

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

In the Matter of)	
)	
SM Cable Holdings, L.L.C.)	File No. EB-02-TS-301
)	
Operator of Cable Systems in:)	
)	
Andalusia (Heath), Alabama)	
Ashville, Alabama)	
Barnwell, Alabama)	
Blount County, Alabama)	
Good Hope, Alabama)	
Frazier Park, California)	
Lake Almanor, California)	
Port St. Joe, Florida)	
Soda Springs, Idaho)	
Winnemucca, Nevada)	
Shady Cove, Oregon)	
Kemmerer, Wyoming)	
)	
Request for Waiver of Section 11.11(a) of the Commission's Rules)	

ORDER

Adopted: February 6, 2004

Released: February 10, 2004

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

1. In this *Order*, we extend the temporary, 12-month waivers of Section 11.11(a) of the Commission's Rules ("Rules") previously granted to SM Cable Holdings, L.L.C. ("SM Cable") for the 12 above-captioned cable television systems for an additional nine months.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

¹ *SM Cable Holdings, L.L.C.*, 18 FCC Rcd 1 (Enf. Bur., Tech. & Pub. Safety Div., 2002) ("*Waiver Order*").

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

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

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 states of Alabama, California, Florida, Georgia, Idaho, Montana, Nevada, Oregon, South Carolina, Utah and Wyoming. In its waiver request, SM Cable stated that 168 cable systems served between 16 and 953 subscribers and 12 cable systems served between 1,029 and 2,792 subscribers. In support of its waiver request, SM Cable estimated that it would cost approximately \$7,300 to install EAS equipment at each of the 180 cable systems for a total cost of \$1,314,000. SM Cable asserted that this cost would impose a substantial financial hardship on it. On January 13, 2003, we granted SM Cable temporary, 36-month waivers of Section 11.11(a) for 168 cable systems and temporary, 12-month waivers of Section 11.11(a) for 12 cable systems.⁸ We concluded that the financial data and other information submitted by SM Cable at that time did not justify a waiver period of longer duration for the 12 cable systems.

4. On September 16, 2003, SM Cable filed a request for a temporary, 24-month extension of the temporary, 12-month waivers granted in the *Waiver Order* for the 12 captioned cable systems. SM Cable states that it was in a state of financial crisis and that both prior to and going forward from the date of the initial waiver request it attempted to sell all of its cable systems. SM Cable further states that it sold some of its assets in July 2002 and some in January 2003. SM Cable notes that it is currently operating under Chapter 11 bankruptcy pursuant to a Court-approved plan.⁹ Additionally, SM Cable

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) (“*Report and Order*”).

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 18 FCC Rcd at 1.

⁹ On May 9, 2003, SM Cable Holdings, L.L.C. filed for Chapter 11 bankruptcy with the United States Bankruptcy Court, the District of Delaware.

asserts that the Bankruptcy Court will conduct a hearing on September 24, 2003 to approve the final asset purchase agreement. In a January 15, 2004 report, SM Cable affirms that the Bankruptcy Court approved the final asset purchase agreement. SM Cable anticipates that the sale of the remaining 12 systems will occur in February 2004.

5. Based on the information provided by SM Cable, we conclude that 24-month extensions of the temporary waivers of Section 11.11(a) previously granted to the 12 captioned cable systems are not warranted. Instead, we conclude that temporary, nine-month extensions of the waivers of Section 11.11(a) for these cable systems are warranted.¹⁰ Furthermore, 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 SM 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. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b), 0.311 of the Rules,¹¹ SM Cable Holdings, L.L.C. **IS GRANTED** a waiver extension of Section 11.11(a) of the Rules until July 1, 2004 for the 12 captioned cable television systems.

7. **IT IS FURTHER ORDERED** that SM Cable Holdings, L.L.C. place a copy of this waiver extension in its system 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., Fleishman and Walsh, L.L.P., 1400 Sixteenth Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰ These temporary waivers will extend from October 1, 2003, until July 1, 2004. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

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