

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

In the Matter of)	
)	
Lycom Communications, Inc.)	File No. EB-03-TS-102
)	
Operator of Cable Systems in:)	
)	
Louisa, Kentucky)	
Blaine, Kentucky)	
Charley, Kentucky)	
Clifford, Kentucky-Glenhays, West Virginia)	
Bonser, Ohio)	
Proctorville, Ohio)	
Genoa, West Virginia)	
)	
Request for Waiver of Section 11.11(a) of the Commission’s Rules)	

ORDER

Adopted: July 1, 2003

Released: July 3, 2003

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

1. In this *Order*, we grant Lycom Communications, Inc. (“Lycom”) temporary waivers of Section 11.11(a) of the Commission’s Rules (“Rules”) for the seven above-captioned cable television systems. Specifically, we grant a temporary waiver of Section 11.11(a) for the system in Louisa, Kentucky from April 9, 2003 until October 1, 2003, and temporary waivers of Section 11.11(a) for the remaining six systems from April 9, 2003 until October 1, 2005. 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

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).

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 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. Lycom filed a request for temporary waivers of Section 11.11(a) for the seven captioned cable systems on April 9, 2003. In support of its waiver request, Lycom states that these are small, rural cable systems, which serve between 40 and 1,302 subscribers. Lycom estimates that it will cost approximately \$56,700 to install EAS equipment at these systems. Lycom asserts that this cost will impose a substantial financial hardship on it and provides its financial statement for 2002 in support of this assertion. In addition, Lycom states that it ordered EAS equipment for its Louisa system in 2002, but subsequently discovered that the equipment was not compatible with its headend equipment. Lycom states that it is determining which EAS equipment will work with its Louisa headend and expects to install EAS equipment at this headend by October 1, 2003. Lycom also states that it plans to interconnect its Charley, Kentucky, Genoa, West Virginia, and Clifford, Kentucky-Glenhays, West Virginia systems with the Louisa headend in the next two years and asserts that this interconnection will save the company the expense of installing EAS equipment at these three systems. Lycom expects to install EAS equipment at the remaining three systems within three years. Finally, Lycom asserts that its subscribers will continue to have ready access to national EAS information from other sources, including its cable system.

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*").

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

4. Based upon our review of the financial data and other information submitted by Lycom, we conclude that temporary waivers of Section 11.11(a) for the seven captioned cable systems are warranted.⁹ In particular, we find that the estimated \$56,700 cost of EAS equipment for these small systems could impose a financial hardship on Lycom. We grant Lycom a temporary waiver of Section 11.11(a) for the Louisa, Kentucky cable system from April 9, 2003 until October 1, 2003, and temporary waivers of Section 11.11(a) for the remaining six cable systems from April 9, 2003 until October 1, 2005. However, we note that Lycom did not file its waiver request until April 9, 2003, after the October 1, 2002 deadline for cable systems serving 10,000 or fewer subscribers to install EAS equipment. We find that Lycom was in violation of the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002. We admonish Lycom for this violation.

5. Accordingly, IT IS ORDERED that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁰ Lycom Communications, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules from April 9, 2003 until October 1, 2003 for the Louisa, Kentucky cable television system, and **IS GRANTED** waivers of Section 11.11(a) of the Rules from April 9, 2003 until October 1, 2005 for the cable television systems in Blaine, Kentucky, Charley, Kentucky, Clifford, Kentucky-Glenhays, West Virginia, Bonser, Ohio, Proctorville, Ohio and Genoa, West Virginia.

6. **IT IS FURTHER ORDERED** that Lycom Communications, Inc. **IS ADMONISHED** for violating the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002.

7. **IT IS FURTHER ORDERED** that Lycom Communications, Inc. place a copy of this waiver 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 counsel for Lycom Communications, Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

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

⁹ We clarify that the waiver we are granting also encompasses the EAS testing and monitoring requirements.

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