STATE OF NEW HAMPSHIRE
SUPREME COURT

SUPREME COURT DOCKET NOS. 2009-0168 & 2009-0432 (Consolidated)

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

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CERTIFICATE OF SERVICE

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I hereby certify that a true copy of the Supplemental Reply Memorandum of MetroCast Cablevision of New Hampshire, LLC was served upon the following parties on Friday, April 23, 2010, by first class mail and electronic mail.

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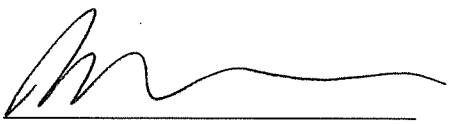

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April 23, 2010

STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NOS. 2009-0168 & 2009-0432 (CONSOLIDATED)

APPEAL OF
UNION TELEPHONE COMPANY d/b/a UNION COMMUNICATIONS

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# APPENDIX TO SUPPLEMENTAL REPLY MEMORANDUM OF METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC

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April 23, 2010

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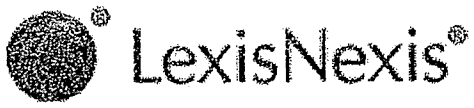

LEXSTAT 47 U.S.C. 253

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 111-156 WITH GAPS OF PL 111-148 AND PL 111-152, APPROVED 4/7/2010 ***

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5. WIRE OR RADIO COMMUNICATION
COMMON CARRIERS
DEVELOPMENT OF COMPETITIVE MARKETS

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*47 USCS § 253*

§ 253. Removal of barriers to entry

(a) In general. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [*47 USCS § 254*], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers. Nothing in this section shall affect the application of section 332(c)(3) [*47 USCS § 332(c)(3)*] to commercial mobile service providers.

(f) Rural markets. It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) [*47 USCS § 214(e)(1)*] for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) [*47 USCS § 251(c)(4)*] that effectively prevents a competitor from meeting the requirements of section 214(e)(1) [*47 USCS § 214(e)(1)*]; and

(2) to a provider of commercial mobile services.

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG No. 919-CR

Petition of Bellerud Communications, LLC, for a certificate of public good to operate as a provider of telecommunications services in Vermont, including service to the local exchange )

Order entered: 3/31/2010

## I. INTRODUCTION

Bellerud Communications, LLC ("Bellerud" or the "Company"), requests issuance of a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 231, to provide intrastate telecommunications service in Vermont, including service to the local exchange. In this Order, the Vermont Public Service Board ("Board") concludes that Bellerud should be issued a CPG as requested to allow the Company to begin operating as a telecommunications carrier within the state.

## II. PROCEDURAL HISTORY

On March 10, 2010, Bellerud, pursuant to 30 V.S.A. § 231 and the rules and regulations of the Board, filed a Telecommunications Provider Registration Form ("Registration Form") and the required accompanying documentation, seeking a CPG to offer resold local exchange and resold interexchange telecommunications services in the State of Vermont. On March 24, 2010, the Vermont Department of Public Service ("Department") filed a letter with the Board in which it recommended that a CPG be granted without the need for investigation or hearings. The Board has reviewed the petition and accompanying documents and agrees that a CPG should be issued without hearing. As a result, newspaper publication is not required prior to issuance of the CPG. 30 V.S.A. §§ 102(a), 231(a).

Based upon the Registration Form and accompanying documents, the Board makes the following findings.

## III. Findings

1. Bellerud has all the necessary authority to transact business in Vermont. Bellerud is incorporated in Texas and was granted a Certificate of Organization by the Vermont Secretary of State effective January 13, 2010. Registration Form at Exhibit C1.

2. Bellerud proposes to provide resold local exchange and interexchange telecommunications services throughout Vermont. Registration Form at 4.

3. Bellerud is currently registered to provide telecommunications services in the states of Alabama, Arkansas, Florida, Indiana, South Carolina and Tennessee. Registration Form at 4.

4. Bellerud has provided the necessary documentation regarding management structure and financial information. Registration Form at Exhibits C2 and C3.

5. Bellerud has not filed for bankruptcy and has never been the subject of an investigation by a state or federal authority. Registration Form at 4.

## IV. Discussion

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g, Docket No. 5012, Petition of Burlington Telephone Company, Order of 5/27/86.

The first rationale for entry regulation – "consumer protection"– remains one of the Board's policy objectives. Having reviewed the petition of Bellerud and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of Bellerud's petition nor do they warrant an investigation at this time.

The second – or "franchise protection"– rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition

outweighed any flaws, and that competition should be permitted in Vermont's markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.[1]

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements and Docket No. 5713 investigation and decisions."[2] The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

> impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[3]

1. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

2. Vermont Telecommunications Plan (dated December 1996) at iii.

3. 47 U.S.C.A. § 253(b).

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may not use that authority to prohibit all competitive entry.[4] Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

Pursuant to Board Rule 7.500, non-dominant telecommunications carriers, including Bellerud, are no longer required to file tariffs with the Board. However, all carriers should familiarize themselves with the consumer protection provisions contained in Board Rule 7.600. In particular, Carriers intending to provide operator services should review the rules governing provision of these services in section 7.609(G) of the rules.

Additionally, the Company should be aware of the Board's policy in connection with the provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the Vermont market that provide debit prepaid calling card services. *See* C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.[5] Consequently, we ordered World Telecom Group and Quest Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also stated that we would examine the issue of whether this requirement should be instituted on an industry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already

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4. *In the Matter of Classic Telephone, Inc.*, Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

5. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. See, e.g., C.P.G. #156, Petition of IDB WorldCom Services, Inc., Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a guideline to certain consumer protection concerns" and are not required by the Public Service Board. Id. at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform the Company that should it decide to include the provision of debit cards among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid calling card services, for the first 12 months of operation. This approach will be fair to the Company, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

## V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Based on the above findings, discussion and conclusion, the provision of intrastate telecommunications services by Bellerud Communications, LLC ("Bellerud"), including service to the local exchange, will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG.

2. If Bellerud at any time in the future proposes to offer operator services, it shall be required to comply with Board Rule 7.609(G).

3. If Bellerud at any time in the future proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

4. Bellerud intends to conduct business in the State of Vermont under the name Bellerud Communications, LLC, and has filed appropriate documents with the Secretary of State. If Bellerud intends to do business in the State of Vermont under a name other than the name in use on the date of this Order, it shall file a notice of the new trade name with the Clerk of the Board

and the Vermont Department of Public Service at least 15 days prior to commencing business under the new trade name.[6]

Dated at Montpelier, Vermont, this 31st day of March, 2010.

s/James Volz )
)
) PUBLIC SERVICE
)
s/David C. Coen ) BOARD
)
) OF VERMONT
s/John D. Burke )

OFFICE OF THE CLERK

FILED: March 31, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*

6. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

# The Vermont Statutes Online

## Title 30: Public Service

### *Chapter 5: POWERS AND DUTIES OF DEPARTMENT OF PUBLIC SERVICE*

### 30 V.S.A. § 231. Certificate of public good; abandonment of service; hearing

**§ 231. Certificate of public good; abandonment of service; hearing**

(a) A person, partnership, unincorporated association, or previously incorporated association, which desires to own or operate a business over which the public service board has jurisdiction under the provisions of this chapter shall first petition the board to determine whether the operation of such business will promote the general good of the state, and shall at that time file a copy of any such petition with the department. The department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in subsection 225(b) of this title. Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the department requests a hearing on the petition, or, if the board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. The director for public advocacy shall represent the public at such hearing. If the board finds that the operation of such business will promote the general good of the state, it shall give such person, partnership, unincorporated association or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.

(b) A company subject to the general supervision of the public service board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the board or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the public service board, after notice and opportunity for hearing, and upon finding by the board that the abandonment or curtailment is consistent with the public interest; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under section 209(b) and (c) of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1975, No. 212 (Adj. Sess.), § 2; 1979, No. 204 (Adj. Sess.), § 34, eff. Feb. 1, 1981; 1987, No. 87, § 8; 1995, No. 99 (Adj. Sess.), § 9; 1999, No. 157 (Adj. Sess.), § 10.)

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65-407 PUBLIC UTILITIES COMMISSION

Chapter 280: PROVISION OF COMPETITIVE TELECOMMUNICATIONS SERVICES

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SUMMARY - This Chapter, adopted pursuant to 35-A M.R.S.A. §§ 104, 111, 301, 1301, 2102, 2105, 2110, 7101, 7101-B, 7104-A, and 7303, establishes economically efficient and equitable access charges for- the provision of competitive services; and describes the process for intrastate competitive telecommunications carriers to obtain authority from the Commission to provide service.

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# STATE OF MAINE
# PUBLIC UTILITIES COMMISSION

## CHAPTER 280

## COMPETITIVE TELECOMMUNICATIONS SERVICES

### § 1 PURPOSE

The purposes of this Chapter are to establish economically efficient and equitable access charges for the provision of competitive-services and to describe the process for intrastate competitive telecommunications carriers to obtain authority from the Commission to provide service.

### § 2 DEFINITIONS

A. **Access Charges.** "Access charges" and "access rates" are those charges and rates, required by section 8 of this Chapter, that an interexchange carrier (defined herein) must pay in order to provide intrastate interexchange service in Maine.

B. **Common Line; Common Line Costs.** A "common line" is a facility that carries telecommunications between a local switch and a customer premises. The common line is also known as a "loop," and, for local exchange purposes, a "link." Common lines may carry intrastate local exchange, intrastate interexchange and interstate communications. Common line costs are subject to recovery as provided in section 8(C).

C. **Competitive Local Exchange Carrier (CLEC).** A competitive local exchange carrier" (CLEC) is any local exchange carrier (LEC) (defined herein) that is not an incumbent local exchange carrier (ILEC) (defined herein).

D. **Incumbent Local Exchange Carrier (ILEC).** "Incumbent local exchange carrier" (ILEC) means a local exchange carrier (defined herein) or its successor that provided local exchange service in a defined service territory in Maine on February 8, 1996. A local exchange carrier that is defined as an ILEC pursuant to this subsection shall not be considered to be an ILEC in any area to which it expands its service after February 8, 1996, and in which another ILEC or competitive local exchange carrier (CLEC) was providing service on the date of that expansion, unless it is found to be an ILEC by this Commission or by the Federal Communications Commission pursuant to 47 U.S.C. § 252(h)(2) provider as defined by federal law.

E. **Interexchange Access.** "Interexchange access" and "interexchange access services" refer to the access services provided by local exchange carriers and used by interexchange carriers for the carriage of intrastate interexchange traffic. The pricing for interexchange access services is governed by section 8 of this Chapter.

F. **Interexchange Carrier (IXC).** An "interexchange carrier" (IXC) is any person, association, corporation, or other entity that provides intrastate interexchange telecommunications services, including a local exchange carrier (LEC), whether or not that entity is a public utility. An interexchange carrier includes an entity that provides services using facilities that it owns, leases, controls, operates or manages, including leased private lines or special access facilities, and an entity that resells switched services provided by other carriers. An IXC does not include a commercial mobile radio service (CMRS) provider as defined by federal law.

G. **Interexchange Communications or Traffic; Interexchange Service.** For the purposes of this Chapter, "interexchange communications" or "interexchange traffic" are any switched or private line telecommunications between telephone exchanges or wire centers, except that switched traffic between points having local calling with one another (extended area service or EAS) under local. exchange carrier's schedule approved by the Commission is not considered "interexchange." The provision of facilities or services for the carriage of interexchange traffic is an "interexchange service."

H. **Intrastate.** "Intrastate" as used in this chapter refers to the provision or carriage of an "intrastate communication" (as defined in this section), or to a carrier or service that provides intrastate communications.

I. **Intrastate Communication or Telecommunication.** An intrastate communication" or "intrastate telecommunication" is a telecommunication that is functionally intrastate, with points of origination and termination within Maine, regardless of the actual routing of the communication. In the case of mobile telecommunications services, the points of origination and termination of the communication shall be assumed to be the antenna locations at which the carrier acquires and passes on the end user's signal, unless the actual location of the end user can be determined.

J. **Local Exchange Carrier (LEC)** . A "local exchange carrier" (LEC) is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), that provides telephone exchange service or interexchange access service within a telephone exchange pursuant to authority granted by or under Private and Special Law of the State of Maine; or Public Law 1895, ch. 103, § 103 or subsequent codification's thereof; or 35-A M.R.S.A. § 2102, or prior codification's thereof; LECs include incumbent local exchange carriers (ILECS) (defined herein) and competitive local exchange carriers (CLECS) (defined herein), and local resellers (defined herein). A local exchange carrier does not include a commercial mobile radio service (CMRS)

K. **Operator Services.** "Operator services" are services performed by a live operator or by electronic means to obtain billing and other information for telephone calls not billed automatically to the telephone line from which the call is originated. Telephone calls that use operator services include, but are not limited to, credit or calling card calls, debit card calls collect calls, calls billed to a third number, and person-to-person calls. Information that is collected by an operator service includes, but is not limited to, a calling or credit card number, a debit card number, the name of the caller and a third-party billing number.

L. **Resale And Sharing.** "Resale" is the acquisition by a telecommunications carrier of a service authorized by the Commission from an authorized telephone utility, or from an entity that by law does not require authority, and the subsequent sale of that service, in a technically unaltered form, with or without a different price structure, to end-users. If the carrier uses the acquired service together with its customers, the resale is termed "sharing."

M. **Telecommunications Carrier.** A "telecommunications carrier" is any person, association, corporation, or other entity that provides intrastate telecommunications services, whether or not that entity is a public utility. Telecommunications carrier include all interexchange carriers (IXPS) (defined herein) and all local exchange carriers (LECS) (defined herein).

## § 3 APPLICABILITY

A. **General Applicability.** This Chapter applies to the provision of all interexchange and local competitive telecommunications services, except as provided in subsection B.

B. **Exception: Inapplicability to Pay Telephone Service Providers.** Nothing in this Chapter will apply to the certification or provision of local service by pay telephone service providers, which are governed by Chapter 250 of the Commission's rules, 65-407 C.M.R. 250.

C. **Exception: Inapplicability to CMRS Providers for Intrastate Traffic Within a Single MTA.** This Chapter shall not apply to Commercial Mobile Radio Service (CMRS) providers, as defined by Federal law, to the extent their intrastate Maine traffic is contained entirely within a single Major Trading Area (MTA), as established by Federal Communications Commission regulation.

## § 4 APPROVAL REQUIRED

A. **Public Convenience and Necessity; Required Findings.** No telecommunications carrier that is a telephone utility, as defined by 35-A M.R.S.A. § 102(19), shall provide competitive local exchange or interexchange telecommunications service in or to a municipality in which another telephone utility is furnishing or is authorized to provide telephone service unless the Commission has first approved the furnishing of that service pursuant to 35-A M.R.S.A. §§ 2102 and 2105 by making a declaration that the public convenience and necessity require an additional public utility. Approval to provide any service shall not be issued unless the applicant has presented sufficient evidence for the Commission to make the following findings:

(1) The applicant has adequate financial ability and willingness to cover any customer advances and deposits; and to pay intrastate access charges and interconnection charges on all intrastate telecommunications services;

(2) The applicant (other than a interexchange carrier that is a reseller or A local exchange carrier that provides service solely through resale of local service purchased from a wholesale schedule of another LEC) has the technical ability to measure and record intrastate traffic information and billing amounts that may be necessary for the calculation of access and interconnection charges; and

(3) The applicant is willing and able to comply with State law and Public Utilities Commission rules, including, but not limited to, this Chapter.

B. **Approval for Additional Service or Service Area.** A telephone utility that is authorized to provide either interexchange service or local exchange service and that desires to provide the other service or to extend either service to additional areas shall obtain further approval pursuant to 35-A M.R.S.A. § 2102, but does not need to provide the information required by this section unless the information supplied previously has changed since the time of the any earlier application. Any further application shall provide a reference by docket number to a prior application.

C. **Contents of Application.** Any application for approval pursuant to 35-A M.R.S.A. § 2102 to operate as a telephone utility and to provide competitive telecommunications services shall contain the following information, as applicable, except to the extent a waiver is granted pursuant to section 14:

(1) Name of the applicant and any names under which the applicant does business (d/b/a's).

(2) Address of the principal office of the applicant.

(3) State (s) under which the applicant is organized and form of organization (corporation, partnership, association, firm, individual, etc.), including the date of organization.

(4) A statement that the applicant, if it is a corporation, is organized under the laws of the State of Maine; or, if it is a foreign corporation, evidence that it is authorized to do business in Maine pursuant to 13-A M.R.S.A. § 1201 et seq. and the name and address of the corporation's registered office and agent in Maine, as required by 13-A M.R.S.A. § 1212.

(5) Names and addresses of the officers and directors of the applicant.

(6) Names and addresses of any affiliated interests of the applicant, as defined by 35-A M.R.S.A. § 707(1), that are public utilities in Maine, as defined by 35-A M.R.S.A. § 102(13), or that own more than 10% of the applicant.

(7) A statement of whether the applicant is applying for authority to offer local service, interexchange service, or both, and the geographic areas for which the applicant seeks to obtain authority to serve. The application may designate those geographic area(s) by political boundaries or by the service areas of incumbent local exchange carriers or other areas specifically designated by the applicant.

(8) A proposed initial schedule setting forth rates and terms and conditions of the proposed services, or an explanation of why a proposed initial schedule is not included.

(9) Name(s), address and telephone number(s) of the person(s) whom the Commission should contact in regard to the proposed rate schedule and terms and conditions required by paragraph 8 and for future filings following the granting of authority.

(10) Name(s), address and telephone number(s) of the person(s) whom the Commission should contact in regard to complaints by consumers.

(11) Name(s), address and telephone number(s) that customers of the applicant should contact for inquiries about service, rates and bills.

(12) A statement that the applicant is willing and able to comply with this Commission's rules, including this Chapter.

(13) A statement whether the applicant presently or within the past 5 years has, to its knowledge, been the subject of an investigation (not including the initial application to provide service) by a state or federal regulatory authority, and, if so, a copy of the final order or settlement if the proceeding has concluded, or a copy of the notice of investigation and any interim orders if the proceeding is pending.

(14) A statement whether the applicant proposes to offer operator services (as defined in section 2(K) and, if so, a reference to the pages of the applicant's proposed rate schedule at which the proposed operator service rates are located.

(15) A statement of the means of access (feature group, special access, etc.) that the applicant intends to use for the provision of intrastate service in Maine; the location of any points of presence (POPS) at which that access is or is intended to be obtained and the local exchange carrier(s) from which it will be obtained; and a description of the means the applicant will use to identify its traffic as intrastate or interstate for the purpose of any intrastate billing reporting requirement required by this Chapter or the access administrator.

## § 5 AVAILABILITY OF SERVICES AND FACILITIES

A. **Requests.** Any person may make a *bona fide* request to a local exchange carrier (LEC) for a specific service, using the LEC's network not available in the requester's area or for access to its network, facilities. The request shall specify particular locations, times, and quantities desired by the requester. A request that is made to managerial, marketing or business office personnel shall constitute a bona fide request if it complies with the requirements of this subsection.

B. **Responses.** the local exchange carrier shall respond to a bona fide request. Responses shall take one of the following forms:

(1) **Request Satisfied.** The request will be considered satisfied if within 2 months of the request the telecommunications local exchange carrier has provided the requested service or facilities, or has agreed to provide it within 3 months of the request pursuant to special contract or rate schedules approved by the Commission.

(2) **Request Not Satisfied.** Within 2 months after receipt of a request for service or facilities if the local exchange carrier has not provided the requested service or facilities, and has determined that it will not provide it, or will not seek Commission approval of schedules or contracts governing such provision, it shall notify the Commission and the requester in accordance with the requirements in subsection C(1) below.

(3) **Disposition of Request Not Resolved.** Within 2 months after receipt of a request for service or facilities or if the local exchange carrier has not determined whether the requested service or facilities will be provided, it shall notify the Commission and the requester in accordance with the requirements of subsection C(2) below.

C. **Notification Requirements.**

(1) **Request Not Satisfied.** Notification required to be made in subsection B(2) above shall contain the following information:

(a) Identification of the person or other entity making the request;

(b) The date on which the request was made and/or received, and any date(s) on which the service or provision of facilities was requested to be effective;

(c) Any determination made by the local exchange carrier as to the bona fide nature of the request;

(d) The specific reason (s) that the requested service or facilities cannot or will not be provided, or reason (s) that the local exchange carrier's existing schedules, operating practice, contract(s), or corporate policy should not be changed to accommodate the request within the time requested or within 3 months after receipt of the request; and

(e) A report of any offer made by the local exchange carrier to the requester to furnish a similar or substitute service or facilities and the disposition of that offer.

(2) **Disposition of Request Not Resolved.** The notification which is required to be made in subsection B(3) above shall contain the following information:

(a) The identification of the person or other entity making the request;

(b) The date on which the request was made and/or received, and any date(s) on which the service or provision of facilities was requested to be effective;

(c) A description of any preliminary findings made with respect to provision of the requested service or facilities and

(d) The anticipated date on which a determination as to the provision of service or facilities will be made.

(3) **Filing of Responses.** Notification required to be made under this subsection must be filed with the Commission within 2 months after receipt of the request. A copy of the notification must be provided to the requester.

D. **Commission Review.** A request may obtain review of an local exchange carrier's refusal to provide a requested service or facility pursuant to section 15 of this Chapter.

## § 6 PROVISION OF FACILITIES BY LOCAL EXCHANGE CARRIERS TO OTHER TELECOMMUNICATIONS CARRIERS.

A. **General Obligation of LECS.** Upon request by an interexchange carrier, a local exchange carrier LEC shall provide access services and facilities in those areas where it provides service and where that provision is technically feasible, by using its own facilities or by obtaining them from another telecommunications carrier. Access facilities should be provided in a timely manner and in a quantity sufficient to accommodate the traffic expected to be generated by the interexchange carrier.

B. **Excessive Traffic.**

1. **Limitation or Delay.** If the provision of the access services or facilities will cause substantial concentration, redirection, or other change to traffic volumes carried on the public switched network that may result in a degradation of service to the LEC's other customers, the LEC shall apply to the Commission for a waiver of these provisions to allow it to terminate, limit, or delay temporarily the provision of service to the requesting interexchange carrier until sufficient facilities can be made available.

2. **Capital Additions; Payment.** If an interexchange carrier wishes to offer competitive services from an exchange which has Extended Area Service (EAS) calling to another exchange, it must obtain Feature Group D (FGD) type access from the affected local exchange carrier(s) at each of the exchanges in which the IXC competitive telecommunications services are to be provided. If FGD is unavailable, the IXC shall pay the affected local exchange carrier all the capital and other costs it incurs that are reasonably

necessary to ensure that the access provided to the competitive carrier will not significantly degrade the service to the affected local exchange carrier's own end-users. A reasonable portion of those costs shall be collected in the form of an installation charge to the IXC at the time the capital additions are required.

## § 7 UNAUTHORIZED INTEREXCHANGE SERVICE; BLOCKING OF UNAUTHORIZED TRAFFIC

All interexchange carriers shall pay access charges as required by section 8 of this Chapter, and their continued authorization to provide service is contingent upon such payment. Where it is technically possible to distinguish and separate intrastate from interstate traffic, LECs shall deny intrastate access to interexchange carriers (IXCS) that are telephone utilities as defined in 35-A M.R.S.A. § 102(19) but are not authorized to provide intrastate telecommunications services. Where the LEC or LECs cannot deny access and the unauthorized IXC can block unauthorized traffic, the IXC shall block all such intrastate traffic. For unauthorized intrastate interexchange traffic that cannot be blocked, the unauthorized IXC shall pay a charge that is equal to the undiscounted Message Telecommunications Service (MTS) of the local exchange carrier.

## § 8 ACCESS RATES

A. **Rate Schedules.** Each local exchange carrier authorized to provide local exchange service in the State of Maine shall file and maintain rate schedules establishing that carrier's access rates pursuant to 35-A M.R.S.A. § 307.

B. **Rates for All LECs Effective June 1, 2003 and Thereafter.** No later than June 1, 2003 (or such later date as may be established by statute), all local exchange carriers shall establish intrastate access rates that are less than or equal to the interstate access rates for that carrier that are in effect on June 1, 2003 (or such other date as may be established by statute). On or before June 1 of every two years thereafter (all odd-numbered years), except to the extent that the need for subsequent changes is modified by statute, all local exchange carriers shall reestablish intrastate access rates that are less than or equal to the interstate rates for that carrier that are in effect on June 1 of that year. If a date later than June 1, 2003, is established by statute for the implementation of intrastate access rates that are less than or equal to specified interstate access rates, the Commission, by order issued in a rate proceeding or in a proceeding under Chapter 288, § 3, may require a LEC to change its access rates to a level specified by the Commission prior to the final date established by statute, provided such an order is not precluded by statute.

C. **Direct End-User Access Charges Prohibited.** All access charges imposed by LECs shall be charged directly to interexchange carriers and no component of an access charge shall be charged by an local exchange carrier directly to an end-user.

## § 9 SCHEDULE FILINGS BY INTEREXCHANGE CARRIERS; CHANGES IN RATES

A. **Rate Schedules.** Interexchange carriers subject to the authority of the Commission shall file schedules of rates, terms and conditions as provided in 35-A M.R.S.A. § 307. Those rates, terms and conditions shall be subject to provisions of all applicable statues, including 35-A M.R.S.A. §§ 309 and 701-703.

B. **Telecommunication services for the deaf, hearing impaired, and speech impaired.** Interexchange carriers are required to provide a 70% rate reduction for intrastate toll calls for deaf, hard-of-hearing or speech-impaired persons as required by 35-A M.R.S.A. § 7302.

C. **Exemption from Filing Requirements.** Interexchange carriers other than ILECs shall be exempt from those provisions of Chapters 110 and 120 that require notice to customers and to the Commission and the filing of specified information at the time a utility files a "general increase in rates" as defined in 35-A M.R.S.A. § 307, unless the Commission orders otherwise in a particular case.

## § 10 NOTICE BY ALL INTEREXCHANGE CARRIERS PRIOR TO EFFECTIVE DATE OF RATE INCREASES

A. **General Requirement.** At least 15 days prior to the effective date of a rate increase of 20% or more in the rate for any individual interexchange service offered by any interexchange carrier (IXC) (including LECs offering interexchange service) that is subject to the authority of the Commission, the IXC shall send notice by a bill insert or by separate mailing to all affected customers, as defined in subsection C. For the purpose of this section, a rate shall be considered to be increased by 20% if rate increases for the service, including the current increase, cumulatively amount to 20% or more over the year prior to the current increase. For the purpose of this section, a "rate increase" shall include any term and condition that has the effect of raising a rate for one or more customers.

B. **Cancellation Period Added to Notice Period.** If a rate (including a rate pursuant to special contract) contains a term and condition stating that cancellation of a service by a customer will not be effective until a stated time period following notice given by the customer to the interexchange carrier, the notice period applicable to the interexchange carrier required by subsection A of this section shall equal 15 days plus the length of the period required for the customer to provide notice of cancellation.

C. **Affected Customer: Definition.** A customer is affected by a rate if the customer has used the service that is subject to the rate increase of 20% or greater and has incurred total charges for the service of $5 or more, during either the month prior to or after the filing of the proposed increase, or has incurred charges for the service that total $15 or more for the 3 month period prior to the filing of the proposed increase.

D. **Alternative Compliance.** An interexchange carrier may satisfy this requirement by sending notice of all increases of 20% or more to all its customers.

E. **Exemption.** An incumbent local exchange carrier or any other interexchange carrier that has complied with the notice requirements of Chapter 110, § 718 following a general rate case is not required to comply with this subsection.

## § 11 REPORTS AND RECORDS

A. **Annual Reports.** All interexchange carriers subject to the authority of the Commission are exempt from the annual report and other requirements of Chapter 210 (Uniform System of Accounts for Telephone Utilities) of the Commission's Rules. They shall, however, annually provide the Commission, in a manner prescribed and on forms specified by the Commission, with a report of its annual revenues, total minutes of use sold, the annual revenues derived from sales for resale and the number of minutes of use sold to resellers.

B. **Records.** All telecommunications carriers subject to the provisions of this Chapter shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

## § 12 WAIVER OF 35-A M.R.S.A. §§ 707 AND 708; NOTICE REQUIREMENT

A. **Waiver.** Subject to the conditions described in subsections B and C below, interexchange carriers subject to the jurisdiction of the Commission shall be exempt from the requirement of 35-A M.R.S.A. § 708(2) that each reorganization (defined in 35-A M.R.S.A. § 708(1)) of a public utility be approved by the Commission.

B. **Notice Requirement.** Each telephone utility that is exempt pursuant to subsection A from the requirement that reorganizations be approved shall file notice with the Commission of a reorganization if that reorganization results in a merger, sale or transfer of a controlling interest of the public utility or of any entity that owns more than 50% of the public utility. The notice required by this subsection shall be filed within 10 days following any reorganization described herein.

C. **Changes of Name, Business office and Contact Person; Notice.** Each public utility subject to the exemption contained in subsection A that has changed its name, the name under which it does business (d/b/a), the location of its business office, and its contact person shall provide the Administrative Director of the Commission with notice of that change within 30 days following the change.

## § 13. *REPEALED*

## § 14 COMMISSION REVIEW

Any person aggrieved may obtain review of decisions by any local exchange carrier that has not provided a retail service, wholesale access services or any telecommunications facilities requested by that person, following the process described in section 5. The aggrieved person may refer the matter to the Commission for Staff resolution. The matter will be treated as an informal complaint submitted for resolution by the Staff under section 1102 of Chapter 110 of the Commission's rules. If a party is not satisfied with the Staff's resolution, it must file a written request for Commission review within 7 business days following the issuance of the resolution by the Staff. Failure to file a timely request for Commission review of the Staff's resolution shall constitute acceptance of the resolution and waiver of further opportunity to be heard with respect to the matter.

Receipt of a request for Commission review shall be treated as a request for investigation pursuant to 35-A M.R.S.A. § 1303. A summary investigation shall be conducted, after which the Commission shall determine whether a formal investigation is warranted. If it decides to commence a formal investigation, the Commission shall may affirm, reverse, or modify the Staff's resolution. If the Commission decides not to commence a formal investigation, failure to act in accordance with the Staff's resolution shall constitute grounds to commence a formal investigation pursuant to section 1303 and the initiation of a proceeding to issue a temporary order pursuant to 35-A M.R.S.A. § 1322.

## § 15 WAIVER OF PROVISIONS OF CHAPTER

Any telecommunications carrier subject to the provisions of this Chapter may request that the Commission waive some or all of the requirements of this Chapter. Where good cause exists, the Commission, the Administrative Director, the Director of Technical Analysis, or the Hearing Examiner assigned to a proceeding involving the subject matter of the waiver may

grant the requested waiver, provided that the granting of the waiver would not be inconsistent with the intent of this Chapter. The waiver shall be applicable only to the specific application under consideration.

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STATUTORY AUTHORITY: 35-A M.R.S.A. §104, 111, 301, 1301, 2102, 2105, 2110. 7101, 7101-B, 7104-A and 7303.

EFFECTIVE DATE:
November 27, 1988

AMENDED:
November 19, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 4, 1996

AMENDED:
June 18, 1997

NON-SUBSTANTIVE CORRECTION:
August 19, 1997 - insertion of missing 3(C) in Table of Contents.

AMENDED: This amendment was approved as to form and legality by the Attorney General on December 19, 1997. It was filed with the Secretary of State on December 19, 1997 and became effective on December 24, 1997.

NON-SUBSTANTIVE CORRECTIONS:
January 26, 1998 - statutory citations in §9 (B) and 14.

AMENDED: This amendment was approved as to form and legality by the Attorney General on March 19, 2003. It was filed with the Secretary of State on March 27, 2003 and became effective on April 1, 2003.

AMENDED: This rule was approved as to form and legality by the Attorney General on July 16, 2003. It was filed with the Secretary of State on July 17, 2003 and became effective on July 22, 2003.

CORRECTED:
August 11, 2003 - proper integration of April 1 and July 22, 2003 filings under the authority of an August 4, 2003 memo from PUC General Counsel Joanne B. Stenneck.

D.P.U. 93-98

Investigation by the Department of Public Utilities on its own motion into the regulatory treatment of telecommunications common carriers within the Commonwealth of Massachusetts.

## I. INTRODUCTION

On June 18, 1993, pursuant to G.L. c. 159, § 12(d), the Department of Public Utilities ("Department") voted to open an investigation into the regulatory treatment of telecommunications common carriers within the Commonwealth of Massachusetts ("Order"). In the Order, the Department noted that "the telecommunications marketplace has changed dramatically since 1983, when the Department first made a policy decision to regulate entry into the telecommunications marketplace." Order at 3. The Department determined that it is appropriate to investigate whether the Department should continue to require telecommunications common carriers within the Commonwealth to obtain (1) a certificate of public convenience and necessity ("certificate") from the Department before offering intrastate services in Massachusetts; and (2) Department approval of the transfer of control or ownership of a certificate. The investigation was docketed as D.P.U. 93-98.

Pursuant to the Department's request for comments, the Attorney General of the Commonwealth ("Attorney General"), New England Telephone and Telegraph Company ("NET"), MFS-McCourt ("MFS"), Cablevision Lightpath, Inc. ("CLI"), New England Cable Television Association, Inc. ("NECTA"), Teleport Communications Group, Inc. ("Teleport"), NSI Communication Services, Inc. ("NSI"), New England Public Communications Council ("NEPCC"), Communications Gateway Network, Inc. ("Gateway") and Clifford Wilson, a pay-telephone service provider, filed written comments with the Department.

## II. PROPOSED CHANGES

In its Order opening the investigation, the Department articulated its proposed alternative to the current regulatory practices:

1. Carriers would not be required to apply for certification before offering telecommunications services within Massachusetts;

2. Pursuant to G.L. c. 159, § 19 and 220 C.M.R. § 5.00, carriers would continue to be required to have an approved tariff on file with the Department before offering services in Massachusetts. The Department may suspend any proposed tariff, or proposed modification to a tariff, for investigation;

3. Carriers would be required to have on file with the Department a "Statement of Business Operations," listing the carrier's address, telephone number, customer service telephone number, and regulatory contact person. Carriers also would have to sign a tax attestation form. The Department would rely on the "Statement of Business Operations" to maintain an accurate list of carriers operating in Massachusetts, in order to monitor the industry and to facilitate resolution of consumer complaints;

4. Carriers still would be required to comply with other regulatory requirements, such as the Department's alternative operator service ("AOS") rate and consumer notice policies (see International Telecharge, Inc., D.P.U. 87-72/88-72 (1988) ("ITI")) and the Department's pay-telephone requirements (see M.G. Communications, Inc., D.P.U. 90-143 (1991) ("M.G.));

5. Before offering service, pay-telephone service providers would be required to sign an affidavit stating that the provider understands and agrees to comply with the Department's pay-telephone regulations and statutory requirements, with the understanding that the Department may order disconnection of the provider's public access lines for noncompliance. See M.G.;

6. Carriers still would be required to file an annual return with the Department, pursuant to G.L. c. 159, § 32;

7. Carriers would not be required to seek Department approval for a transfer of ownership or control of an existing certificate; however, carriers would be required to notify the Department when such a transfer takes place; and

8. The Department's consumer dispute resolution procedures for intrastate services would remain unchanged under this proposal. The Department's Consumer Division would continue to handle consumer complaints concerning the intrastate services provided by any carrier under the Department's jurisdiction.

The Department sought written comments regarding the proposed changes to the present regulatory framework as it relates to, among other things, consumer protection, administrative efficiency, and economic conditions in the telecommunications marketplace within Massachusetts.

## III. POSITIONS OF THE PARTIES

### A. The Attorney General

The Attorney General asserts that the current certification requirement should remain in effect in order to protect the public interest (Attorney General Comments at 2). The Attorney General contends that although there is no statutory requirement that common carriers must obtain certificates before offering telecommunications services, the Department has in previous cases stated that managerial, technical and financial ability to offer telecommunications services, and a demonstration of public need are "relevant to the determination of the public interest" (id. at 3). The Attorney General states that the Department, in AT&T Communications of New England, D.P.U. 1641 (1983) ("AT&T"), found that certification not only is consistent with its general supervisory authority but necessary to protect the public interest (id. at 3-4). The Attorney General argues that the certification requirement has ensured that Massachusetts consumers "had less exposure to 'fly-by-night'" companies (id. at 6).

Moreover, the Attorney General contends that, as cable companies and interexchange companies are poised to enter the local market, more guidance from the government, not less, would be necessary to promote the public interest (id. at 7-8). The Attorney General argues that elimination of the certification requirement at this moment "would be an abandonment by the Department of its obligation to protect the public interest" (id. at 8).

Furthermore, the Attorney General contends that, in the case of pay-telephone and AOS, competition could not be relied upon for consumer protection because of the unique characteristics and environment in which these services are offered (id. at 4-5). The

Attorney General maintains that the present system of regulating pay-telephone service and AOS has proven effective and has provided consumers with greater choices (id. at 9). Therefore, according to the Attorney General, abandoning the present system would "create greater administrative demands and little, if any, protection of the public interest" (id.).

Similarly, regarding the transfer of ownership of certificates, the Attorney General argues that the Department should not discontinue the present requirements because this would (1) eliminate the Department's ability to ensure that the new owner is qualified to provide telecommunications services and (2) potentially allow a local telephone monopoly to "spin-off" certain segments of its market, resulting in higher rates to captive customers (id. at 10-12).

B. NET

NET indicates its support of the Department's proposal to streamline the certification process but proposes its own procedures (NET Comments at 1). NET states that because there are several interexchange carriers and pay-telephone service providers operating in the state, "there is less of a need for the Department to adjudicate every application for a certificate so as to determine the public need for the proposed services and the technical, financial, and managerial competency of each potential interexchange carrier" (id. at 2). Similarly, because of the existence of multiple alternative providers, NET argues that there is less need to adjudicate every transfer application (id.).

However, while supporting the streamlining effort, NET argues that the certification or transfer requirements should not be completely abandoned (id.). According to NET, "[C]ertification requirements are practices that serve to provide notice to the Department and parties of ongoing developments and emerging issues and are vehicles by which matters can be brought before the Department for a timely resolution, if necessary" (id.). Accordingly, NET proposes the following procedures:

1. Any person or entity wishing to receive notice of applications for certification, amendments to certificates, or transfers would request inclusion on a service list maintained by the Department;

2. A party seeking certification, either initially or to amend an existing certificate, or approval for a transfer would file a streamlined application with the Department and contemporaneously serve all parties on the service list;

3. If no objection to the proposed certification or transfer is filed within 45 days of submission to the Department, the filing would be deemed approved, unless the Department chooses to open an investigation on its own motion;

4. If an objection is received, the Department may open an investigation, approve the filing, despite the objection, or take whatever other action it deems appropriate;

5. The level of detail required for certification and transfer applications can be reduced to basic information. The applicant should provide a Statement of Business Operations as discussed by the Department in the Order. In addition, a clear and concise statement of the specific authority requested should be provided, including the specific services which are the subject of the certificate or the transactions associated with the transfer of ownership or control; and

6. In the case of certification application, the carrier may include a copy of its initial or revised tariff to be effective at the end of the 45-day notice period.

(id. at 3).

C. MFS

MFS indicates its support of the Department's effort to streamline the certification process (MFS Comments at 1). MFS contends that streamlining of the certification process would be "a significant step toward removing regulatory burdens that inhibit competition in the telecommunications marketplace" (id.). MFS indicates that the Department, in granting MFS its certificate, recognized the benefits that would accrue to Massachusetts customers from the introduction of competition into the telecommunications marketplace (id. at 2).

Moreover, MFS argues that certification is not a statutory requirement and the Department's proposal to streamline the process would not "pose a threat" to the

Department's ability to protect the public interest (id. at 3). MFS notes that the proposal is consistent with the Department's statutory obligations because carriers would have to file a "Statement of Business Operations," allowing the Department to supervise the industry and resolve consumer complaints (id.).

Furthermore, MFS requests that the Department expand the scope of the investigation to include streamlining current tariff requirements (id. at 5). While it does not propose the complete elimination of tariff requirements, MFS requests that the Department consider a tariff review process similar to the one adopted by the Federal Communications Commission ("FCC") (id.). Specifically, MFS requests that the Department (1) reduce the tariff notice period for nondominant carriers from 30 days to one day and (2) permit nondominant carriers to file tariffs that include either fixed rates or a "reasonable range of rates" (id. at 7). According to MFS, the streamlining of tariff requirements would reduce the direct and indirect costs of filing a tariff, and would increase carriers' incentives to lower rates (id.).

D. CLI

Similarly, CLI supports the Department's initiative to streamline the certification process (CLI Comments at 2-4). CLI contends that the Department's review of applications for certification has become "pro forma," rarely requiring a hearing on an application (id. at 3). According to CLI, the Department's proposal would reduce "the regulatory burdens for both carriers and the Department ... in preparing, reviewing, and keeping certificates for what is ceasing to be a meaningful review..." (id. at 3-4).

CLI also requests that the Department extend its investigation to include streamlining tariff regulations (id. at 4). CLI contends that the requirements of tariff regulation are an unnecessary burden to carriers (id. at 5). CLI argues that, based on G.L. c. 159, §20, the Department has authority to reduce the time in which tariffs become effective for good cause shown (id. at 6). CLI indicates that the Department, using its authority, has already changed its review of specialized services and Facility-Based Payment Option ("FPO") Centrex services[1]

by relying more on competitive forces rather than its own tariff review to "insure just and reasonable pricing of competitive services" (id. at 7). Accordingly, CLI requests that the Department allow (1) nondominant carriers to file tariffs with 24 hours notice and (2) to file streamlined tariff revisions allowing for a range of rates and a letter of transmittal but with no letter of explanation (id. at 9-10). Alternatively, CLI requests that the Department clarify 220 C.M.R. § 5.02 to allow carriers to file tariffs with the Department in the same form adopted by the FCC (id. at 10). Accordingly, CLI requests that the Department begin a rulemaking to consider its proposed changes to the review of tariffs (id. at 11).

E. NECTA, Teleport and NSI

NECTA, Teleport and NSI also indicate their support for the Department's proposed changes (NECTA Comments at 1; Teleport Comments at 1; NSI Comments). Also, Teleport requests that the Department's investigation include streamlining tariff filing regulations (Teleport Comments at 2).

F. NEPCC, Gateway and Clifford Wilson

Gateway indicates its opposition to the Department's proposed streamlining of the certification requirements, while NEPCC and Clifford Wilson indicate their opposition to the extent that the proposed changes affect the provision of pay-telephone service (Gateway Comments at 1; NEPCC Comments at 1; Clifford Wilson Comments). Regarding pay-telephone service requirements, NEPCC contends that the present process has "served a purpose by screening potential providers and allowing only those the Department believed could provide services within the regulatory framework to commence operation" (NEPCC Comments at 1). Similarly, Gateway argues that the proposal would expose consumers to fraudulent billing practices and deception by unscrupulous carriers (Gateway Comments at 1-2). Clifford Wilson contends that the proposal would further damage the credibility of pay-telephone service providers (Clifford Wilson Comments).

III. ANALYSIS AND FINDINGS

A. Introduction

The Department has endorsed competitive telecommunications markets as the best method for promoting its policy goals for the industry in Massachusetts. IntraLATA Competition, D.P.U. 1731, at 25 (1985). In D.P.U 1731, the Department stated that "there are benefits inherent in a competitive marketplace that encourage greater levels of economic efficiency and fairness than does a regulated monopoly environment. These benefits have the clear potential of encouraging the development of a more efficient and modern telecommunications network in Massachusetts." Id. at 26. Moreover, the Department recognized the importance of changing the regulatory framework as competition penetrates into specific markets. Id. at 45. The Department stated that "as competitive forces begin to take hold in a market, the Department should begin to reduce the degree of regulation in the market, so that the benefits of competition may be enjoyed by the public. Such a reduction of regulation is consistent with our goal of economic efficiency, since we have found ... that competitive markets provide economic incentives without traditional regulatory review." Id. at 55.

B. Certification

In 1983, the Department found that "the regulation of entry into a specific field by a carrier is an integral part of safeguarding [the interests of the public]." AT&T,

D.P.U. 1641, at 9. The Department has regulated market entry by requiring that common carriers who wish to provide intrastate service in Massachusetts obtain a certificate from the Department. The Department has determined that an applicant must possess the managerial, technical, and financial ability to provide the proposed service, and that there is a public need for the proposed service. See MCI, D.P.U. 1655 (1984); GTE Sprint, D.P.U. 84-12 (1984); First Phone, Inc., D.P.U. 1581 (1984); ITI, supra; IMR Telecom, D.P.U. 89-212 (1990); and M.G., supra.

The above stated requirements have been the standard of review for certificate applications, but tariff review and other consumer protection requirements have been the Department's primary tools in ensuring that the provision of interexchange, competitive access,[2] and AOS services are in the public interest. Although the Department is committed to promoting competition in telecommunications, we are not abandoning the concept of consumer protection nor are we abandoning our responsibility to follow the statutory requirement to ensure just and reasonable rates. Rather, we find in this case that current market forces, statutory requirements, and the Department's tariff regulations, notice requirements, and consumer complaint resolution process, are sufficient to ensure not only that rates are just and reasonable but that there is adequate consumer protection for interexchange, competitive access, and AOS services, absent the regulation of entry into these markets.[3] Therefore, it is no longer necessary for the providers of these services to obtain a certificate before offering service.

The elimination of entry regulation does not constitute general deregulation of these markets, and it should not be construed as a reduction in the Department's commitment to insuring the protection of the public interest in telecommunications. Any common carrier that has an approved tariff on file with the Department, and that has submitted a Statement of Business Operations, will be considered a "registered" common carrier in the Department's new framework. Registered common carriers will be subject to the Department's general supervisory authority, including specific requirements in G.L. c. 159, and the Department's regulatory policies as articulated in Department Orders.

We anticipate that elimination of entry regulation will promote additional competition in Massachusetts and thus provide benefits to consumers, but should we later determine otherwise, we maintain the authority to reconsider the issue of certification as a condition of providing telecommunications services within Massachusetts.

Because NET deems the process of certification useful for monitoring industry developments, NET recommended streamlining, but not eliminating, entry regulation. However, NET's proposed modifications to the Department's proposal are substantially the same as the current process. The Department has regulated entry ostensibly to protect the public interest, not to provide a mechanism for carriers to monitor industry developments. Because we find that entry regulation is no longer necessary to protect the public interest, continuing the current process for other reasons would be an inefficient use of regulatory authority.

The Attorney General's concern regarding the Department's proposal to eliminate the requirement for approval of a transfer can be addressed within the proposed regulatory framework, since carriers would be required to notify the Department when such transfers take place. Under this framework, the Department retains the authority to investigate any issue, including transfers of control of carriers or the transfer of certain segments of a carrier's market.

We note that the Department currently has before it a number of certificate and transfer applications for consideration. Because the decision to eliminate entry regulation will become effective as of the date of this Order, the Department will not continue to process those applications that are pending as of the date of this Order under the current regulatory scheme. Therefore, those entities, other than applicants for authority to offer pay-telephone service, will be notified that they will only be required to submit a tariff and a Statement of Business Operations. If their respective tariff filings are approved by the Department, the entities would then be considered registered common carriers in Massachusetts and will be allowed to offer intrastate services, as of the effective date of the approved tariffs.

C. Pay-Telephone Service

The Department has previously found that "pay-telephone service, if not properly operated and maintained, and if not in compliance with statutory and regulatory requirements, could result not only in worse quality of service, but also could pose a threat to public safety." M.G., supra, at 22-23. Therefore, the Department required all pay-telephone service providers to obtain a certificate from the Department before providing services and to comply with certain additional minimum conditions of service. Id. at 24-39. As the Attorney General noted, the Department has denied certificates to several pay-telephone applicants that did not meet the Department's pay-telephone certification requirements.

Based on the comments filed by the Attorney General, the NEPCC, and others, and a review of the Department's pay-telephone regulation, including the number of complaints about pay-telephone service received by the Department, we find that the Department's certification requirements for pay-telephone service providers should continue. Accordingly, pay-telephone service providers must obtain a certificate and comply with all other pay-telephone service requirements before providing service.

D. Tariff Regulation

Several parties requested that the Department expand this investigation to include streamlining the Department's tariff regulation. Specifically, the parties requested that the Department shorten the tariff review period from 30 days to 24 hours and that the Department permit nondominant carriers to file tariffs containing a range of rates. Consideration of such proposals is beyond the scope of this investigation. Moreover, such changes would call for legislative action because the review period is a statutory

requirement. G.L. c. 159, § 19, requires that "... no change shall be made in any rate, except after thirty days from the date of filing ...."

With regard to the proposal to allow tariffs to include a range of rates instead of a specific rate for a service, the Department has previously disallowed such tariffs. See GTE Sprint Communications Corporation, D.P.U. 84-13 (1984); RCI Long Distance, Inc., D.P.U. 86-252 (1987); G.L. c. 159, §§ 14, 19.

## IV. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That telecommunications common carriers, other than pay-telephone service providers, shall no longer be required to obtain a certificate before offering intrastate telecommunications services in Massachusetts; and it is

FURTHER ORDERED: That, pursuant to G.L. c. 159, § 19 and 220 C.M.R. § 5.00, all telecommunications common carriers shall continue to submit tariffs for review by the Department and that such tariffs shall be approved by the Department before a carrier may offer intrastate telecommunications services in Massachusetts; and it is

FURTHER ORDERED: That telecommunications common carriers, other than pay-telephone service providers, shall file with the Department a "Statement of Business Operations," listing the carrier's address, telephone number, a brief description of the type of services to be offered, an "800" number or other number for customer service, a regulatory contact person, and sign a tax attestation form, and such other information and in a form determined by the Department; and it is

FURTHER ORDERED: That, pursuant to G.L. c. 159, § 32, telecommunications common carriers shall continue to file annual returns with the Department; and it is

FURTHER ORDERED: That telecommunications common carriers, other than pay-telephone service providers, shall no longer be required to seek approval of a transfer of a certificate, but carriers shall continue to notify the Department within 30 days of such a transfer; and it is

FURTHER ORDERED: That all telecommunications common carriers shall comply with all other directives contained in this Order; and it is

FURTHER ORDERED: That this Order shall become effective upon issuance.

By Order of the Department,

Kenneth Gordon, Chairman

Barbara Kates-Garnick, Commissioner

Mary Clark Webster, Commissioner

1. FPO rates are individually developed rates and are based on the customer's system-specific configuration and quantity of facilities for each premises location. In NET-Centrex, D.P.U. 85-275/276/277 (1985), the Department allowed NET to price its FPO Centrex services based on market conditions, and the FPO Centrex rates are filed with the Department pursuant to G.L. c. 159, § 19.

2. Competitive access service is provided by firms that offer private line and switched access services in competition with the local exchange carrier.

3. Consumer protections established by the Department include, among other things, residential customer billing and collection regulations (see NET, D.P.U. 18448 (1977)), operator service notice requirements (see ITI), and pay-telephone service requirements (see M.G.).

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION
IN RE: ENTRY REQUIREMENTS FOR
COMPETITIVE LOCAL EXCHANGE CARRIERS DOCKET NO. 2411
REPORT AND ORDER

On April 5, 1996, a letter from Brooks Fiber Communications of Rhode Island, Inc. ("Brooks") was received by the Public Utilities Commission ("Commission"). The letter formally notified the Commission of Brooks' intention to provide switched local service in Rhode Island, and requested whatever permission might still be necessary to do so. After open meeting discussion as to the proper forum Footnote1 for considering entry requirements for competitive local exchange carriers ("CLECs"), the Commission created this generic docket on April 23, 1996 and invited prospective CLECs to submit comments on the scope of regulation.

By May 21, 1996, comments had been filed by Brooks, Teleport Communications Group, AT&T, Cox Communications, Inc., the Division of Public Utilities and Carriers, and NYNEX, the incumbent local exchange carrier.

Several parties noted that all the services offered by CLECs are competitive. Thus, their service offerings, service quality and prices are all responsive to the marketplace. It was suggested that the difference in market power between the CLECs and the incumbent, NYNEX, requires different regulatory treatment for the CLECs.

The distinction in the scope of regulation was explicitly recognized by Congress in the Telecommunications Act of 1996 ("the Act"). CLECs, for example, are saddled with fewer obligations than those imposed on incumbents and former Bell Operating Companies. Footnote2

The Commission is mindful that the Act prohibits states from erecting barriers to competitive entry. Footnote3 However, Congress did not thereby intend to preempt our jurisdiction over all aspects of local service delivery. Indeed, the Act authorizes the Commission to impose requirements "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Footnote4

Many of those requirements will be developed in the context of Docket No. 2252, and this docket does not purport to address them. Rather, our goal is to establish minimal provisions necessary to protect residential and small business customers, whose sophistication and ability to protect themselves may not be equal to those of the large users who have typically been customers of the Competitive Access Providers authorized by Docket No. 2129.

The Commission is of the opinion that the following entry requirements for CLECs, similar to those proposed by Brooks, will adequately protect Rhode Island consumers without erecting barriers to competitive entry:

1. The Commission shall grant authority to a CLEC upon its finding all of the following:

    1. That the applicant has satisfactorily provided a Statement of Business Operations in accordance with the Report and Order in Docket No. 2129, and a map of the geographical area or areas in which service will be offered; and **(outlined the required information earlier in this requirement file listing)**
    2. That the applicant meets the standard for financial resources, managerial qualifications, and technical competence established below; and
    3. That the CLEC has specified whether it intends to offer its service to all business and residence customers that request local exchange service; and
    4. That the CLEC has paid the appropriate application fees, pursuant to the Regulations and Fee Schedules for Telecommunications Providers. Until further notice, a CLEC shall be treated as a Class I telecommunications provider.

2. The Commission shall use the following standard for determining an applicant has sufficient financial resources:

    1. Upon request, applicants to become facilities-based service providers shall demonstrate they possess a minimum of $100,000 cash or other financial instrument as described in 2(c), available for the first year expenses of Rhode Island operations;

2. Upon request, applicants to become non-facilities based service providers shall demonstrate they possess a minimum of $20,000 cash or other financial instrument as described in 2(c), available for the first year expenses of Rhode Island operations
3. To satisfy the requirements of 2(a) and (b), if imposed, applicants may use appropriate financial instruments, subject to verification and review by the Commission, including but not limited to:
    - cash or cash equivalent, including cashier's check or sight draft
    - certificate of deposit or other liquid deposit with a reputable bank or other institution
    - irrevocable letter of credit
    - line of credit
    - loan
    - guarantee.
4. The requirements of 2(a), (b), and (c) are not intended to prescribe the credit terms which apply between carriers.

3. The Commission shall determine an applicant possesses sufficient managerial qualifications on the basis of reviewing brief biographies of the applicant's key officers and/or managers:

1. For facilities-based applicants, the Commission shall review brief biographies of the applicant's key technical management personnel, if different from its key officers and/or managers, commensurate with the scope of the applicant's operations.
2. For non-facilities based applicants, the Commission shall consider the technical competence of the underlying carrier(s) used in providing the applicant's service.

4. Before commencing operations, an applicant shall, if deemed necessary by the Commission, post and maintain a surety bond to cover refunds of all residential customer deposits, including advanced billing.

5. A CLEC must receive approval of its filed intrastate tariff **prior to commencing operations**. Such approval will be automatic if the Commission does not act within sixty days of the tariff filing.

The Commission is committed to competition in telecommunications. We believe that removing barriers and encouraging new entrants will result in lower costs to customers. These minimal entry requirements for CLECs will allow competitive local exchange service to commence. How it is to be managed raises issues, including the applicability of quality of service standards and universal service requirements, which we will address in Docket No. 2252. Any CLEC authorized to provide service in Rhode Island is bound by the decision in that docket.

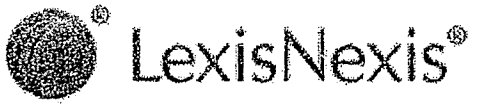
Accordingly, it is

(15040) ORDERED:

The Commission adopts, for Brooks Fiber Communications of Rhode Island, Inc., and all other potential Competitive Local Exchange Carriers, the requirements detailed in this Report and Order.
EFFECTIVE AT PROVIDENCE, RHODE ISLAND ON JULY 9, 1996 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JULY 12, 1996.

PUBLIC UTILITIES COMMISSION

Footnote1
The Commission is currently considering a wide range of issues arising from competition in the telecommunications marketplace in Docket No. 2252.
Footnote2
Contrast Section 251(b), which defines obligations for all local exchange carriers, with Section 251(c), imposing additional obligations on incumbent local exchange carriers.
Footnote3
See Section 253(a).
Footnote4
See Section 253(b).



1 of 1 DOCUMENT

LEXISNEXIS (TM) CONNECTICUT ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE JANUARY 2009 REGULAR SESSION ***
*** AND THE JUNE AND SEPTEMBER 2009 SPECIAL SESSIONS ***
*** ANNOTATIONS CURRENT THROUGH MARCH 16, 2010 ***

TITLE 16 PUBLIC SERVICE COMPANIES
CHAPTER 283 DEPARTMENT OF PUBLIC UTILITY CONTROL; TELEGRAPH, TELEPHONE, ILLUMINATING, POWER AND WATER COMPANIES

**GO TO CONNECTICUT STATUTES ARCHIVE DIRECTORY**

*Conn. Gen. Stat. § 16-247g* (2010)

**Sec. 16-247g. Certificate of public convenience and necessity for intrastate telecommunications services: Application, requirements, suspension, revocation. Fees. Obligation to serve.**

(a)(1) Any person may apply to the department for an initial certificate of public convenience and necessity to offer and provide intrastate telecommunications services. Such application shall include such information as the department shall require, and any reasonable fees, not to exceed actual cost, the department may prescribe, in regulations adopted pursuant to chapter 54. The department may issue such certificate and may, as a precondition to certification, require any applicant to procure a performance bond sufficient to cover moneys due or to become due to other telecommunications companies for the provision of access to local telecommunications networks, to protect any advances or deposits it may collect from its customers if the department does not order that such advances or deposits be held in escrow or trust, and to otherwise protect customers. Following receipt of such application, the department shall give notice of such application to all interested persons. The department may approve or deny the application after holding a hearing with notice to all interested persons if any person requests such hearing.

(2) Any person may object to a fee charged pursuant to this section by filing with the department, not later than thirty days after the fee was charged, a petition stating the amount of the fee charged to which it objects and the grounds upon which it claims such fee is excessive, erroneous, unlawful or invalid. Upon the request of the person filing the petition, the department shall hold a hearing. After reviewing the petition and testimony, if any, the department shall issue its order in accordance with its findings. The person shall pay the department the amount indicated in the order not later than thirty days after the date of the order.

(b) A certified telecommunications provider may petition the department to expand the authority granted in its certificate of public convenience and necessity to the provision of a previously-authorized service in an additional service area or to the provision of a service not previously authorized, or to both. Such petition shall include such information as the department shall require by regulations adopted pursuant to chapter 54. The department may expand the authority granted in such a certificate and may, as a precondition to such expansion, require a petitioner to procure a performance bond sufficient to cover moneys due or to become due to other telecommunications companies for the provision of access to local telecommunications networks, to protect any advances or deposits it may collect from its customers if the department does not order that such advances or deposits be held in escrow or trust, and to otherwise protect customers. Following receipt of such petition, the department may, on petition or its own motion, hold a hearing with notice to all interested parties, after which the department may approve or deny the application.

(c) The department may certify an applicant if the applicant: (1) Provides the information requested by the department pursuant to the provisions of *sections 16-247f* to *16-247h*, inclusive, and *section 16-247j*; (2) provides a performance bond or complies with escrow or trust requirements, if required by the department; (3) provides a fee, if required

by this section; and (4) possesses and demonstrates adequate financial resources, managerial ability and technical competency to provide the proposed service.

(d) Any certified telecommunications provider and any telephone company shall (1) maintain its accounts in such manner as the department shall require; (2) file financial reports at such times and in such form as the department shall prescribe; (3) file with the department such current descriptions of services and listings of rates and charges as it may require; (4) cooperate with the department in its investigations of consumer complaints and comply with any resulting orders; (5) comply with standards established pursuant to *section 16-247p*; and (6) comply with additional requirements as the department shall prescribe by regulation.

(e) Except as provided in subsection (f) of this section, on or after July 1, 2001, each certified telecommunications provider shall, within a period of time the department determines is reasonable after said provider is certified, be obligated to serve a residential or business customer in its authorized area of operation who is seeking from said provider telecommunications services that are provided by said provider.

(f) Any community antenna television company that is a certified telecommunications provider or an affiliate of a community antenna television company that is a certified telecommunications provider and that provides telecommunications services shall be obligated to serve all residential and business customers seeking local exchange service in its entire franchise area in which said company provides community antenna television services pursuant to *section 16-331*. Notwithstanding the provisions of this section, the department shall not require any such company to provide local exchange service outside of its franchise area. If, however, any such company elects to provide local exchange service to customers outside its franchise area, such company shall be subject to all geographic service requirements established by the department.

(g) Notwithstanding any decision of the department to allow the competitive provision of a telecommunications service or to grant a certificate pursuant to this section, the department, after holding a hearing with notice to all interested parties and determining that (1) continued competitive provision of a telecommunications service would be contrary to the goals set forth in *section 16-247a*, or would not be in accordance with the provisions of *sections 16-247a* to *16-247c*, inclusive, *section 16-247e* or *16-247f*, this section, or *section 16-247h*, or *16-247k*, (2) a certified telecommunications provider does not have adequate financial resources, managerial ability or technical competency to provide the service, or (3) a certified telecommunications provider has failed to comply with an applicable order made or regulation adopted by the department, may suspend or revoke the authorization to provide said telecommunications service or take any other action it deems appropriate. In determining whether to suspend or revoke such authorization, the department shall consider, without limitation, (A) the effect of such suspension or revocation on the customers of the telecommunications service, (B) the technical feasibility of suspending or revoking the authorized usage only on an intrastate basis, and (C) the financial impact of such suspension or revocation on the provider of the telecommunications service.

(h) The department shall remit all fees collected under this section to the State Treasurer for deposit in the Consumer Counsel and Public Utility Control Fund established in *section 16-48a*.

(i) On October first, annually, the department shall submit to the joint standing committee of the General Assembly having cognizance of matters relating to energy and technology a report of all fees collected pursuant to this section during the preceding fiscal year.

# STATE OF CONNECTICUT

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

**DOCKET NO. 07-07-23 APPLICATION OF METROCAST COMMUNICATIONS OF CONNECTICUT, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

August 22, 2007

By the following Commissioners:

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

## DECISION

# DECISION

## I. INTRODUCTION

### A. SUMMARY

This docket addresses MetroCast Communications of Connecticut, LLC's (MetroCast or Company) request for a Certificate of Public Convenience and Necessity (CPCN) to operate as a facilities-based provider of local exchange and a reseller of intrastate interexchange services in Connecticut. In this Decision, the Department of Public Utility Control (Department) finds that MetroCast meets the managerial, financial and technical criteria to operate as a facilities-based provider of local exchange and a reseller of intrastate interexchange services. In addition, the Department finds the Company's proposal to be in the public interest and grants the certificate.

### B. BACKGROUND OF THE PROCEEDING

By application received on July 2, 2007 (Application), filed pursuant to § 16-247g of the General Statutes of Connecticut (Conn. Gen. Stat.) and § 16-247c-3 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.), MetroCast requested the Department's approval for a CPCN to operate as a facilities-based provider of local exchange and a reseller of intrastate interexchange services in Connecticut. Specifically, the Company proposed to offer local exchange, directory assistance and operator services. Application, Exhibit B-1.

### C. CONDUCT OF THE PROCEEDING

Upon examination of the Application, the Department determined that a hearing in this docket was not necessary, and, therefore, no hearing was held.

### D. PARTIES AND INTERVENORS

The Department recognized MetroCast Communications of Connecticut, LLC, 61 Myrock Avenue, P.O. Box 6008, Waterford, Connecticut 06385; the Southern New England Telephone Company d/b/a AT&T Connecticut (AT&T), 310 Orange Street, 8th Floor, New Haven, Connecticut 06510; Verizon New York, Inc. (Verizon), 140 West Street, 47th Floor, New York, New York 10007; Harron Communications, L.P., 70 East Lancaster Avenue, Frazer, Pennsylvania 19355; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, Connecticut 06051, as Parties to this proceeding.

## II. DEPARTMENT ANALYSIS

### A. FINANCIAL RESOURCES, MANAGERIAL ABILITY AND TECHNICAL COMPETENCY

Pursuant to Conn. Gen. Stat. §§ 16-247c and 16-247g, MetroCast must obtain a CPCN to offer and provide facilities-based local exchange and resold intrastate interexchange telecommunications services. To grant a CPCN, the Department must find that the Company "possesses and demonstrates adequate financial resources,

managerial ability and technical competency to provide the proposed service." Conn. Gen. Stat. § 16-247g(c).

MetroCast is a Delaware limited liability company organized on September 22, 2005, with principal offices in Waterford, Connecticut. Application, p. 1, Exhibit A-11. MetroCast registered as a foreign limited liability company with the Connecticut Secretary of the State on August 24, 2006. Response to Interrogatory TE-1. MetroCast states that its management team has extensive managerial and technical experience to provide telecommunications services in Connecticut. Metrocast maintains that the Department expressly reviewed the credentials and experience of the Company's management team in 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. (Eastern) to MetroCast Communications of Connecticut, LLC, and found Metrocast's management team to be well qualified. Application, Exhibits D-1 and E-3.

Metrocast requested that the Department issue it a CPCN to provide local exchange and intrastate interexchange services in Connecticut. MetroCast will rely on the technical capability of its underlying carrier, IDT America Corporation (IDT), for the operation and ongoing maintenance of the network transmission facilities already in place to promote the development of effective competition in Connecticut. Application, Exhibit D-5. According to MetroCast, IDT will be providing service to the Company as a wholesale interconnected Video over Internet Protocol (VoIP) provider. MetroCast will be responsible for all customer contact, handling customer service issues and resolving trouble reports associated with the MetroCast telephony network, up to a demarcation point. IDT will be responsible for resolving trouble reports on its network. IDT is deploying a managed Class 5 Safari switch, with redundant record keeping and voicemail servers at MetroCast's head-end facility in Montville, Connecticut, which will be interconnected with the MetroCast's cable network. Response to Interrogatory TE-5. The Department has reviewed MetroCast's financial statements and qualifications and concludes that the Company possesses adequate financial resources to provide the proposed telecommunications services. Application, Exhibit 2 C-1 and C-2; Response to Interrogatory TE-2.

MetroCast indicates that it does not intend to construct any telephony network facilities in the public rights-of way. Rather, MetroCast will be utilizing its cable television system network already located in the public rights-of-way in its provisioning of telephony services. Response to Interrogatory TE-4. By the Decision dated August 21, 2006 in Docket No. 06-05-05, the Department approved the joint application of Eastern Connecticut Cable Television, Inc. (Eastern) and MetroCast, whereby the assets of Eastern and the CPCN under which it operated a community antenna television system in Connecticut were transferred to MetroCast. In that same Decision, the Department also approved MetroCast's proposed system-wide upgrade. MetroCast indicates that the Company is in the midst of a $25 million upgrade/rebuild of its cable network, based on commitments made to the Department in its Franchise Agreement and in Docket No. 06-05-05. Of the $25 million, the Company estimated the incremental capital expenditures to be approximately $1 million for the proposed telephony service. Application, Exhibit D-2. For these reasons, the Department finds

that MetroCast possesses and demonstrates adequate financial resources, managerial ability and technical competency to provide the proposed services in Connecticut.

The Department has reviewed the Company's capital expenditures and its proposed plans to utilize IDT's telephony network for its proposed telephony services and finds them acceptable. The Department notes that if MetroCast decides to construct facilities in the public rights-of-way in the future, it must submit its construction plan for approval as outlined in the Conn. Agencies Regs. § 16-247c-5 at least 90 days prior to the commencement of any such construction.

## B. PUBLIC INTEREST CONSIDERATIONS

Conn. Gen. Stat. § 16-247a (a) sets forth the goals of the State in the provision of telecommunications services:

> (1) ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state, (2) promote the development of effective competition as a means of providing customers with the widest possible choice of services, (3) utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market, (4) facilitate the efficient development and deployment of an advanced telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity, (5) encourage shared use of existing facilities and cooperative development of new facilities where legally possible, and technically and economically feasible, and (6) ensure that providers of telecommunications services in the state provide high quality customer service and high quality technical service.

According to the Company, its provision of service will serve the public interest by creating greater competition in the local exchange market and permitting customers to achieve increased efficiencies and greater cost savings. Application, Exhibit G-1. The Company also states that approval of its Application is likely to increase customer choice through increased service offerings. Additionally, MetroCast intends to provide high quality customer and technical service to its Connecticut customers. Id.

The Department finds that the addition of MetroCast to the Connecticut market will allow consumers to receive benefits directly as a result of the competitively priced service offerings, and indirectly, because its presence in the marketplace will increase the incentives for other telecommunications providers to operate more efficiently, reduce prices, and offer more innovative services. Id. Further, the Department finds that MetroCast's use of IDT facilities will contribute to the efficient and cooperative use and operation of the telecommunications infrastructure and will avoid the unnecessary duplication of the facilities of existing telecommunications carriers, resulting in maximum interoperability and interconnectivity. Application, Exhibit D-5. Lastly, the Department finds that MetroCast's customer service and technical policies and procedures will ensure that high quality customer and technical services are provided to its Connecticut customers. Application, Exhibit F-2; Responses to Interrogatories TE-6 and TE-7. Therefore, the Department concludes that MetroCast's proposal to provide the

proposed services furthers the goals of Conn. Gen. Stat. § 16-247a (a) and is in the public interest.

## C. POST-CERTIFICATION REPORTING REQUIREMENTS

In the Decision dated March 15, 1995, in Docket No. 94-07-03, DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity, at pages 29-30, the Department set forth the post-certification filing requirements for certified telecommunications companies. Those requirements are as follows:

- Pursuant to statute the Department is required to report to the General Assembly on an annual basis regarding the telecommunications market in Connecticut. Conn. Gen. Stat. § 16-247i. To meet its statutory obligations, the Department requires each authorized telecommunications provider to submit responses to the Department's annual data requests on the basis of an October 1 - September 30 fiscal year; the Department compiles the information at the conclusion of the third calendar quarter of each year.

- To evaluate the financial, managerial and technical adequacy of a certified provider periodically, as contemplated by Conn. Gen. Stat. § 16-247g (d), the Department requires each certified provider to submit on an annual basis a copy of the company's annual report, annual return or a summary financial statement.

- The following information filings are also required to be submitted to the Department:

  --current listings of rates and charges for all certified services;

  --annual reports on the provider's Connecticut operations within 60 days of the close of its fiscal year, including at a minimum: the number of customers for each certified service, a description of physical changes in or additions to existing facilities expected for the next fiscal year and any changed uses of those facilities, and any changes in the information that was filed with the Department;

  --copies of the Form 10-K (if required to file a Form 10-K with the Securities and Exchange Commission (SEC) and any other informational filings at the time filed with the SEC in the certification proceeding.

MetroCast will be subject to the above-detailed post-certification filing requirements, as are all certified providers in this state.

## D. TARIFFS

The Company filed proposed Connecticut-specific tariffs. Application, Exhibit B-1. In the Decision dated March 15, 1989, in Docket No. 87-08-24, DPUC Investigation into Authorization of Competition for Intrastate Interexchange Telecommunications Services Pursuant to Public Act 87-415, the Department required that Connecticut local

exchange companies and competitive service providers be subject to virtually the same tariff application and review procedures. The Department finds that sufficient data have been presented during this proceeding to indicate that MetroCast's rates and charges will exceed the respective costs of its services. Response to Interrogatory TE-3. Therefore, the Department finds that MetroCast has provided adequate cost justification for its proposed intrastate services' rates and charges and finds them to be acceptable as filed.

### E. LIFELINE CREDIT AND TELECOMMUNICATIONS RELAY SERVICE FUNDING REQUIREMENTS

In the Decision dated May 3, 1995, in Docket No. 94-07-09, DPUC Exploration of the Lifeline Program Policy Issues, the Department concluded that funding mechanisms based on market share as measured by total intrastate and interstate revenues are the most equitable method of recovering telecommunications relay service (TRS) and Lifeline costs. As a telecommunications service provider operating in Connecticut, MetroCast will participate in TRS and Lifeline funding as discussed in the aforementioned Decisions, and will be so ordered below.

### F. EXIT GUIDELINES AND SURETY BOND REQUIREMENT FOR LOCAL SERVICE PROVIDERS

In the Decision issued on April 2, 2003 in Docket No. 01-12-10, DPUC Investigation into the Discontinuation of Telecommunications Services by Certified Telecommunications Service Providers, the Department concluded that the increasing number of bankruptcies and general market conditions affecting the telecommunications industry necessitated the need for the implementation of Connecticut specific local service provider exit guidelines. These guidelines outline the processes and procedures that local service providers must follow in the event they exit the Connecticut marketplace. In the Decision in Docket No. 01-12-10RE01, the Department required that a bond in the amount of $25,000 be posted by all service providers offering local exchange service. Failure to do so will result in the revocation of the provider's CPCN.

In its Decision dated August 21, 2006 in Docket No. 94-07-06RE01, DPUC Investigation into the Competitive Provision of Alternate Operator Service (AOS) in Connecticut – SBC LD Petition, the Department concluded that until such time as the AOS industry has demonstrated a satisfactory intrastate performance record, the Department would require that performance bonds be posted by certificated call aggregators. The Department requires a bond in the amount of $25,000 be posted by all service providers offering operator services. To the extent that MetroCast provides operator services prior to its offering of local services, Metrocast shall comply with this requirement.

## III. FINDINGS OF FACT

1. MetroCast possesses and demonstrates adequate financial resources, managerial ability and technical competency to provide the proposed services.

2. MetroCast's participation in the funding program to recover Connecticut's Lifeline and TRS costs is in keeping with the Department's commitment to further Universal Service.

3. MetroCast plans to expend approximately $1 million in capital expenditures for its proposed telephony services.

4. The Company plans to operate as a facilities-based provider of local service and to resell intrastate interexchange services of IDT.

## IV. CONCLUSION AND ORDERS

### A. CONCLUSION

MetroCast's request to offer facilities-based local exchange and resold directory assistance and operator services furthers the goals of Conn. Gen. Stat. § 16-247a(a) and is in the public interest. The Department hereby grants MetroCast's request for a Certificate of Public Convenience and Necessity.

### B. ORDERS

For the following Orders, please submit an original and 6 copies of the requested material, identified by Docket Number, Title and Order Number to the Executive Secretary.

1. MetroCast shall file tariffs consistent with this Decision no later than September 5, 2007. The effective date of the Company's tariffs shall be August 22, 2007.

2. MetroCast shall comply with the post-certification filing requirements set forth in the Department's March 15, 1995 Decision in Docket No. 94-07-03. Regarding the requirement to file with the Department annual reports on its Connecticut operations, MetroCast shall do so no later than April 30th of each year, beginning in 2008. Such annual reports shall describe the status of its Connecticut operations and shall include at a minimum the following information:

   (a) the number of customers for each certified service;

   (b) number of lines subscribed;

   (c) total intrastate revenues;

   (d) intrastate minutes of use on a total service basis;

   (e) a description of physical changes in or additions to existing facilities expected for the next fiscal year and any changed uses of those facilities; and

   (f) any changes in the information, which was filed with the Department in this certification proceeding.

3. MetroCast shall participate in the Lifeline Credit and TRS funding program as described in Section II, E, above.

4. No later than 90 days prior to the Company's commencement of its own telephony facilities construction in the public rights-of-way, Metrocast shall file with the Department its construction plans for review and approval in accordance with § 16-247c-5 of the Conn. Agencies Regs.

5. No later than 15 days prior to Metrocast's offering of telecommunications services, the Company shall procure a $25,000 surety bond and shall file with the Department evidence that it has obtained the bond.

DOCKET NO. 07-07-23 APPLICATION OF METROCAST COMMUNICATIONS OF CONNECTICUT, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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
Acting Executive Secretary
Department of Public Utility Control

August 23, 2007
Date

1 of 1 DOCUMENT

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*** THIS SECTION IS CURRENT AS OF MARCH 24, 2010 ***
*** THROUGH RELEASED CHAPTERS 1 THROUGH 16 AND 52 ***

PUBLIC SERVICE LAW
ARTICLE 5. PROVISIONS RELATING TO TELEGRAPH AND TELEPHONE LINES AND TO TELEPHONE AND TELEGRAPH CORPORATIONS

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*NY CLS Pub Ser § 99* (2010)

§ 99. Franchises and privileges

1. No telegraph corporation or telephone corporation hereafter formed shall begin construction of its telegraph line or telephone line without first having obtained the permission and approval of the commission and its certificate of public convenience and necessity and the required consent of the proper municipal authorities. Notwithstanding the foregoing, any such certificate shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for a certificate, unless the commission, or its designee, determines within such ninety day period that the public interest requires the commission's review and its written order.

2. No franchise nor any right to or under any franchise to own or operate a telegraph line or telephone line shall be assigned, transferred or leased, nor shall any contract or agreement hereafter made with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission. No telephone corporation shall transfer or lease its works or system or any part of such works or system to any other person or corporation or contract for the operation of its works or system, without the written consent of the commission. Notwithstanding the foregoing, any such transfer or lease between affiliated corporations with an original cost of (a) less than one hundred thousand dollars proposed by a telephone corporation having annual gross revenues in excess of two hundred million dollars, (b) less than twenty-five thousand dollars proposed by a telephone corporation having annual gross revenues of less than two hundred million but more than ten million dollars or (c) less than ten thousand dollars proposed by a telephone corporation having annual gross revenues of less than ten million dollars and any other transfer or lease between non-affiliates regardless of cost shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete such transfer or lease and submits a description of the transfer or lease, unless the commission, or its designee, determines within such ninety days that the public interest requires the commission's review and written consent.

3. The approval of the commission to the exercise of a franchise or to the assignment, transfer or lease of a franchise shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.