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

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| In the Matter of | ) | |
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| Whitehall Cable TV | ) | File No. EB-02-TS-281 |
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| Operator of Cable System in: | ) | |
| | ) | |
| Whitehall, Montana | ) | |
| | ) | |
| Request for Waiver of Section 11.11(a) of the Commission's Rules | ) | |
| | ) | |

# ORDER

**Adopted: October 21, 2002** **Released: October 21, 2002**

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

1. In this *Order*, we grant Whitehall Cable TV ("Whitehall") a temporary, 36-month waiver of Section 11.11(a) of the Commission's Rules ("Rules") for the above-captioned cable television system. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.[1]

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.[2] In 1994, the Commission adopted rules requiring cable systems to participate in EAS.[3] In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.[4] The Commission declined to exempt small cable systems from the EAS requirements, concluding that such an

[1] 47 C.F.R. § 11.11(a).

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

[3] *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) ("*First Report and Order*"), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

[4] *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*").

exemption would be inconsistent with the statutory mandate of Section 624(g).[5] However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers 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.[6] 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.[7] 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.[8]

3. Whitehall filed a request for a waiver of Section 11.11(a) for the captioned cable system on July 1, 2002. In support of its waiver request, Whitehall states this is a small, rural cable system which serves approximately 250 subscribers. Whitehall asserts that the cost to install EAS equipment at the system will impose a substantial financial hardship on it and provides financial statements for 2000 and 2001 in support of this assertion. In addition, Whitehall indicates that subscribers will continue to have ready access to national EAS information from other sources, including its cable system. In this regard, Whitehall notes that its subscribers currently have access to national EAS messages on at least one-third of all programmed channels. Whitehall further indicates that subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

4. Based upon our review of the financial data and other information submitted by Whitehall, we conclude that a temporary, 36-month waiver of Section 11.11(a) for the captioned cable system is warranted.[9] In particular, we find that the estimated cost of EAS equipment for this small cable system could impose a financial hardship on Whitehall.

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.[10] Based on comments from equipment

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[5] *Id.* at 15512-13.

[6] *Id.* at 15516-15518.

[7] *Id.* at 15513.

[8] *Id.* at 15513, n. 59.

[9] The waiver will from October 1, 2002, until October 1, 2005. We clarify that the waiver we are granting also encompasses the EAS testing and monitoring requirements.

[10] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.[11]

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,[12] Whitehall Cable TV **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the captioned cable television system.

7. **IT IS FURTHER ORDERED** that Whitehall Cable TV place a copy of this waiver in its system file.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to William E. Herbolich, Owner, Whitehall Cable TV, Box 343, Whitehall, Montana 59759.

FEDERAL COMMUNICATIONS COMMISSION

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

[11] One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

[12] 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.