

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

In the Matter of
SM Cable Holdings, L.L.C.
Operator of Cable Systems in the States of:
Alabama, California, Florida, Georgia, Idaho,
Montana, Nevada, Oregon, South Carolina, Utah,
and Wyoming
Request for Waiver of Section 11.11(a) of the
Commission's Rules
File No. EB-02-TS-301

ORDER

Adopted: January 10, 2003

Released: January 13, 2003

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

1. In this Order, we grant SM Cable Holdings, L.L.C. ("SM Cable") temporary waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 180 cable television systems in the 11 above-captioned states. Specifically, we grant temporary, 12-month waivers of Section 11.11(a) for 12 cable television systems and temporary, 36-month waivers of Section 11.11(a) for 168 cable television systems listed in Attachment A. 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

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).

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 July 11, 2002, SM Cable filed a request for temporary 36-month waivers of Section 11.11(a) for 180 small, rural cable systems in the 11 captioned states. In support of its waiver request, SM Cable indicates that 168 of its cable systems serve less than 1,000 subscribers, with 146 systems serving less than 500 subscribers. In addition, SM Cable notes that only 12 of its systems serve between 1,029 and 2,792 subscribers. Based on price quotes provided by EAS equipment manufacturers, SM Cable estimates that it would cost an average of approximately \$7,300 to install EAS equipment at each of these systems for a total cost of \$1,314,000. SM Cable asserts that this cost will impose a substantial financial hardship on it and provides financial statements for 2000 and 2001 in support of this assertion. SM Cable submits that its subscribers will continue to have ready access to national EAS information from other sources, including many of the programmed channels carried over its cable systems. SM Cable further submits 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 SM Cable, we decline to issue temporary, 36-month waivers of Section 11.11(a) for 12 of the cable systems. However, we conclude that temporary, 12-month waivers of Section 11.11(a) for 12 cable systems and temporary, 36-month waivers of Section 11.11(a) for 168 systems are warranted.⁹ In

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.

⁹ The 12-month waivers will extend from October 1, 2002 until October 1, 2003, and the 36-month waivers will extend from October 1, 2002, until October 1, 2005. Additionally, we clarify that the waivers we are granting also

particular, we find that the estimated \$1,314,000.00 cost of EAS equipment for these small cable systems could impose a financial hardship on SM Cable.

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

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹² SM Cable Holdings, L.L.C. **IS GRANTED** waivers of Section 11.11(a) of the Rules until October 1, 2003 for 12 cable television systems and **IS GRANTED** waivers of Section 11.11(a) of the Rules until October 1, 2005 for 168 cable television systems listed in Attachment A.

7. **IT IS FURTHER ORDERED** that SM Cable Holdings, L.L.C. place a copy of these waivers in its systems files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for SM Cable Holdings, L.L.C., Sharon O'Malley Monahan, Esq., Fleischman and Walsh, L.L.P., 1400 Sixteenth Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

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

encompass the EAS testing and monitoring requirements.

¹⁰ *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).

¹¹ 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.

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

Attachment A

SM Cable Holdings, L.L.C.

Cable Systems:**Temporary Waiver Granted Until:****Alabama**

Andalusia (Heath), Alabama	October 1, 2003
Ashville, Alabama	October 1, 2003
Barnwell, Alabama	October 1, 2003
Blount County, Alabama	October 1, 2003
Good Hope, Alabama	October 1, 2003

Addison, Alabama	October 1, 2005
Beatrice, Alabama	October 1, 2005
Castleberry, Alabama	October 1, 2005
Daphne, Alabama	October 1, 2005
Hayneville, Alabama	October 1, 2005
Lowndes, Alabama	October 1, 2005
McKenzie, Alabama	October 1, 2005
Montgomery, Alabama	October 1, 2005
Perdido Beach, Alabama	October 1, 2005
Stapleton, Alabama	October 1, 2005
St. Clair, Margaret, Alabama	October 1, 2005

California

Frazier Park, California	October 1, 2003
Lake Almanor, California	October 1, 2003

Cedarville, California	October 1, 2005
Dorris, California	October 1, 2005
Fall River, California	October 1, 2005
Happy Camp, California	October 1, 2005
Herlong Base, California	October 1, 2005
Klamath, California	October 1, 2005
Olinda, California	October 1, 2005
Orick, California	October 1, 2005
Trinity Center, California	October 1, 2005
Tulelake, California	October 1, 2005
Willow Creek, California	October 1, 2005

Florida

Port St. Joe, Florida	October 1, 2003
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Baker, Florida	October 1, 2005
Dowling Park, Florida	October 1, 2005
East Milton, Florida	October 1, 2005

Cable Systems:**Temporary Waiver Granted Until:**

Greenville, Florida	October 1, 2005
Holiday Heights, Florida	October 1, 2005
Lee, Florida	October 1, 2005
Live Oak, Florida	October 1, 2005
Marion Co. Highland, Florida	October 1, 2005
Oak Forest, Florida	October 1, 2005
Ozello, Florida	October 1, 2005

Georgia

Abbeville, Georgia	October 1, 2005
Allentown, Georgia	October 1, 2005
Arabi, Georgia	October 1, 2005
Attapulcus, Georgia	October 1, 2005
Berlin, Georgia	October 1, 2005
Chauncey, Georgia	October 1, 2005
Climax, Georgia	October 1, 2005
Collins, Georgia	October 1, 2005
Colquitt, Georgia	October 1, 2005
Dry Branch, Georgia	October 1, 2005
Dudley, Georgia	October 1, 2005
E. Baldwin Co., Georgia	October 1, 2005
East Dublin, Georgia	October 1, 2005
Flint River, Georgia	October 1, 2005
Gibson, Georgia	October 1, 2005
Gordon, Georgia	October 1, 2005
Guyton, Georgia	October 1, 2005
Hayneville, Georgia	October 1, 2005
Hoboken, Georgia	October 1, 2005
Iron City, Georgia	October 1, 2005
Irwinton, Georgia	October 1, 2005
Jeffersonville, Georgia	October 1, 2005
Jones, Co./Haddock, Georgia	October 1, 2005
Lake Blackshear/Cobb, Georgia	October 1, 2005
Leslie, Georgia	October 1, 2005
Midville, Georgia	October 1, 2005
Milan, Georgia	October 1, 2005
N. Baldwin Co., Georgia	October 1, 2005
Newton Co., Georgia	October 1, 2005
Oak Park, Georgia	October 1, 2005
Pineview, Georgia	October 1, 2005
Pitts, Georgia	October 1, 2005
Plains, Georgia	October 1, 2005
Port Wentworth, Georgia	October 1, 2005
Portal, Georgia	October 1, 2005

Cable Systems:**Temporary Waiver Granted Until:**

Rebecca, Georgia	October 1, 2005
Recovery, Georgia	October 1, 2005
Rentz, Georgia	October 1, 2005
Rhine, Georgia	October 1, 2005
Rochelle, Georgia	October 1, 2005
Sardis, Georgia	October 1, 2005
Seminole, Georgia	October 1, 2005
Smithville, Georgia	October 1, 2005
Sparta, Georgia	October 1, 2005
Stapleton, Georgia	October 1, 2005
Stillmore, Georgia	October 1, 2005
Surrency, Georgia	October 1, 2005
Toomsboro, Georgia	October 1, 2005
Uvalda, Georgia	October 1, 2005
Warwick, Georgia	October 1, 2005
Whigham, Georgia	October 1, 2005
Wiley Acres, Georgia	October 1, 2005
Wrens, Georgia	October 1, 2005

Idaho

Soda Springs, Idaho	October 1, 2003
Arco, Idaho	October 1, 2005
Ashton, Idaho	October 1, 2005
Challis, Idaho	October 1, 2005
Downey, Idaho	October 1, 2005
Driggs, Idaho	October 1, 2005
Lava, Idaho	October 1, 2005
Mackay, Idaho	October 1, 2005
Malad, Idaho	October 1, 2005
McCammon, Idaho	October 1, 2005
Victor, Idaho	October 1, 2005

Montana

Baker, Montana	October 1, 2005
Belt, Montana	October 1, 2005
Big Sky, Montana	October 1, 2005
Charlo, Montana	October 1, 2005
Chester, Montana	October 1, 2005
Culbertson, Montana	October 1, 2005
Darby, Montana	October 1, 2005
Dutton, Montana	October 1, 2005
Ennis, Montana	October 1, 2005
Fromberg, Montana	October 1, 2005

Cable Systems:**Temporary Waiver Granted Until:**

Harlowton, Montana	October 1, 2005
Hot Springs, Montana	October 1, 2005
Hysham, Montana	October 1, 2005
Joliet, Montana	October 1, 2005
Paradise, Montana	October 1, 2005
Plains, Montana	October 1, 2005
Plentywood, Montana	October 1, 2005
Poplar, Montana	October 1, 2005
Ryegate, Montana	October 1, 2005
Scobey, Montana	October 1, 2005
St. Ignatius, Montana	October 1, 2005
St. Regis, Montana	October 1, 2005
Valier, Montana	October 1, 2005
Vaughn/Sun Pr., Montana	October 1, 2005
West Billings, Montana	October 1, 2005
West Yellowstone, Montana	October 1, 2005

Nevada

Winnemucca, Nevada	October 1, 2003
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Oregon

Shady Cove, Oregon	October 1, 2003
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Bonanza, Oregon	October 1, 2005
Butte Falls, Oregon	October 1, 2005
Chiloquin, Oregon	October 1, 2005
Cove, Oregon	October 1, 2005
Glendale, Oregon	October 1, 2005
Haines, Oregon	October 1, 2005
Imbler, Oregon	October 1, 2005
Malin, Oregon	October 1, 2005
Merrill, Oregon	October 1, 2005
North Powder, Oregon	October 1, 2005
Prospect, Oregon	October 1, 2005
Sumpter, Oregon	October 1, 2005

South Carolina

Bowman, South Carolina	October 1, 2005
Cameron, South Carolina	October 1, 2005
Clarendon Co., South Carolina	October 1, 2005
Ehrhardt, South Carolina	October 1, 2005
Holly Hill, South Carolina	October 1, 2005
Norway, South Carolina	October 1, 2005

Cable Systems:**Temporary Waiver Granted Until:**

Rowesville, South Carolina	October 1, 2005
Santee, South Carolina	October 1, 2005
Springfield, South Carolina	October 1, 2005
St. George, South Carolina	October 1, 2005

Utah

Beaver, Utah	October 1, 2005
Brian Head, Utah	October 1, 2005
Central, Utah	October 1, 2005
Cleveland/Elmo, Utah	October 1, 2005
Enoch, Utah	October 1, 2005
Enterprise, Utah	October 1, 2005
Escalante, Utah	October 1, 2005
Eureka, Utah	October 1, 2005
Glenwood, Utah	October 1, 2005
Goshen, Utah	October 1, 2005
Kanarrville, Utah	October 1, 2005
Lyman, Utah	October 1, 2005
Mayfield, Utah	October 1, 2005
Mona, Utah	October 1, 2005
New Harmony, Utah	October 1, 2005
Panguitch, Utah	October 1, 2005
Paragonah, Utah	October 1, 2005
Parowan, Utah	October 1, 2005
Santaquin, Utah	October 1, 2005
Winchester, Utah	October 1, 2005

Wyoming

Kemmerer, Wyoming	October 1, 2003
Afton, Wyoming	October 1, 2005
Dubois, Wyoming	October 1, 2005
Medicine Bow, Wyoming	October 1, 2005
Meeteetse, Wyoming	October 1, 2005
Pinedale, Wyoming	October 1, 2005