

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

In the Matter of)	
)	
Town of Levan, Utah d/b/a Levan Town Cable Systems)	File No. EB-03-TS-103
)	
Operator of Cable System in:)	
)	
Levan, Utah)	
)	
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 Town of Levan, Utah d/b/a Levan Town Cable Systems (“Town of Levan”) a temporary 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

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*

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. Town of Levan filed a request for a temporary waiver of Section 11.11(a) for the captioned cable system on April 11, 2003. In support of its waiver request, Town of Levan states that it was understaffed and under-funded and was unable to retain counsel to submit a waiver request by the October 1, 2002 deadline for its small, rural cable system, which serves approximately 187 subscribers. Town of Levan estimates that it will cost approximately \$10,000 to install EAS equipment at this system. Town of Levan asserts that this cost will impose a substantial financial hardship on it and provides financial data for 2002 in support of this assertion. Town of Levan asserts that its subscribers will continue to have ready access to national EAS information from other sources, including its cable system. Finally, Town of Levan believes that it can bring the captioned cable system into EAS compliance within the next three years.

4. Based upon our review of the financial data and other information submitted by Town of Levan, we conclude that a temporary waiver of Section 11.11(a) for the captioned cable system from April 11, 2003 until October 1, 2005 is warranted.⁹ In particular, we find that the estimated \$10,000 cost of EAS equipment for this system could impose a financial hardship on Town of Levan. However, we note that Town of Levan did not file its waiver request until April 11, 2003, after the October 1, 2002 deadline for cable systems serving 10,000 or fewer subscribers to install EAS equipment. We find that Town of Levan was in violation of the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002. We admonish Town of Levan for this violation.

Order”).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

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

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁰ Town of Levan, Utah d/b/a Levan Town Cable Systems **IS GRANTED** a waiver of Section 11.11(a) of the Rules from April 11, 2003 until October 1, 2005 for the captioned cable television system.

6. **IT IS FURTHER ORDERED** that Town of Levan, Utah d/b/a Levan Town Cable Systems **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 Town of Levan, Utah d/b/a Levan Town Cable Systems 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 counsel for Town of Levan, Utah d/b/a Levan Town Cable Systems, 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

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