

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

In the Matter of)	
)	
American Samoa Cable)	File No. EB-02-TS-211
)	
Operator of Cable System in:)	
)	
Pago Pago, American Samoa)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: February 9, 2004

Released: February 11, 2004

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

1. In this *Order*, we grant American Samoa Cable (“ASC”) a temporary waiver of Section 11.11(a) of the Commission’s Rules (“Rules”) for the above-captioned cable television system. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level 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

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 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

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).

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).

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 January 9, 2002, ASC filed a request for a waiver of Section 11.11(a) for the captioned cable television system which serves approximately 3,000 subscribers. In support of its request, ASC states that there are no sources transmitting EAS signals to the small remote island of American Samoa. In particular, ASC states that the only live or real-time video signal source available to the cable system is received via communications satellite and that the video signals transmit taped programming. ASC provides financial statements for 2000 and 2001 and asserts that the cost to order and install EAS equipment where there are no receivable EAS signals would impact the system significantly. Additionally, ASC notes that should the system receive EAS information through other sources it would make such information available to its subscribers. In this regard, ASC asserts that its subscribers will have ready access to a dedicated cable origination channel that provides early and real-time emergency alert messages to subscribers, particularly those pertaining to weather. ASC notes that few of its programmed channels originate from the United States and that there is not a live EAS signal source on American Samoa. Finally, ASC notes that if local American Samoan authorities implement EAS plans, it is prepared to comply with state and local EAS requirements.

4. We note that EAS staff at the FCC is working with the Federal Emergency Management Agency to identify a primary entry point for American Samoa and ensure the creation of a functioning EAS system in American Samoa. Accordingly, based upon our review of the financial data and other information submitted by ASC and the present lack of real-time EAS video signal sources in American Samoa, we conclude that a temporary waiver of Section 11.11(a) for the captioned system is warranted until such time as a live EAS signal source is available in American Samoa.⁹

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

⁹ The waiver we are granting also encompasses the EAS testing and monitoring requirements.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁰ America Samoa Cable **IS GRANTED** a waiver of Section 11.11(a) of the Rules as set forth herein for the captioned cable television system.

6. **IT IS FURTHER ORDERED** that American Samoa Cable place a copy of this waiver in its system file.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for American Samoa Cable, John D. Pellegrin, P.C., 9306 Old Keene Mill Road, Burke, Virginia 22015.

FEDERAL COMMUNICATIONS COMMISSION

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

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