

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

In the Matter of	)	
	)	
Gilmer Cable Television Company	)	
	)	File No. EB-04-HS-005
Operator of Cable System in:	)	
	)	
Gilmer, Texas	)	
	)	
Request for Waiver of Section 11.11(a) of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: January 27, 2004**

**Released: January 29, 2004**

By the Director, Office of Homeland Security, Enforcement Bureau:

1. On October 29, 2002, Gilmer Cable Television Company (“Gilmer”) was granted a 12-month waiver of its obligations under section 11.11(a)<sup>1</sup> of the Commission’s Rules (“Rules”).<sup>2</sup> In this *Order*, we grant Gilmer a six-month extension of that waiver.

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.<sup>3</sup> In 1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>4</sup> Section 11.11(a) of the Commission’s rules 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.<sup>5</sup>

<sup>1</sup> 47 C.F.R. § 11.11(a).

<sup>2</sup> *Gilmer Cable Television Company*, Order, 17 FCC Rcd 22101 (Enf. Bur., Tech. & Pub. Safety Div., 2002) (“*Waiver Order*”).

<sup>3</sup> 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).

<sup>4</sup> *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91-171/91-301, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786 (1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

<sup>5</sup> 47 C.F.R. § 11.11(a).

3. In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.<sup>6</sup> The Commission declined to exempt small cable systems from the EAS requirements entirely, however, concluding that such an exemption would be inconsistent with the statutory mandate of section 624(g).<sup>7</sup> The amended rules 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>8</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>9</sup>

5. On August 9, 2002, Gilmer filed a request for a temporary, 24-month waiver of section 11.11(a). In its waiver request, Gilmer noted that its small, rural cable system served 2,450 subscribers. Gilmer asserted that the estimated cost to install the EAS equipment would impose a substantial financial hardship on Gilmer and provided financial data for 2000 and 2001 in support of this assertion. On October 29, 2002, we granted Gilmer a temporary 12-month waiver of section 11.11(a) for its small cable system, concluding that the financial data and other information submitted by Gilmer did not justify a waiver period of longer duration.<sup>10</sup>

6. On September 30, 2003, Gilmer filed a request for a one year extension to the temporary 12-month waiver granted in the *Waiver Order* for the captioned cable system. Gilmer stated that it has lost 120 subscribers since its August 9, 2002, waiver request and that it continues to have financial problems. Gilmer provided additional financial information regarding operation expenses for its cable system in support of its request for additional time to comply with section 11.11(a) of the Rules.

7. Based on the additional financial data and other information submitted by Gilmer, we conclude that a six-month extension of the temporary waiver of Section 11.11(a) of the Rules for the captioned cable system is warranted.<sup>11</sup> The information provided by Gilmer shows that a minimal extension is justified, but does not support a finding of financial hardship of a magnitude that would warrant a 12-month extension of the temporary waiver.<sup>12</sup>

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<sup>6</sup> *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).

<sup>7</sup> *Id.* at 15512-13.

<sup>8</sup> *Id.* at 15516-15518.

<sup>9</sup> *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64, 17 FCC Rcd 4055 (2002).

<sup>10</sup> *Gilmer Cable Television Company*, Order, 17 FCC Rcd 22101 (Enf. Bur., Tech. & Pub. Safety Div., 2002).

<sup>11</sup> The six-month extension waiver will extend from October 1, 2003 until April 1, 2004.

<sup>12</sup> We note that Gilmer raised health-related matters in support of its request for an extension of its temporary waiver. However, these matters are not a valid basis for granting waivers of our EAS rules.

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8. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b), 0.311 of the Rules,<sup>13</sup> that Gilmer Cable Television Company's request for a waiver of section 11.11(a) of the Rules is **GRANTED**, consistent with the discussion and conclusions in this *Order*.

9. **IT IS FURTHER ORDERED** that Gilmer Cable Television Company place a copy of this waiver in its system file.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Gilmer Cable Television Company, Timothy P. Tobin, Esq., Cole, Raywid and Braverman, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006

FEDERAL COMMUNICATIONS COMMISSION

James A. Dailey  
Director, Office of Homeland Security  
Enforcement Bureau

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<sup>13</sup> 47 C.F.R. §§ 0.111, 0.204(b), 0.311.