

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

In the matter of
Petitions for Waiver of the Emergency Alert
System Rules filed by Various Cable
Television Systems
Requests for Waivers of Section 11.11(a) of the
Commission's Rules
File No. EB-05-HS-034

ORDER

Adopted: September 22, 2005

Released: September 23, 2005

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we amend waivers previously granted to certain cable television systems of their obligations under the Federal Communications Commission's (Commission) Emergency Alert System (EAS) rules by extending the date by which these cable systems must install EAS equipment from October 1, 2005 to March 1, 2006.

II. BACKGROUND

2. The EAS provides the President the capability of communicating with the American public during national emergencies, as well as providing a vehicle for state and local level emergency alerts.

1 See 47 C.F.R. § 11.11(a), et seq.

2 Vista III Media, L.L.C.; Oldtown Community Systems, Inc.; Northland Cable Properties, Inc.; Neu Ventures, Inc., d/b/a Mountain Zone TV Systems; Galaxy Cable, Inc.; Long View Cable and Data, LLC; Upper Peninsula Communications, Inc.; Prairieburg Telephone Company, Inc.; Project Services, Inc.; Clearview Cable, Inc.; Long Lines Metro, LLC; Tex-Tech, Inc.; Carson Communications, LLC; Nepsk, Inc d/b/a Polaris Cable; Glenwood Telecommunications; Goldfield Communications Services, Corp.; Branch Cable, Inc.; PEC Cable; Cable Services, Inc.; Hawkeye Telephone Co.; Pine Tree Cablevision Associates; Northland Communications, Inc.; Lone Pine Television, Inc.; Minerva Valley Cablevision, Inc.; Klip, LLC; Nex-Tech, Inc.; Whitehall Cable TV; Howard Cable; Riviera Cable TV; Karban TV Systems, Inc.; Cass Cable TV, Inc.; Herr Cable; Grove Communications Inc.; Hamilton County Cable TV, Inc.; Millennium Digital Media Systems, L.L.C.; Com-Link, Inc.; Pinpoint Communications, Inc.; Glass Antenna Systems, Inc.; Hart Cable, Inc.; Cable Communications of Willsboro, Inc.; CenCom, Inc.; Green Hills Communications, Inc. d/b/a/ Green Hills Multi-Media; North American Communications Corporation; Telecommunications Management, LLC d/b/a NewWave Communications; and Oregon Cable Group LLC (Petitioners).

3 See 47 C.F.R. § 11.1. For a history of the EAS, see Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the EBS, 10 FCC Rcd 1786, 1788-89 (1994) (First Report and Order), recon. granted in part and denied in part, 10 FCC Rcd 11,494 (1995).

accordance with the Commission's EAS rules, cable system operators must be capable of delivering EAS messages to their subscribers.⁴ The Commission is responsible for implementing and enforcing the EAS rules.

3. Beginning in 1994, in accordance with the *First Report and Order*, cable television systems have been required to participate in the EAS.⁵ The Commission has subsequently reviewed and refined cable operators' EAS obligations to ensure that the Commission's rules continue to provide for public safety in a manner that does not impose undue financial and regulatory burdens on the affected cable systems.

4. In the *Second Report and Order*, the Commission recognized that purchasing and installing EAS equipment could impose financial difficulties on small cable operators.⁶ Accordingly, the Commission revised its part 11 rules to establish an October 1, 2002, deadline for small cable system compliance, and gave small cable operators two options for complying with their EAS obligations. Small cable systems were allowed either to install equipment that would allow them to provide the national level EAS messages on all programmed channels, or to install EAS equipment that would allow them to 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, 2002.⁷

5. In the *Second Report and Order* the Commission also authorized the Compliance and Information Bureau (now the Enforcement Bureau) to grant waivers of the October 1, 2002 compliance date on a case-by-case basis, upon showings by small cable systems that purchasing and installing EAS equipment would cause financial hardship.⁸ The Commission's Enforcement Bureau, under delegated authority, granted waivers of up to 36 months, or until October 1, 2005, to over 200 small cable operators.

6. On August 12, 2004, the Commission released a Notice of Proposed Rulemaking on the EAS (*EAS NPRM*).⁹ In part, the *EAS NPRM* requested comment on the impact EAS upgrades may have on small cable operators.¹⁰ In its comments, the American Cable Association (ACA) requested the Commission to, *inter alia*, adopt a rule change that would exempt cable operators serving 1,000 or fewer customers from having to install EAS equipment to alert their customers; and for cable operators serving between 1,000 and 5,000 customers, a two-year extension of the waivers currently in place, from October 1, 2005 to October 1, 2007. The ACA claimed that these actions would alleviate the financial hardship to small cable operators.

7. Subsequently, several small cable operators that had been granted EAS waivers until October 1, 2005, filed requests with the Enforcement Bureau to extend these waivers until the later of October 1,

⁴ 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).

⁵ See *First Report and Order*, 10 FCC Rcd at 1785.

⁶ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503 (1997) (*Second Report and Order*). (Small Cable Operators are defined, with respect to EAS obligations, as those with 5,000 or fewer subscribers per head-end).

⁷ *Id.* at 15503.

⁸ *Id.* at 15513.

⁹ See *Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775 (2004).

¹⁰ *Id.* at 15792.

2006, or the date the Commission issues new rules in response to the *EAS NPRM*.¹¹ These requests were based on purported continuing financial need and/or regulatory uncertainty in light of the pending EAS proceeding.

III. DISCUSSION

8. The Commission may grant a waiver of any of its rules if the petitioner can show that the request would not frustrate the underlying purpose of the rule, that in view of the unique or unusual circumstances of the case, application of the rule would be inequitable or unduly burdensome, and that granting the requested waiver would be in the public interest.¹² Based upon the circumstances presented in these small cable service provider waiver requests, we find that a brief extension of the current waiver of the EAS rules is consistent with the underlying purposes of the Commission's EAS rules and serves the public interest. We therefore grant the requested petitions for waiver as explained below.

9. The Commission has taken significant steps to ensure that its EAS rules could be implemented in a manner that does not impose an undue financial burden on the smallest cable system operators. Although we believe that small cable operators have had sufficient time to factor in the cost of EAS compliance into their overall business plans,¹³ we do not need to reach the issue of whether the requested waiver extensions should be granted on the basis of financial need. Rather, we recognize that small cable systems that have waivers in place until October 1, 2005, are experiencing a degree of regulatory uncertainty during the pendency of the EAS proceeding. A short extension of the deadline would not undermine the effectiveness of the Commission's EAS rules, and granting some level of certainty to small cable businesses would be in the public interest. Accordingly, we will grant a brief extension of the deadline by which affected small cable service providers must comply with the Commission's EAS rules from October 1, 2005 to March 1, 2006. Because we believe we should extend a similar level of regulatory certainty to all affected cable systems, we grant this extension to all waivers in place, whether or not the cable system has filed a request. Although we deny the petitioners' requests for longer extensions of their temporary waivers of section 11.11(a), we reserve the right to revisit this proceeding as the March 1, 2006 date approaches.

IV. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁴ Vista III Media, L.L.C.; Oldtown Community Systems, Inc.; Northland Cable Properties, Inc.; Neu Ventures, Inc., d/b/a Mountain Zone TV Systems; Galaxy Cable, Inc.; Long View Cable and Data, LLC; Upper Peninsula Communications, Inc.; Prairieburg Telephone Company, Inc.; Project Services, Inc.; Clearview Cable, Inc.; Long Lines Metro, LLC; Tex-Tech, Inc.; Carson Communications, LLC; Nepsk, Inc., d/b/a Polaris Cable; Glenwood Telecommunications; Goldfield Communications Services, Corp.; Branch Cable, Inc.; PEC Cable; Cable Services, Inc.; Hawkeye Telephone Co.; Pine Tree Cablevision Associates; Northland Communications, Inc.; Long Pine Television, Inc.; Minerva Valley Cablevision, Inc.; and Klip, LLC; Whitehall Cable TV; Howard Cable; Riviera Cable TV; Karban TV Systems, Inc.;

¹¹ While the majority of the subject cable systems have requested extensions to their existing temporary waivers of section 11.11(a) of the rules, others have requested waiver extensions on behalf of recently acquired non-compliant cable television systems.

¹² 47 C.F.R. § 1.925. See also *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *Northeast Cellular Telephone Co., L.P. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ Similarly, we address only the issue of extending the compliance date for waivers previously granted by the Enforcement Bureau under delegated authority. We do not address the issues raised in the ACA comments to the *EAS NPRM*.

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

Cass Cable TV, Inc.; Herr Cable; Grove Communications Inc. Hamilton County Cable TV, Inc.; Millennium Digital Media Systems, L.L.C.; Com-Link, Inc.; Pinpoint Communications, Inc.; Glass Antenna Systems, Inc.; Hart Cable, Inc.; Cable Communications of Willsboro, Inc.; CenCom, Inc.; Green Hills Communications, Inc. d/b/a/ Green Hills Multi-Media; North American Communications Corporation; Telecommunications Management, LLC d/b/a NewWave Communications; and Oregon Cable Group LLC (Petitioners) **ARE GRANTED** an extension of their current waivers of section 11.11(a) of the Rules from October 1, 2005 until March 1, 2006.¹⁵

11. **IT IS** also **ORDERED** that all other small cable systems that have waivers until October 1, 2005, **ARE GRANTED** an extension of such waivers of section 11.11(a) of the Rules from October 1, 2005 until March 1, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

¹⁵ We clarify that these waivers also encompass the EAS testing and monitoring requirements.