

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

In the Matter of
Arlington TV Cooperative, Inc.
Operator of Cable System in:
Arlington, Oregon
Request for Waiver of Section 11.11(a) of the
Commission's Rules
No. EB-02-TS-662

ORDER

Adopted: August 14, 2003

Released: August 18, 2003

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we grant Arlington TV Cooperative, Inc. ("Arlington TV") 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.

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. In 1994, the Commission adopted rules requiring cable systems to participate in EAS. In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems. 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).<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

3. Arlington TV filed a request for a temporary, 36-month waiver of Section 11.11(a) for the captioned small, rural cable system on October 17, 2002. In support of its waiver request, Arlington TV states that this cable system serves approximately 92 subscribers. Based on price quotes provided by EAS equipment manufacturers, Arlington TV estimates that it would cost approximately \$6,800 to install EAS equipment at this system. Arlington TV asserts that this cost will impose a substantial financial hardship on it and provides its financial statements for 2000, 2001 and 2002 in support of this assertion. In addition, Arlington TV submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable system. In this regard, Arlington TV notes that its subscribers currently have access to national EAS messages on approximately 68 percent of all programmed channels. Arlington TV also asserts that its 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 Arlington TV, we conclude that a temporary waiver of Section 11.11(a) for the captioned cable system from October 17, 2002 until October 1, 2005 is warranted.<sup>9</sup> However, we note that Arlington TV did not file its waiver request until October 17, 2002, after the October 1, 2002 deadline for cable systems serving 10,000 or fewer subscribers to install EAS equipment. We find that Arlington TV was in violation of the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002. We admonish Arlington TV for this violation.

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

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<sup>5</sup> *Id.* at 15512-13.

<sup>6</sup> *Id.* at 15516-15518.

<sup>7</sup> *Id.* at 15513.

<sup>8</sup> *Id.* at 15513, n. 59.

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

encoders and decoders.<sup>10</sup> Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.<sup>11</sup>

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,<sup>12</sup> Arlington TV Cooperative, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules from October 17, 2002 until October 1, 2005 for the captioned cable television system.

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

8. **IT IS FURTHER ORDERED** that Arlington TV Cooperative, Inc. place a copy of this waiver in its system file.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Arlington TV Cooperative, 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

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<sup>10</sup> *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).

<sup>11</sup> 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.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.