

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

In the Matter of
Galaxy Cable, Inc.
Operator of Cable System in:
Schuyler, Nebraska
Request for Waiver of Section 11.11(a) of the
Commission's Rules
File No. EB-02-TS-334

ORDER

Adopted: July 16, 2003

Released: July 18, 2003

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we grant Galaxy Cable, Inc. ("Galaxy Cable") a temporary, 36-month waiver of Section 11.11(a) of the Commission's Rules ("Rules") for the above-captioned cable television system. Additionally, we clarify three previous orders granting waivers of Section 11.11(a) to Galaxy Telecom, L.P. ("Galaxy Telecom"), Galaxy Cable's predecessor-in-interest.1 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, 2002.2

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.3 In 1994, the Commission adopted rules requiring cable systems to participate in EAS.4 In 1997, the

1 Galaxy Telecom, L.P., 17 FCC Rcd 11798 (Enf. Bur., Tech. & Pub. Safety Div., 2002); Galaxy Telecom, L.P., 17 FCC Rcd 11801 (Enf. Bur., Tech. & Pub. Safety Div., 2002); Galaxy Telecom, L.P., 17 FCC Rcd 11805 (Enf. Bur., Tech. & Pub. Safety Div., 2002) (collectively, "Waiver Orders").

2 47 C.F.R. § 11.11(a).

3 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).

4 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).

Commission amended the EAS rules to provide financial relief for small cable systems.⁵ 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).⁶ 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.⁷ 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.⁸ 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.⁹

3. On April 2, 2002, Galaxy Telecom filed a request for waiver of Section 11.11(a) of the Rules for 234 small cable systems. In its waiver request, Galaxy Telecom noted that it had filed for Chapter 11 bankruptcy protection in October 2001 and that it intended to transfer all of its assets to Galaxy Cable as part of the court-ordered reorganization plan. Galaxy Telecom indicated that it was therefore filing the waiver request on behalf of both Galaxy Telecom and Galaxy Cable. In support of its waiver request, Galaxy Telecom submitted financial documentation indicating that compliance with Section 11.11(a) would impose a serious financial hardship on it. On June 21, 2002, the Technical and Public Safety Division of the Enforcement Bureau released three orders granting Galaxy Telecom temporary waivers of Section 11.11(a) for the 234 small cable systems.¹⁰ On July 19, 2002, Galaxy Cable filed a request for clarification of the *Waiver Orders*. Galaxy Cable states that following the issuance of the *Waiver Orders*, all of Galaxy Telecom's assets were transferred to Galaxy Cable pursuant to the court-ordered reorganization plan. Galaxy Cable notes that the *Waiver Orders* only reference Galaxy Telecom, not Galaxy Cable, and seeks clarification that the waivers granted in these orders also apply to Galaxy Cable. We clarify that the temporary waivers of Section 11.11(a) granted to Galaxy Telecom in the *Waiver Orders* also apply to its successor, Galaxy Cable. The failure to reference Galaxy Cable in the *Waiver Orders* was inadvertent.

4. Galaxy Cable also requests clarification that the waivers granted in the *Waiver Orders* will continue to apply to the systems if the systems are sold. Galaxy Cable states that it is currently

⁵ *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).

⁶ *Id.* at 15512-13.

⁷ *Id.* at 15516-15518.

⁸ *Id.* at 15513.

⁹ *Id.* at 15513, n. 59.

¹⁰ *See Waiver Orders, supra* n. 1.

seeking buyers for certain of its systems and asserts that its ability to sell the systems at market value may be substantially impaired if the buyers have to bring the systems into compliance immediately. Galaxy Cable further asserts that the Commission has recognized the importance of small system relief following a system after sale of the system to a larger operator. In support of this assertion, Galaxy Cable cites a 1995 Commission order determining that a small cable system eligible for relief from cable rate regulation shall remain eligible for such relief even if the system is subsequently acquired by a larger cable operator.¹¹

5. We deny Galaxy Cable's request for clarification that the temporary waivers granted in the *Waiver Orders* will continue to apply if the systems are sold. We granted the temporary waivers based on our review of the financial data and other information submitted by Galaxy Telecom, which demonstrated that the estimated cost of EAS equipment for the 234 small cable systems could impose a substantial financial hardship on it. We have no basis for determining at this juncture whether compliance with the EAS requirements would impose a similar financial hardship on any buyer or buyers if some of Galaxy Cable's systems are sold. Moreover, we do not believe that the policy of allowing small cable systems to remain eligible for relief from rate regulation even if they are subsequently acquired by a larger operator should be automatically extended to the EAS context. We think that there is a significant distinction between the ongoing regulatory burdens and costs associated with rate regulation and the one-time expense of installing EAS equipment. Further, the cost to small cable systems of complying with the EAS rules continues to decline. In this regard, 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.¹² On July 23, 2002, the Commission staff granted an equipment authorization for an EAS decoder-only unit to an equipment manufacturer.¹³ We anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹⁴ Finally, in view of the serious public safety objectives underlying the EAS rules, we do not think that it would be appropriate to automatically extend the temporary waivers granted to Galaxy Cable's systems to any subsequent buyer irrespective of its size or financial status. Rather, we will afford any such buyer 30 days from the date the sale of any system or systems is consummated to request a waiver of Section 11.11(a), submitting the information necessary to support a financial hardship showing. Any buyer that does not file a waiver request will be required to come into compliance with the EAS rules by the end of the 30-day period.

6. On August 26, 2002, Galaxy Cable filed a supplemental request for a temporary, 36-month waiver of Section 11.11(a) for its Schuyler, Nebraska cable system. Galaxy Cable states that in preparing the April 2, 2002 waiver request, it incorrectly identified the Schuyler system as being interconnected with its Wilber, Nebraska headend and therefore believed that the Schuyler system would

¹¹ *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7413 (1995).

¹² *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055, 4082 (2002).

¹³ *Public Notice*, "Notice Regarding FCC Certification of EAS Decoder," DA 02-2312 (Enf. Bur. released September 19, 2002).

¹⁴ One estimate indicates that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. 17 FCC Rcd at 4082.

not require a waiver. However, Galaxy Cable states that it is actually its Geneva, Nebraska cable system that is interconnected with the Wilber headend and therefore does not require a waiver. One of the *Waiver Orders* granted Galaxy Telecom's request for a 24-month waiver of Section 11.11(a) for the Geneva, Nebraska cable system.¹⁵ Galaxy Cable notes that the Schuyler cable system has approximately 996 subscribers. Based on price quotes from EAS equipment manufacturers, Galaxy Cable estimates that it would cost approximately \$10,000 to install EAS equipment at this system. Galaxy Cable asserts that this cost will impose a substantial financial hardship on it and provides its financial statements for 2000 and 2001 in support of this assertion. In addition, Galaxy Cable submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. Galaxy Cable also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

7. Based upon our review of the financial data and other information submitted by Galaxy Cable, we conclude that a temporary, 36-month waiver of Section 11.11(a) for the Schuyler cable system is warranted.¹⁶ In particular we find that the estimated \$10,000 cost of EAS equipment for this small cable system could impose a financial hardship on Galaxy Cable. Further, we withdraw the temporary, 24-month waiver previously granted for the Geneva, Nebraska cable system.

8. Accordingly, **IT IS ORDERED** that Galaxy Cable, Inc.'s request for clarification **IS GRANTED** to the extent indicated herein and **IS** otherwise **DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁷ Galaxy Cable, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the Schuyler, Nebraska cable television system.

10. **IT IS FURTHER ORDERED** that the temporary, 24-month waiver of Section 11.11(a) of the Rules previously granted to Galaxy Cable for its Geneva, Nebraska cable television system **IS WITHDRAWN**.

11. **IT IS FURTHER ORDERED** that Galaxy Cable, Inc. place a copy of this waiver in its system files.

¹⁵ *Galaxy Telecom, L.P.*, 17 FCC Rcd 11801 (Enf. Bur., Tech. & Pub. Safety Div., 2002).

¹⁶ The waiver will extend from October 1, 2002, until October 1, 2005. We clarify that the waiver we are granting also encompasses the EAS testing and monitoring requirements. Galaxy Cable also requests that we clarify that this waiver will continue to apply to the Schuyler cable system if it is sold. For the reasons stated above, we deny this request.

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

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Galaxy Cable, Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau