

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

In the Matter of)	
)	
Great Plains Cable Television, Inc.)	File No. EB-02-TS-209
)	
Operator of Cable Systems in:)	
)	
Elgin, Nebraska)	
Grant, Nebraska)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: January 8, 2004

Released: January 12, 2004

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

1. In this *Order*, we grant the request of Great Plains Cable Television, Inc. ("Great Plains") to extend the temporary, 12-month waivers of Section 11.11(a) of the Commission's Rules ("Rules") previously granted for the two above-captioned cable television systems for an additional 24 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 1994, the Commission adopted rules requiring cable systems to participate in EAS.⁴ In 1997, the

¹ *Great Plains Cable Television, Inc.*, 17 FCC Rcd 19043 (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 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*").

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 May 23, 2002, Great Plains filed a request for temporary waivers of Section 11.11(a) of the Rules for 10 small rural cable systems in the state of Nebraska. In its waiver request, among other things, Great Plains requested temporary, 24-month waivers for the Elgin and Grant cable systems which served approximately 1,093 subscribers and 1,546 subscribers, respectively. In support of its waiver request, Great Plains asserted that the estimated \$10,000 cost to install EAS equipment at each of the cable systems would impose a substantial financial hardship on it. On October 4, 2002, we granted Great Plains temporary, 12-month waivers of Section 11.11(a) for the Elgin and Grant cable systems.⁸ We concluded that the financial data and other information submitted by Great Plains at that time did not justify a waiver period of longer duration for these two cable systems.

4. On September 30, 2003, Great Plains filed a request for a temporary, 24-month extension of the temporary, 12-month waivers granted in the *Waiver Order* for the Elgin and Grant cable systems. Great Plains asserts that extension of the waivers is appropriate because it already provides national and local emergency messages to its Elgin and Grant subscribers through its Safety Alert Monitoring (“SAM”) system.⁹ Great Plains states that the SAM system receives national EAS messages from EAS decoders¹⁰ installed at the Elgin and Grant headends and receives local emergency messages from local officials via telephone and from the National Weather Service. Whenever an emergency message is received by the SAM system, a set-top box at the subscriber’s home, which Great Plains provides to its subscribers free of charge,¹¹ emits a loud alarm and provides a visual alert (a flashing red light). Great Plains states that the SAM system is critical in tornado-prone Nebraska because it sounds an alert even when a subscriber’s television is turned off, such as at night when subscribers are asleep. In addition, Great Plains asserts that extension of the waivers is warranted because its financial hardship has continued. Great Plains estimates that it will cost approximately \$13,000 to install the video interrupt

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 17 FCC Rcd at 19043.

⁹ Great Plains notes that it did not mention the SAM system in its previous waiver request.

¹⁰ The EAS decoders installed at Great Plains’s Elgin and Grant headends are not capable of providing video interrupts.

¹¹ Great Plains states that the set-top boxes cost it approximately \$46 each.

equipment needed to bring the two systems into compliance with Section 11.11(a) and provides updated financial data for 2003 in support of its claim that this expense would cause a substantial financial hardship unless distributed over a longer period of time. Great Plains also states that its declining customer base has increased its financial hardship. In this regard, Great Plains notes that over the past year it has lost nearly 3% of its subscribers on the Elgin and Grant systems, which now serve 1,078 subscribers and 1,494 subscribers, respectively.

5. Based on the additional financial data submitted by Great Plains, and in view of the fact that Great Plains is providing national and local emergency messages to its subscribers through its SAM system, we conclude that 24-month extensions of the temporary waivers of Section 11.11(a) granted to Great Plains are warranted.¹² We note, in this regard, that the Commission has acknowledged the benefits of the SAM system as an emergency alerting mechanism for the hard-of-hearing and deaf communities.¹³ We believe that this system can also provide substantial benefits in areas of the country, such as the areas served by Great Plains, which are prone to tornadoes and other severe weather emergencies.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b), 0.311 of the Rules,¹⁴ Great Plains Cable Television, Inc. **IS GRANTED** a waiver extension of Section 11.11(a) of the Rules until October 1, 2005 for the Elgin and Grant, Nebraska cable television systems.

7. **IT IS FURTHER ORDERED** that Great Plains Cable Television, Inc. 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 Great Plains Cable Television Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² These temporary waivers will extend from October 1, 2003 until October 1, 2005. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

¹³ *Report and Order*, 10 FCC Rcd at 1807-1808 (“Cable systems must therefore provide either audio and video EAS messages on all channels or an equivalent alerting function on the entire system for deaf or hard-of-hearing persons. The requirement for equivalent messaging can be implemented using independent set-top alerting devices which are turned on by EAS equipment at headends.”)

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