

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

In the Matter of)	
)	
W.A.T.C.H. TV and)	
Benton Ridge Telephone Co.)	File No. EB-02-TS-510
)	
Operator of Wireless Cable Systems in:)	
)	
Lima, Ohio)	
Wapakoneta, Ohio)	
Celina, Ohio)	
Ottawa, Ohio)	
St. Mary's, Ohio)	
Ada, Ohio)	
Bluffton, Ohio)	
Van Wert, Ohio)	
Bellafontaine, Ohio)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: September 26, 2002

Released: September 27, 2002

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we deny the request for waiver of Section 11.11(a) of the Commission's Rules ("Rules") filed by W.A.T.C.H. TV and the Benton Ridge Telephone Co. ("W.A.T.C.H. TV") for the above-captioned wireless cable television systems. However, we grant W.A.T.C.H. TV a limited 30-day waiver to permit the filing of a petition for rulemaking seeking modification of Section 11.11(a) as it applies to wireless cable systems. In the event such a petition is filed, this 30-day waiver will be automatically extended as specified in paragraph 5 of this *Order*.

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.¹ In

¹ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same

1994, the Commission adopted rules requiring cable systems to participate in EAS.² In 1997, the Commission amended the EAS rules to include wireless cable television systems.³ The Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁴ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers and all wireless cable systems to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁵ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁶ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁷

3. W.A.T.C.H. TV filed a request for waiver of Section 11.11(a) for its wireless cable systems on September 9, 2002.⁸ W.A.T.C.H. TV states that its need for a waiver "arises from the unsuitability of current EAS equipment for digital wireless cable systems" and asserts that compliance with the current EAS rules will impose substantially greater costs on wireless cable systems using digital technology than on other cable systems. W.A.T.C.H. TV proposes an alternative way for wireless cable systems to provide EAS alerts, which it estimates will be less costly. W.A.T.C.H. TV requests a permanent waiver of Section 11.11(a) to enable it to implement its alternative approach within two

emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

² *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("*Second Report and Order*").

⁴ *Id.* at 15512-13.

⁵ *Id.* at 15516-15518.

⁶ *Id.* at 15513.

⁷ *Id.* at 15513, n. 59.

⁸ Letter from Robert Primosch, Esq., Counsel, W.A.T.C.H. TV and Benton Ridge Telephone Company, to Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau (September 9, 2002).

months of the October 1, 2002 deadline. In support of its waiver request, W.A.T.C.H. TV relies in part upon a decision granting a waiver to Qwest Broadband Services, Inc. ("Quest").⁹

4. Based upon our review of the information submitted by W.A.T.C.H. TV, we decline to grant it a financial hardship waiver. The information provided by W.A.T.C.H. TV indicates that it is not requesting a waiver based upon specific financial circumstances unique to its operations. Rather, it is seeking what is in effect a revision of the EAS rules to reflect the impact of the use of digital technology by wireless cable systems. At the time the Commission extended the EAS requirements to wireless cable systems, it anticipated that the wireless cable industry "will seek changes to the Commission's EAS Rules as technology changes from analog to digital"¹⁰ The Commission has to date received no such requests. Moreover, we find that W.A.T.C.H. TV's reliance on the decision granting a waiver to Quest is misplaced. That decision only granted Quest a 12-month waiver of the existing requirements of Section 11.11(a), not a permanent waiver or modification of these requirements.¹¹

5. While we decline to grant the waiver requested by W.A.T.C.H. TV, we grant W.A.T.C.H. TV a limited 30-day waiver of Section 11.11(a) of the Rules to enable a revision of the Commission's EAS rules to be requested through the petition for rulemaking process.¹² In addition, if a petition for rulemaking is filed, this waiver will be automatically extended until either the effective date of any changes adopted by the Commission to the EAS rules for wireless cable systems using digital technology, or 90 days after the Commission issues a decision declining to adopt any such changes.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹³ W.A.T.C.H. TV **IS GRANTED** a limited waiver of Section 11.11(a) of the Rules as specified herein and in all other respects its application for a waiver of Section 11.11(a) of the Rules **IS DENIED**.

7. **IT IS FURTHER ORDERED** that W.A.T.C.H. TV place a copy of this *Order* in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Robert Primosch, Esq., W.A.T.C.H. TV and Benton Ridge Telephone Company, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

⁹ *Qwest Broadband Services, Inc.*, 17 FCC Rcd 14210 (Enf. Bur. 2002).

¹⁰ *Second Report and Order*, 12 FCC Rcd at 15522.

¹¹ 17 FCC Rcd at 14211.

¹² See 47 C.F.R. § 1.401.

¹³ 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.