industry. Tr. 6/26/06, pp. 95 and 96.

### **C. FINANCIAL SUITABILITY**

MetroCast will receive financial support for the transaction from Harron. Response to Interrogatory CATV-14. The Applicants maintain that Harron is well capitalized with financial resources adequate to comfortably enable the Eastern system to be operated as an ongoing business and modernized into an advanced broadband network. Response to Interrogatory CATV-23. In September 2005, Boston Ventures, a leading private equity firm, made an investment of \$50 million into Harron and remains a minority investor. Application, p. 6. Harron is the guarantor of a \$300 million loan facility for which its three subsidiaries are co-borrowers. Response to Interrogatory CATV-6. This credit facility is led by SunTrust Bank on behalf of itself and 17 other banks that are lenders under the facility. Response to Interrogatory CATV-18. The credit facility is expandable to \$425 million for the purpose of refinancing existing debt and making acquisitions. Application, pp. 6 and 7. If Harron were to pursue this expansion of the credit facility, the terms and the conditions of any additional financing would be substantially similar to the terms and conditions of current loans made to Harron or its subsidiaries. Response to Interrogatory CATV-19. Harron has currently drawn \$187 million of this facility. *Id.*, p. 7. The Applicants estimate that immediately after the acquisition, funds would still be available under the credit facility with additional funds available if Harron chooses to expand the facility. The Applicants do not

anticipate that additional drawdowns of debt will be made in 2006 to fund other projects. Response to Interrogatory CATV-20.

The Applicants state that as a private company with no public debt, Harron is not rated by public credit rating agencies; however, its bank group consists of 18 banks, including some of the largest in the nation. They also state that the banks which underwrote Harron's credit agreement are a testament to the confidence of the financial community in Harron's financial strength. Response to Interrogatory CATV-15. Attesting to Harron's ability to increase equity value and cash flow, the Applicants maintain that Harron's New Hampshire cable operation doubled its cash flow from 2001 to 2005, as a result of system rebuild activity and subsequent rollout of new services to subscribers. Response to Interrogatory CATV-16; Tr. 6/26/06, p. 48.

#### **D. MANAGERIAL SUITABILITY**

In determining whether MetroCast is suitable to manage the Eastern franchise, the Department reviewed the experience of the MetroCast staff proposed to oversee and operate the company's Connecticut CATV business.

MetroCast is a new corporation, and has never operated a cable franchise in Connecticut. Harron owns and operates 109 cable television systems in Maine, New Hampshire, Pennsylvania, Maryland and Virginia. Application, p. 5, Exhibit No. 12. Harron has been an independent, family-owned, successfully operated cable entity since 1964. Application, pp. 5 and 6; Tr. 6/26/06, pp. 10 and 15. It has recently focused on acquiring, modernizing and then operating cable systems in the northeastern United States. Harron plans to continue to grow its business through strategic growth and acquisitions, and seeks to double in size to approximately 300,000 subscribers, although no specific time frame has been established to do so. Response to Interrogatory CATV-44. Harron-owned cable systems currently pass over 173,000 homes, serving approximately 110,000 video customers through networks consisting of over 4,800 miles of plant. Response to Interrogatory CATV-44; Application, p. 6. Nearly all of its systems have been upgraded to 860 MHz. Application, Exhibit No. 11.

MetroCast believes that its relatively small size offers certain advantages, especially in terms of local decision-making. Application, pp. 5 and 6; Tr. 6/26/06, p. 17. Eastern also noted Harron's size and management style as one of the reasons Harron was selected as Eastern's successor. Tr. 6/26/06, pp. 95-97. Harron's management team has extensive experience in cable system management and operations, and several members have significant Connecticut cable experience. Application, pp. 5 and 6. Among Harron's management leadership, its Chairman and CEO has almost 30 years of cable experience, including part of the management team that oversaw two Connecticut cable franchises (Group W's Danbury and Middletown cable systems) in the early 1980's, and recently was a principal of Avalon Cable of New England, LLC (Avalon), which operated the Winsted area system prior to its acquisition by Charter Communications, Inc. Tr. 6/26/06, pp. 11 and 12. MetroCast has engaged John Dee to lead its transition team to ensure smooth transition of operations from Eastern. *Id.*, pp. 10 and 11. Mr. Dee has a distinguished 25-year career in Connecticut cable operations. He was most recently Vice President in Charter's Northeast Division for Connecticut operations and previously served as Avalon's Northeast Director of Operations, which

included responsibility for the Winsted system. Application, p. 6; Response to Interrogatory CATV-41; Tr. 6/26/06, pp. 16 and 17. Mr. Dee is anticipated to serve as General Manager of the MetroCast system post-closing. Response to Interrogatory CATV-41. As general manager, Mr. Dee would oversee the day-to-day operations of the system, with technical, community access, marketing, and customer service departments reporting directly to him. Tr. 6/26/06, p. 17; Responses to Interrogatories CATV-4 and CATV-5.

MetroCast continues to evaluate the personnel needs of Eastern's system operations. Presently, MetroCast does not anticipate any significant changes in staffing levels or office and service center locations. MetroCast's initial operational focus will be on the upgrade/rebuild of the system. Tr. 6/26/06, pp. 17 and 18. Response to Interrogatory CATV-33. Eastern currently has approximately 76 employees on its payroll, including 14 administrative positions, 38 technical/field staffers, and 24 in customer service. Response to Interrogatory CATV-40. Several key Eastern employees, including its current general manager and marketing director, have agreed to stay on with MetroCast. Tr. 6/26/06, p. 11.

#### **E. PROGRAMMING, SERVICES, RATES**

With regard to programming, MetroCast is in the process of evaluating Eastern's rates and programming tier structures, and has made no specific commitments related thereto. Response to Interrogatory CATV-32. However, MetroCast has identified seven channels on Eastern's digital basic tier as programming more suitable for the expanded basic tier, including Comedy Central, the History Channel, the Travel Channel, the Food Network, ABC Family, MSNBC, and the Sci Fi Channel. Responses to Interrogatories CATV-34 and CATV-38. MetroCast also intends to increase HDTV programming shortly after closing of this transaction. MetroCast will abide by all applicable laws and regulations for the establishment of rates and charges for regulated rates and services. Any changes to programming services, rates and charges would be implemented in accordance with Connecticut requirements for notifications and related tariff procedures. Id.

MetroCast presently offers high-speed Internet access and HDTV services in all of its franchise areas. Application, Exhibit No. 11. MetroCast has also introduced Video-on-Demand (VOD) services to all digital customers in its New Hampshire and Maine systems, and is actively rolling out VOD services in most of its remaining systems. MetroCast is currently in the planning stages for deployment of IP-based telephony service in several of its franchise areas. MetroCast plans to explore the technical, regulatory and operational benefits to IP-based video services over the coming years. Response to Interrogatory CATV-37.

MetroCast plans to make decisions concerning programming, packages, rates, and services based on factors including customer input, consultation with its advisory council, underlying costs and contractual obligations. According to the Applicants, the horizontal organization of Harron companies allows for almost all decisions regarding day-to-day functions to occur at the local system level. Harron believes that a positive local presence, combined with strong leadership and local community involvement distinguish it as a good cable company, while also providing a competitive advantage.

## Responses to Interrogatories CATV-35 and CATV-37.

MetroCast's policy is to provide ample opportunity for existing and potential customers to submit questions, suggestions and comments on available or desired programming and packages. MetroCast accomplishes this via pre-paid return mail surveys left by technicians at each customer visit, website channel requests and "frequently asked questions" tabs, and follow-up daily quality assurance surveys of 5-10% of all installation and service work. Response to Interrogatory CATV-35.

As a keystone to the Application, MetroCast maintains that the franchise area would benefit significantly from its planned investment of over \$20M in proposed system-wide rebuild/upgrade activities to commence shortly after the scheduled closing. Tr. 6/26/06, p. 9. In addition to increasing system bandwidth to allow expanded video offerings and other advanced services,<sup>4</sup> the rebuild/upgrade would improve system reliability and picture quality. MetroCast states that the quantity and diversity of programming will also be increased, with an emphasis on adding HDTV and VOD services and greater choices for residential and commercial customers. According to MetroCast, cable and Internet services will also be expanded to commercial areas, and Voice-over-Internet Protocol (VoIP) telephony services will be launched to franchise area residents upon completing system rebuild/upgrade. Response to Interrogatory CATV-31; Application, pp. 7 and 8; Tr. 6/26/06, pp. 9 and 10.

### F. CUSTOMER SERVICE

As previously noted, MetroCast does not anticipate any significant changes in staffing levels or office and service center locations. Response to Interrogatory CATV-33 The only proposed customer service change contemplated by MetroCast post-closing is implementation of 24-hour/seven-day customer service access via telephone, to be implemented within 12 months of closing.<sup>5</sup> Responses to Interrogatories CATV-45 and CATV-31; Tr. 6/26/06, pp. 13, 14 and 34. MetroCast also states that it plans to investigate to ensure continued telephone responsiveness, as new and additional services are launched in the franchise area. Response to Interrogatory CATV-33.

MetroCast believes that Eastern has achieved and maintained substantial compliance with its current Franchise Agreement (FA). MetroCast plans to evaluate telephone answering issues raised in response to Department questioning, and is prepared to report to the Department on its recommendation following transfer of the system. Response to Interrogatory CATV-47.

### G. COMMUNITY ACCESS

MetroCast has reviewed the Community Access budget and has no major changes planned at this time, and its evaluation of Eastern's access facilities leads it to believe no immediate modification and/or renovations needed. Response to Interrogatory CATV-53; Tr. 6/26/06, pp. 49, 77 and 78. MetroCast has committed to

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<sup>4</sup> Eastern does not offer VoIP services or VOD. Tr. 6/26/06, p. 22.

<sup>5</sup> Eastern's customer service lines are staffed from 8:30 a.m. to 11 p.m. weekdays, and from 9 a.m. to 1 p.m. Saturday. An answering service handles calls during all other hours. Tr. 6/26/06, p. 24.

maintain the current number of community access channels while the proposed rebuild/upgrade is underway. There are a total of 16 active return lines in the franchise area, all installed prior to the effective date of the current FA. Response to Interrogatory CATV-51; Application, Exhibit No. 5, FA Section 7.4. Upon completion of the rebuild/upgrade, MetroCast will provide each town with its own dedicated PEG access channel: (1) channel for town specific public access, (1) channel for town specific educational and government access, (1) channel dedicated to CT-N and (1) system-wide public access channel. Application, Exhibit No. 6; Response to Interrogatory CATV-53; Tr. 6/26/06, pp. 49-51.

MetroCast proposes to extend the hours of the access facility to include Saturday and Sunday to make those facilities available to a larger group of volunteers. MetroCast also believes extending the weekend hours will expand opportunities for "live" programming. Response to Interrogatory CATV-53.

#### **H. SYSTEM REBUILD/UPGRADE**

Subject to the Department's approval, MetroCast proposes to undertake an upgrade/rebuild of the existing system serving the Franchise Area. The System consists of approximately 1,144 miles of cable plant. To allow sufficient time for network design and engineering, MetroCast initially stated that it plans to complete the system upgrade/rebuild to no less than an 860 MHz broadband network no later than three years from the date of the Department's final Decision approving the Application as proposed.<sup>6</sup> MetroCast will endeavor to use its best efforts to complete the network upgrade as expeditiously as possible, and has set 30 months as its internal completion goal. Application, pp. 7 and 8.

Based on the significant investment it plans to make in undertaking the upgrade/rebuild, MetroCast requests that the Department extend the term of the existing Franchise by ten years.<sup>7</sup> Application, pp. 7 and 8; Response to Interrogatory CATV-46. Based on the Application and the commitments herein, MetroCast believes that the public interest will be served by accelerating the system upgrade into an advanced broadband network, rather than deferring it until completion of a formal renewal proceeding.<sup>8</sup> *Id.* MetroCast declined to commit to any upgrade commitment if the term of the franchise is not extended as requested. Response to Interrogatory CATV-46.

#### **I. APPLICANT'S SUITABILITY AND TRANSFERRED FRANCHISE PROPOSAL**

The Department has reviewed the purchase price of the asset transfer in comparison to the Eastern subscriber count as of the agreement date. The Department

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<sup>6</sup> Some upgrade work has already been commenced and completed by Eastern. Tr. 6/26/06, pp. 20, 21 and 42.

<sup>7</sup> In its Exceptions filed August 1, 2006, MetroCast clarified its testimony regarding the length of the term it was requesting by stating that it sought a franchise term of ten years commencing September 1, 2006.

<sup>8</sup> MetroCast also proposed certain other modifications to the existing FA. A copy of the proposed transferred FA was submitted as Exhibit No. 6 to the Application.

finds that the purchase price per subscriber for this transaction aligns adequately within the range of industry data for this statistic provided by the Applicants. Response to Interrogatory CATV-12.

The Department also reviewed Harron's current financial statements and finds that Harron has adequate debt- and equity-to-capital positions, income from operations, and cash flow from operating activities. Application, Exhibit 5. The Department further reviewed the pro forma five-year statement of Harron combined with Connecticut operations and found that key financial measurements remained consistent, with various financial ratios improving over the time period shown through 2010. Schedule CATV-23. The Applicants also testified that such pro forma financials and the resultant financial ratios calculated include the effect of the proposed capital investment for the system upgrade/rebuild planned over the next three years. Tr. 6/26/06, p. 86. Based on the Department's review of the financial data provided by the Applicants, Harron's successful financial management of cable operations in other states, and the Applicants' testimony that adequate financing for this transaction is currently available through Harron's credit facility, the Department finds that the Buyer has the necessary financial capability to purchase the assets of Eastern and to support the ongoing operations pursuant to the proposed transaction in the Application. Id., p. 15.

The Department has also reviewed the credentials and experience of MetroCast's proposed Connecticut management team, and finds them well-qualified. MetroCast has assembled a Connecticut executive team that includes key management from Eastern's current team, and individuals with significant experience in other franchise areas throughout New England. The Department notes with favor MetroCast's testimony that it encourages local decision-making, and plans no significant changes in staffing levels or office and service center locations in the Eastern franchise area. Indeed, Eastern testified that chief among the reasons it chose MetroCast as its successor, was because MetroCast was most likely to keep operations "local," including staff and the Eastern call center. Id., pp. 17, 95 and 96.

Other aspects of the Application deserve favorable comment as well. Although MetroCast made no specific commitments related to programming and rates, it has identified seven channels it plans to migrate from a digital tier to the lower, expanded basic tier, thus making them available to a wider subscriber base. MetroCast also plans to make decisions concerning programming, packages, rates, and services based on a local level after considering factors including customer input, consultation with its advisory council, underlying costs and contractual obligations.

MetroCast also proposes a significant upgrade of the system to expand its bandwidth and allow for new and expanded offerings to include High Definition and VOD services, VoIP telephony services, and to extend Internet services to commercial areas. The Company believes that a positive local presence, combined with strong leadership and local community involvement distinguish it as a good cable company, while also providing a competitive advantage.

The revised Franchise Agreement presented by MetroCast is substantially similar to the current Eastern FA, with the notable exceptions of the upgrade to be completed

within three years,<sup>9</sup> the extension of the franchise term, expanded customer service and community access facility hours, and additional dedicated PEG capacity for franchise area towns.

Having found that MetroCast meets the financial, managerial, and technical tests to acquire Eastern's assets and Certificate, the Department must determine an appropriate franchise term. The Department notes that many of the statutory criteria for determining an appropriate term contemplate analysis of the operator's past performance in meeting the local community's cable-related needs. In terms of compliance (franchise agreement, regulations, and law), successful management,<sup>10</sup> provision of quality customer service, working collaboratively with its advisory council, providing quality and diverse programming choices, and other important factors, MetroCast has no Connecticut experience for the Department to evaluate.<sup>11</sup>

Department records indicate receipt of only three complaints from Eastern subscribers in all of calendar year 2005. This is a substantial accomplishment and sets a high standard of customer satisfaction for MetroCast to maintain.<sup>12</sup> However, the Department notes that measurements of telephone responsiveness presented by Eastern and MetroCast (for its New Hampshire operations) do not demonstrate substantial compliance with the call responsiveness provisions of Conn. Gen. Stat. § 16-333a(k).<sup>13</sup> In May of 2006, almost 20% of calls to Eastern were not answered within the two-minute maximum. Of the total calls "received," almost 11% were abandoned. Response to Interrogatory CATV-49. MetroCast's telephone responsiveness in its New Hampshire franchises for the same period indicates a lower abandoned rate (6.2%), but an *average* hold time near one-and-a-half minutes. Response to Interrogatory CATV-50.

Pursuant to Conn. Gen. Stat. § 16-331(k), when the Department transfers a cable certificate, the amount of money that the company or organization responsible for community access shall receive for such operations from subscribers must be included in the franchise agreement. Pursuant to the Department's Decision dated April 26, 2006, in Docket No. 06-01-04, DPUC Annual Community Access Support Review, Eastern is to fund its 2006 community access operations at an inflation adjusted amount of \$6.04 per subscriber. The Department finds that because MetroCast is proposing to manage and operate community access consistent with the obligations included in the

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<sup>9</sup> In its Exceptions, MetroCast states that it would commit in its transferred franchise agreement to complete the rebuild/upgrade within 30 months from date of transfer if the Department awarded it a ten-year franchise term. MetroCast Exceptions, p. 8.

<sup>10</sup> As noted, several members of MetroCast's senior staff have some CATV experience in Connecticut with other operators.

<sup>11</sup> No franchising authority has denied a request by Harron or MetroCast to acquire a cable franchise. Response to Interrogatory CATV-43.

<sup>12</sup> The Eastern Advisory Council also remarked that Eastern has fostered a positive rapport with the community and provided excellent community service over its many years of its operation. Response to Interrogatory CATV-57.

<sup>13</sup> Conn. Gen. Stat. § 16-333k(3) requires each community antenna television system to connect each customer service telephone call to a customer service representative within two minutes during normal business hours, unless there is an emergency in which case the customer should receive a recorded message describing the problem and offering assistance.

existing FA, required access support levels should remain unchanged from Eastern's current FA obligations.

Only two letters were received from Eastern subscribers regarding MetroCast's proposal. One subscriber wrote regarding discounted basic cable for seniors and another to support expanded competition in the Connecticut cable marketplace.<sup>14</sup> The Eastern Advisory Council is in favor of the Application. Responses to Interrogatories CATV-55 and CATV-57.

The minimum term for which MetroCast is eligible is a five-year term and the maximum term is 15 years. MetroCast has requested a ten-year extension of Eastern's current term which is set to expire on June 30, 2009.

Fair evaluation of MetroCast's credentials and proposals warrants a term longer than the five-year minimum. Upon due consideration to the totality of MetroCast's proposal, the Department will award the Company a nine-year franchise term, expiring nine years from the scheduled closing date of September 1, 2006, provided that the Company modifies its proposed franchise agreement to commit to complete, activate and ubiquitously deploy no later than March 1, 2009, a system-wide upgrade to no less than 860 MHz.

### III. FINDINGS OF FACT

1. Eastern Connecticut Cablevision, Inc. and MetroCast Communications of Connecticut, LLC jointly request Department approval of the transfer to MetroCast of Eastern's assets, including its Certificate.
2. Eastern's 550 MHz 1,144 plant mile HFC cable system serves approximately 36,000 subscribers in the franchise area comprising the towns of East Lyme, Griswold, Killingly, Montville, New London, Plainfield, Putnam, Sterling and Waterford.
3. Eastern provides service pursuant to a franchise agreement with the Department in accordance with Department Decisions dated May 19, 1999, and June 16, 1999, in Docket No. 96-07-23, Application of Eastern Connecticut Cable Television, Inc. for Franchise Renewal.
4. Conn. Gen. Stat. § 16-331(d)(1) sets a franchise term of not less than five years for CATV certificates of public convenience and necessity transferred after June 1, 1988.
5. MetroCast's parent maintains cash on deposit for the acquisition and the remainder of the purchase price will be financed with Harron's consolidated \$300 million credit facility with SunTrust Bank.

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<sup>14</sup> MetroCast will continue to offer senior discounted basic cable rates. Application, Exhibit No. 6; Tr. 6/26/06, p. 47.

6. Harron's New Hampshire cable operation doubled its cash flow from 2001 to 2005, as a result of system rebuild activity and subsequent rollout of new services to subscribers.
7. Harron has been an independent, family-owned, successfully operated cable entity since 1964.
8. Harron's management team has extensive experience in cable system management and operations, and several members have significant Connecticut cable experience.
9. MetroCast will abide by all applicable laws and regulations for the establishment of rates and charges for regulated rates and services.
10. The proposed system upgrade would improve system reliability and picture quality.
11. The proposed system upgrade will increase the quantity and diversity of programming and services available.
12. MetroCast plans to implement 24-hour/seven-day customer service access.
13. MetroCast plans to expand the community access facility's hours of operation.
14. MetroCast plans to provide expanded dedicated community access channels for each franchise area town.
15. MetroCast plans to undertake an upgrade/rebuild of the existing system to 860 MHz.
16. MetroCast requests that the Department extend the term of the existing franchise by ten years.
17. MetroCast declined to commit to any upgrade commitment if the term of the franchise is not extended as requested.
18. The proposed purchase price per subscriber for this transaction aligns adequately within the range of industry data for this statistic provided by the Applicants.
19. Measurements of telephone responsiveness presented by Eastern and MetroCast do not demonstrate substantial compliance with the call responsiveness provisions of Conn. Gen. Stat. § 16-333a(k).
20. Eastern is to fund its 2006 community access operations at an inflation adjusted amount of \$6.04 per subscriber.

#### **IV. CONCLUSION AND ORDERS**

##### **A. CONCLUSION**

The suitability of MetroCast's management and its ability to perform efficiently have been satisfactorily demonstrated, as has its financial responsibility. The Department concludes, therefore, that the proposed transaction is in the public interest, and approves the transfer of Eastern's assets and its Certificate of Public Convenience and Necessity to MetroCast pursuant to Conn. Gen. Stat. §§ 16-43 and 16-331(b), subject to the terms and conditions of a revised franchise agreement with the Department, to be filed pursuant to the Department's findings herein.

##### **B. ORDERS**

For the following orders, please submit an original and eight copies of the requested material, identified by Docket Number, Title, and Order Number to the Executive Secretary.

1. No later than August 23, 2006, MetroCast will execute and submit a revised, proposed franchise agreement consistent with this Decision, for the Department's review and approval.
2. No later than September 8, 2006, MetroCast shall notify the Department in writing whether the transaction has been consummated in the form described in this proceeding. If the transaction has been consummated with any modification or amendment, MetroCast shall so notify the Department. If the closing has not occurred by September 8, 2006, MetroCast shall provide a complete explanation of the status of the transaction as of that time, why it has not been completed, and when closing is expected to occur.
3. The revised proposed franchise agreement shall include quarterly reporting requirements regarding telephone accessibility activity as provided in Response to Interrogatory CATV-49. The first such report for the calendar quarter ending December 31, 2006, will be due no later than January 31, 2007.
4. The revised proposed franchise agreement shall include quarterly reporting requirements regarding upgrade activity. Each report will identify plant miles upgraded in the prior quarter, and projected mileage to be upgraded in the subsequent quarter. Additionally, each report shall also include a description of any milestone that is not met, the reason it was not met and what corrective action MetroCast plans. The first such report for the calendar quarter ending December 31, 2006, will be due no later than January 31, 2007.

**DOCKET NO. 06-05-05 JOINT APPLICATION FOR APPROVAL TO TRANSFER  
CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY AND OTHER ASSETS OF EASTERN  
CONNECTICUT CABLE TELEVISION, INC. TO  
METROCAST COMMUNICATIONS OF CONNECTICUT,  
LLC**

This Decision is adopted by the following Commissioners:

Anthony J. Palermino

Anne C. George

Donald W. Downes

**CERTIFICATE OF SERVICE**

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

*Louise E. Rickard*

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Louise E. Rickard  
Acting Executive Secretary  
Department of Public Utility Control

August 23, 2006

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Date