

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

In the Matter of)	
)	
Cunningham Communications, Inc.)	File No. EB-02-TS-246
)	
Operator of Cable System in:)	
)	
Glen Elder, Kansas)	
)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: September 25, 2003

Released: September 30, 2003

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this *Order*, we grant Cunningham Communications, Inc. (“Cunningham”) a limited, temporary waiver of Section 11.11(a) of the Commission’s Rules (“Rules”) for the video portion of a single channel on its Glen Elder, Kansas cable television system that carries locally-inserted community programming. 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 The temporary waiver will apply for only long as the video programming on the local community channel continues to be inserted at the community nodes and the audio portion of the local community channel continues to carry national EAS alerts. In addition, as a condition of this grant, Cunningham must include an insert with its bill to subscribers once a year alerting the subscribers that this local community channel will not carry the video portion of national EAS alerts because Cunningham has been granted a partial waiver of the EAS requirements with respect to this channel. The first billing insert to be provided within 90 days of release of this order.

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. On June 13, 2002, Cunningham filed a request for a narrow and limited temporary waiver of Section 11.11(a) for its Glen Elder, Kansas cable system, which serves approximately 2,670 subscribers in eleven small communities. Specifically, Cunningham requests a limited waiver of Section 11.11(a) for the video portion of one channel on its Glen Elder system that carries locally-inserted community programming. Cunningham states that this local community channel, which is currently featured in seven of the eleven communities served by the Glen Elder system and may be featured in additional communities in the future, carries text messages inserted at the municipal level. To enable the municipalities to insert local text messages, Cunningham has installed deletion filters at each node, which remove any signal from the headend and remodulate the local community channel so that the municipalities may insert community-specific text messages. Cunningham asserts that it cannot override these text messages with EAS messages without installing costly switching equipment at each node. Based on consultations with an engineering consultant familiar with EAS applications, Cunningham estimates that the cost of installing the necessary switching equipment ranges from \$2,500 to \$4,500 per node, for a total cost of between \$17,500 and \$31,500. Cunningham asserts that this cost will impose a substantial financial hardship on it and submits its financial reports for 2001 and 2002 in support of this assertion. Cunningham states that it will install the required EAS equipment in the Glen Elder headend

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), *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).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

by October 1, 2002, so that EAS messages will be provided on 65 of the 66 programmed channels carried on the system. Further, Cunningham notes that the audio portion of the programming on the local community channel is the signal of a local radio station, which will provide audio national EAS messages. Finally, Cunningham submits that its subscribers will also 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 Cunningham Communications, we conclude that limited temporary waiver of Section 11.11(a) for one channel on the company's Glen Elder, Kansas system is warranted.⁹ In particular, we find that the estimated \$31,500 cost of switching equipment for this small cable system could impose a financial hardship on Cunningham. This waiver will extend for as long as the video programming on the local community channel continues to be inserted at the community nodes and the audio portion of the channel continues to carry national EAS alerts. In addition, as a condition of the waiver, Cunningham must include an insert with its bill to subscribers once a year alerting the subscribers that this channel will not carry the video portion of national EAS alerts because Cunningham has been granted a partial waiver of the EAS requirements with respect to this channel.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁰ Cunningham Communications, Inc. **IS GRANTED** a temporary waiver of Section 11.11(a) of the Rules for the video portion of one channel on its Glen Elder, Kansas system which carries locally-inserted community programming, subject to the conditions specified herein.

6. **IT IS FURTHER ORDERED** that Cunningham Communications, Inc. place a copy of this waiver in its system files.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Cunningham Communications, 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

⁹ We clarify that we are also granting Cunningham a waiver of the EAS testing requirements with respect to this local community channel.

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