

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
MetroCast Communications of Mississippi, LLC	)	
	)	EB Docket No. 04-296
Petition for a Limited Waiver of the CAP Compliance Obligations Contained in Part 11 of the Commission's Rules	)	
	)	
To: Chief, Public Safety and Homeland Security Bureau	)	

**PETITION FOR A LIMITED WAIVER OF THE  
CAP COMPLIANCE OBLIGATIONS**

**I. Introduction and Summary**

On behalf of MetroCast Communications of Mississippi, LLC ("MetroCast"), pursuant to Sections 1.3 and 11.52(d)(4) of the Commission's rules,<sup>1</sup> we submit this request for a waiver of the Common Alerting Protocol compliance deadline in 47 C.F.R. § 11.56(a). On May 24, 2012, MetroCast purchased two systems in rural Mississippi, and has begun interconnecting the systems with MetroCast's headend in Starkville, Mississippi. MetroCast has installed CAP-compliant equipment at its Starkville headend, and expects to complete this interconnection by December 31, 2012.<sup>2</sup>

It would be economically wasteful for MetroCast to upgrade these two headends for CAP compliance given the short time that they will remain operable, only to discard the upgraded facilities when the headends are interconnected. Accordingly, MetroCast

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<sup>1</sup> 47 C.F.R. § 1.3 (providing for the waiver of the Commission's rules "for good cause shown"), § 11.52(d)(4) (indicating that where an EAS message source cannot be received a waiver of the CAP compliance rules may be obtained by written request to the Chief, Public Safety and Homeland Security Bureau).

<sup>2</sup> The Starkville headend is associated with PSID 004088.

requests a six-month waiver of the Commission's CAP-compliance rules for these two systems so that it may avoid incurring unnecessary expenses.

We organize this Petition as follows:

- Background information on MetroCast
- Justification for the Requested Waiver
- Conclusion

## **II. Background**

Owned and operated by Harron Communications, L.P. ("Harron"), MetroCast and its affiliated entities is a family-owned Internet, cable, and telephone service provider that provides approximately 175,000 subscribers with cable television services in nine states.

On May 24, 2012, MetroCast acquired two small cable systems, in Louisville and Union, Mississippi, from Mediacom Southeast LLC.<sup>3</sup> MetroCast purchased the systems with the plan to upgrade the systems by interconnecting them to its Starkville headend.<sup>4</sup> To accomplish this system interconnection in an orderly and efficient manner, with the least possible disruption to its customers and the communities in which they live, MetroCast has scheduled the construction over the next few months, with a target completion by December 31, 2012.<sup>5</sup>

## **III. Justification for Requested Waiver**

The Commission may waive its rules for good cause shown.<sup>6</sup> Moreover, the Commission may exercise its waiver authority where grant of the waiver does not

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<sup>3</sup> See *Exhibit A*, Declaration of Steve Murdough, ¶ 2 ("*Murdough Declaration*"); see also *Exhibit C*, Bill of Sale.

<sup>4</sup> We attach a Work Order and redacted invoice as *Exhibit D*, showing that MetroCast began preparation for the interconnection in March, prior to MetroCast's purchase of the systems.

<sup>5</sup> *Murdough Declaration*, ¶ 2.

<sup>6</sup> 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC has authority to waive its rules if there is "good cause" to do so."); See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (The Commission may exercise its waiver authority where

undermine the policy served by the rule, and where particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> Good cause exists for granting MetroCast's request because granting the waiver will not undermine the policy served by the CAP compliance rules, while strict enforcement of the compliance deadline would result in unnecessary and unjustified economic waste.

**a. Grant of the waiver will not undermine the policy served by the EAS CAP compliance rules.**

In the *EAS Fifth Report and Order*, the Commission continued its on-going process of modernizing the Part 11 Emergency Alert System ("EAS") rules with the stated goal of making them more flexible and robust, to accommodate a wide array of modern digital communications media, and to integrate EAS with other public alert and warning systems.<sup>8</sup> To accomplish these goals, the Commission revised its EAS rules to specify the manner in which EAS Participants must receive CAP-formatted alert messages while continuing to distribute those messages in the legacy EAS format over the current broadcast-based EAS.<sup>9</sup> The Commission noted its belief that the new CAP rules will make public alerts disseminated through the EAS more effective and informative.<sup>10</sup>

Granting MetroCast's waiver request will not undermine these policy goals.

MetroCast intends to interconnect and consolidate the systems by December 31, 2012.<sup>11</sup>

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grant of the waiver does not undermine the policy served by the rule, and where particular facts make strict compliance inconsistent with the public interest.).

<sup>7</sup> See *WAIT Radio*, 418 F.2d at 1159.

<sup>8</sup> *In the Matter of Review of the Emergency Alert System, Fifth Report and Order*, 27 FCC Rcd 642, ¶ 2 (rel. Jan. 10, 2012) ("*EAS Fifth Report and Order*").

<sup>9</sup> *Id.*, ¶ 3.

<sup>10</sup> *Id.*, ¶ 5.

<sup>11</sup> *Murdough Declaration*, ¶ 3.

In the interim, the non-complaint systems will continue to receive and transmit EAS messages as before, and will carry broadcast channels that should be CAP compliant. As a result, the impact on consumers will be negligible and for a limited time. Furthermore, because subscribers will interconnect into the Starkville system incrementally, any impact will decrease over time.

In addition, granting the instant waiver has an insignificant impact on the EAS system as a whole. The MetroCast systems in question provide services to only approximately 3,000 subscribers. This number represents a negligible percentage of the total consumers served by all EAS Participants. Consequently, grant of this waiver does not undermine the Commission's goal of modernizing the EAS system and integrating it with other alert systems. Achievement of these policy objectives will continue unabated.

**b. Failure to grant a waiver to MetroCast will result in economic waste.**

Strict compliance with the new CAP compliance standards for systems that MetroCast intends to interconnect within a six-month period will require MetroCast to incur upgrade expenses that will be unrecoverable with the systems being interconnected.<sup>12</sup> In the *EAS Fifth Report and Order*, the Commission acknowledged that there are costs associated with upgrading and installing the equipment necessary for CAP compliance and crafted its rules to avoid, where possible, any unnecessary and unjustified costs associated with CAP compliance.<sup>13</sup> Granting MetroCast's waiver request is consistent with the Commission's efforts to avoid unnecessary and unjustified costs associated with CAP compliance.

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<sup>12</sup> *EAS Fifth Report and Order*, ¶ 5.

<sup>13</sup> *Id.*, ¶ 72 (allowing the use of intermediary devices because "imposition of the costs associated with the purchase of replacement EAS equipment is unnecessary and unjustified").

**c. Commission precedent supports a waiver.**

In 2003, the Media Bureau granted an EAS waiver under almost identical facts. At that time, Mediacom Communications Corporation requested a waiver of the EAS requirements while it “embarked on a capital expenditure to upgrade, interconnect and consolidate its cable systems.”<sup>14</sup> Like MetroCast, Mediacom argued that strict compliance would require it to incur costs that would be quickly lost due to planned system upgrades.<sup>15</sup> Here, MetroCast would suffer economic waste if is it required to upgrade its systems that are slated for interconnection and consolidation by the end of 2012. The Commission should avoid this unnecessary economic loss and grant MetroCast’s limited waiver request.

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<sup>14</sup> *In the Matter of Mediacom Communications Corporation; Operator of Cable Systems in the States of: Alabama, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri and Wisconsin; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, File No. EB-02-TS-617, 18 FCC Rcd 7656, ¶ 3 (2003) (granting a 12-month waiver of the October 1, 2002 EAS implementation deadline because requiring strict compliance would result in economic waste).

<sup>15</sup> *Id.*

#### IV. Conclusion

MetroCast has demonstrated good cause for the Commission to waive its EAS CAP-compliance requirements for the two systems, scheduled to be interconnected by the end of 2012. Granting this waiver does not undermine the purpose or policy behind the CAP compliance requirements, will not harm consumers, and will avoid unnecessary and unjustified costs consistent with the *EAS Fifth Report* and Order and Commission precedent.

Respectfully submitted,



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Andrea N. Person  
Cinnamon Mueller  
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Ste 1020  
Chicago, IL 60613

(312) 372-3930

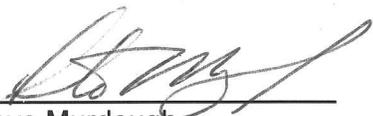
Attorneys for MetroCast  
Communications of Mississippi, LLC

June 29, 2012

**EXHIBIT A**

**DECLARATION OF STEVE MURDOUGH**

1. My name is Steve Murdough and I am Vice President of Operations for MetroCast Communications of Mississippi, LLC ("MetroCast").
2. MetroCast purchased the Louisville and Union, Mississippi systems from Mediacom Southeast LLC on May 24, 2012, and is currently working on interconnecting the systems with MetroCast's headend in Starkville, Mississippi.
3. To accomplish this system interconnection in an orderly and efficient manner and with the least possible disruption to its customers and communities, MetroCast has scheduled the construction over the next few months, with a target completion by December 31, 2012.
4. MetroCast will continue to operate legacy EAS equipment in the Louisville and Union systems.
5. I have read the foregoing "Petition for a Limited Waiver of the CAP Compliance Obligations" (the "Waiver Request") and I am familiar with its contents.
6. I declare under penalty of perjury that the facts contained herein and within the foregoing Waiver Request are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Waiver Request is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.

  
\_\_\_\_\_  
Steve Murdough  
Vice President of Operations  
MetroCast Communications of Mississippi, LLC

June 28, 2012.

**EXHIBIT B**

**METROCAST SYSTEMS**

<b>System Name</b>	<b>FCC CUIDs</b>	<b>PSID</b>
<b>Louisville</b>	MS0066, MS0213	004089
<b>Union</b>	MS0093, MS0094, MS0099	001837

**EXHIBIT C**  
**BILL OF SALE**

## **BILL OF SALE**

This **BILL OF SALE** (this "Bill of Sale") is made and delivered this 24<sup>th</sup> day of May, 2012 by Mediacom Southeast LLC ("Seller"), for the benefit of MetroCast Communications of Mississippi, LLC ("Buyer"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as hereinafter defined).

**WHEREAS**, Seller and Buyer have entered into that certain Asset Purchase Agreement dated May 24, 2012 (the "Purchase Agreement"), the terms of which are incorporated herein by reference, which provides, among other things, for the sale and assignment by Seller to Buyer of the Assets.

**NOW, THEREFORE**, in consideration of the mutual promises contained in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, and subject to the terms and conditions of the Purchase Agreement:

1. Seller does hereby sell, assign, transfer and deliver unto Buyer, and its successors and assigns, effective as of the Closing, all of Seller's right, title and interest in and to the Assets **TO HAVE AND TO HOLD** such Assets with all appurtenances thereto, unto Buyer, and its successors and assigns, for their use forever.

2. Seller covenants and agrees to warrant and defend the sale, assignment, contribution, and delivery of the Assets hereby made against all persons whomsoever, to take all steps reasonably necessary to establish the record of Buyer's title to the Assets and to put Buyer in actual possession and operating control thereof.

3. This Bill of Sale shall inure to the benefit of and be binding upon the parties to the Purchase Agreement and their respective successors and assigns.

4. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Purchase Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the Purchase Agreement, the Purchase Agreement shall govern. To the extent any Asset is expressly transferred pursuant to the terms of another bill of sale executed by Seller for Buyer's benefit, such Bill of Sale shall govern the conveyance of such Assets.

5. This Bill of Sale shall be governed by, and construed in accordance with the laws of the State of New York, as applied to contracts made and performed entirely in such State.

[Signature page follows]

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, Seller has caused this Bill of Sale to be executed and delivered as of the day and year first above written.

**MEDIACOM SOUTHEAST LLC**

By:   
Name:  
Title:

**EXHIBIT D**

**WORK ORDER**

## **WORK ORDER**

attached to

Contractor Agreement (this "Agreement") dated as of September 16, 2011 by and between MetroCast Communications of Mississippi, LLC ("MetroCast") and K and B Underground Services, LLC ("Contractor")

### **Work Order Overview**

The following Work Order, for the project titled "Fiber Backbone Interconnect from the Starkville Headend to Louisville Headend", defines the required underground conduit fiber optic cable construction and required coordination and cooperation with the aerial fiber optic cable construction contractor.

Contractor will provide competent and experienced underground construction crews to perform the required underground excavating and backfilling construction, placement of PVC conduits and fiber optic cables.

Contractor will provide competent and experienced fiber optic splicing personnel to perform the required aerial and underground optical splicing, aerial and underground splice enclosure placement and aerial and underground slack management.

The fiber backbone construction will begin at a fiber splice point in Starkville and end at the Louisville headend.

Contractor will be responsible for underground construction, all fiber and coaxial splicing and acceptance testing of the fiber optic cable in accordance to the construction, splicing and testing specifications included in the construction contract and provided here in. All construction work and acceptance testing to MetroCast's standards will be completed within sixty (60) days of receiving authorization from MetroCast to proceed with construction, with the finished product delivered to MetroCast before the end of such sixty (60) day period. In all cases, the Construction Specifications set forth in the Agreement must be followed.

### **Underground Fiber Placement**

Beginning in Starkville, Mississippi, Contractor will construct the underground portion of the 144 count fiber optic cable from the location identified as Enclosure A in Starkville to the termination point at the Louisville headend, as indicated on the design prints to be furnished by MetroCast. The underground construction consists of approximately 44,010 feet of which, 22,331 feet of 2 inch conduit has been previously constructed. Contractor is required to place 21,679 feet of 2 inch conduit with splice and pull vaults located at approximately 1000 to 1500 foot increments allowing for ease of construction, maintenance and restoration.

Contractor is required to place 44,010 feet of 144 count fiber optic cable within the existing and new 2 inch conduit. A slack quantity of 150 feet of 144 count fiber optic cable will be placed and managed at 1000 to 1500 foot vault locations. Fiber optic cable will be grounded using MetroCast's standard grounding procedures, in all vault locations.

Due to the deployment of fiber optic cable in both aerial and underground environments, coordination of slacked cable and field staging of underground cable requires contractor's cooperation and understanding of potential delays. Contractor acknowledges the potential for this type of delay and agrees to full cooperation with Company's aerial contractor.

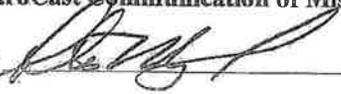
**Splice enclosures and splicing**

Fiber optic splice enclosure housings will be placed at designated splice points, both aerial and underground, along the route from the Starkville Headend to the Louisville Headend. Contractor will be provided with the actual system design print that identifies the physical location of all enclosure housings. Enclosures are to be placed with 150 feet of fiber cable tails to allow for the enclosure to be removed from the strand attachment and lowered to a ground location for splicing and testing purposes. Contractor is required to terminate all 144 count fibers in a MetroCast-provided splice and patch panel chassis located within the Louisville Headend facility. The OSP optical cable within the Louisville Headend will not exceed 50 feet. Additional slack requirements will be maintained on the last cable span outside the Louisville headend building. Contractor is required to make an entry point in the external wall of the Louisville facility and will be required to use a proper entry device to insure against environmental damages such as water and rodent.

All fiber optic cable splicing shall be performed to MetroCast specifications using a "Core Align" fusion splicer that has been certified and calibrated to manufacturer's specifications within the last 4 months. All fiber optic splicing documentation to MetroCast specifications shall be submitted for approval upon completion of the testing.

Agreed and accepted:

**MetroCast Communication of Mississippi, LLC**

By: 

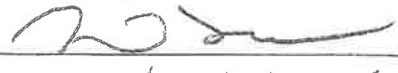
Name: Steven Murdough

Title: Vice President of Operations

Date: March 5, 2012

Agreed and accepted:

**K and B Underground Services, LLC**

By: 

Name: Michael Bruns

Title: President

Date: 3-31-12

K & B Underground Services LLC

1129 Windsor Dr  
Gallatin, TN 37066

JUN 25 2012

# Invoice

RECEIVED

Date	Invoice #
6/16/2012	219

<b>Bill To</b>
Metrocast 105 Allison Cv Oxford MS 38655

13005

Qty	Item	Description	Rate	Amount
1,110 48	Directional Bore Labor	Directional Bore Labor Sales Tax		
			<b>Total</b>	
<i>Interconnect</i>				