

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

In the Matter of	)	
	)	
Review of the Emergency Alert System;	)	
	)	EB Docket No. 04-296
Independent Spanish Broadcasters Association,	)	
the Office of Communication of the United	)	
Church of Christ, Inc., and the Minority Media	)	
and Telecommunications Council, Petition for	)	
Immediate Relief;	)	
	)	
Randy Gehman Petition for Rulemaking	)	

**ORDER**

**Adopted: November 21, 2014**

**Released: November 21, 2014**

By the Chief, Public Safety and Homeland Security Bureau:

**I. Introduction**

1. In this Order we address the petitions for temporary waiver of Section 11.56 of the Commission’s rules,<sup>1</sup> filed by Charter Communications (Charter);<sup>2</sup> Comcast Cable Communications, LLC (Comcast);<sup>3</sup> Kenai Broadcasting, LLC (Kenai);<sup>4</sup> New Ulm Telecom, Inc. (New Ulm);<sup>5</sup> Oregon Amateur Radio Club (OARC);<sup>6</sup> Townsquare Media Oneonta License, LLC (Townsquare);<sup>7</sup> Western Oregon Radio

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<sup>1</sup> 47 C.F.R. § 11.56.

<sup>2</sup> See Charter Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed June 21, 2012) (Charter Petition); see also Charter Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed on Dec. 31, 2012) (renewing Charter Petition).

<sup>3</sup> See Comcast Cable Communications, LLC, Petition for Temporary Waiver, EB Docket No. 04-296 (filed June 20, 2012) (Comcast Petition); see also Letter from Steven J. Horvitz, Davis Wright Tremaine LLP, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Dec. 26, 2012) (supplementing Comcast Petition).

<sup>4</sup> See Letter from David Tillotson, on behalf of Kenai Broadcasting, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed June 12, 2012) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56) (Kenai Petition).

<sup>5</sup> See Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 29, 2012) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56) (New Ulm Petition); see also Letters from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 28, 2013, and Dec. 31, 2013) (renewing New Ulm Petition).

<sup>6</sup> See Letter from Peter Tannenwald, Fletcher, Heald and Hildreth, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed June 26, 2012) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56) (OARC Petition).

Club, Inc. (WORC);<sup>8</sup> and WVCH Communications, Inc. (WVCH) (collectively, the Petitioners).<sup>9</sup> Section 11.56 of the Commission's rules requires Emergency Alert System (EAS) Participants<sup>10</sup> to have installed operational equipment that can receive and process EAS alerts formatted in the Common Alerting Protocol (CAP) by June 30, 2012.<sup>11</sup> For the reasons set out herein, we grant, *nunc pro tunc*, these petitions.

## II. Background

2. Under Commission rules, EAS Participants are required to be able to receive CAP-based EAS alerts by June 30, 2012.<sup>12</sup> In its *EAS Fifth Report and Order*, the Commission observed that because the primary method of distributing CAP messages will be via broadband Internet connections, the physical availability of broadband Internet access would be a predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.<sup>13</sup> Accordingly, the Commission concluded that the physical unavailability of broadband Internet service offered a presumption in favor of a waiver.<sup>14</sup> The Commission also observed, however, that broadband Internet access might become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, might also become available, thus obviating the basis for granting the waiver.<sup>15</sup> For this reason, the Commission indicated that any waiver based on the physical unavailability of broadband Internet access likely would not exceed six months, with the option of renewal if

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<sup>7</sup> See Letter from Howard M. Liberman, Drinker, Biddle and Reath, LLP, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed July 3, 2012) (seeking a temporary waiver of the CAP-related requirements in Part 11) (Townsquare Petition).

<sup>8</sup> See Letter from Peter Tannenwald, Fletcher, Heald and Hildreth, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed June 26, 2012) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56) (WORC Petition).

<sup>9</sup> See WVCH Communications, Inc., Petition for Temporary Waiver of CAP Obligations, EB Docket No. 04-296 (filed June 27, 2012) (WVCH Petition).

<sup>10</sup> EAS Participants are the FCC-regulated entities required to receive and broadcast EAS alerts. These entities are defined in Section 11.11(a) of the Commission's rules and include radio and television broadcast stations, cable systems, wireline video systems, wireless cable systems, direct broadcast satellite (DBS) service providers, and digital audio radio service (SDARS) providers. See 47 C.F.R. § 11.11(a). The EAS is a hierarchical alert message distribution system that delivers alerts initiated by federal, state and local alerting authorities utilizing the transmission facilities of radio and television broadcast stations, cable operators and other EAS Participants. An overview of the EAS is contained in the *Fifth Report and Order* in this docket. See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket No. 04-296, *Fifth Report and Order*, 27 FCC Rcd 642, 646-47, ¶¶ 6-7 (2012) (*EAS Fifth Report and Order*).

<sup>11</sup> See 47 C.F.R. § 11.56(a). CAP is an open, interoperable XML-based standard that allows an alert initiator to deliver information-rich alerts to multiple devices. See *EAS Fifth Report and Order*, 27 FCC Rcd 642, 648 ¶ 10.

<sup>12</sup> See 47 C.F.R. § 11.56(a).

<sup>13</sup> See *EAS Fifth Report and Order*, 27 FCC Rcd 695-96, ¶ 152.

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

circumstances have not changed.<sup>16</sup> Finally, the Commission concluded that, in all events, to the extent a waiver applies, the affected party would be required to continue to operate its legacy EAS equipment.<sup>17</sup>

3. The Petitioners all filed requests for temporary waiver of the obligation to receive and process CAP-formatted alerts specified in Section 11.56 of the Commission's rules due to the physical unavailability of broadband Internet service at Petitioners' facilities.<sup>18</sup> The Petitioners subsequently all filed correspondence indicating that they had secured broadband connectivity and were CAP-compliant for those facilities.<sup>19</sup>

### III. Discussion

4. The Commission has authority to waive its rules if there is "good cause" to do so.<sup>20</sup> The Commission may find such good cause where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>21</sup> The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>22</sup> However, as

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<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *See* Charter Petition at 2; *see also* Comcast Petition at 1-2; Kenai Petition at 1; New Ulm Petition at 1; OARC Petition at 1; Townsquare Petition at 1; WORC Petition at 1; and WVCH Petition at 1.

<sup>19</sup> *See* Letter from Jennifer Towland Frewer, Davis Wright Tremaine LLP, to Gregory Cooke, Associate Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Mar. 21, 2014) (withdrawing the Charter Petition and indicating that Charter became CAP-compliant as of April 30, 2013); *see also* Letter from Catherine Fox, Comcast Cable Communications, LLC, to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Apr. 15, 2013), (withdrawing the Comcast Petition and indicating that Comcast became CAP-compliant as of the end of February 2013); Letter from David Tillotson, on behalf of Kenai Broadcasting, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed Jan. 15, 2014) (withdrawing the Kenai Petition and indicating that the studio at issue was relocated to where CAP formatted EAS alerts can be received and is compliant); Letter from Scott C. Friedman, Cinnamon Mueller, to David G. Simpson, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Mar. 21, 2014) (indicating that broadband access for the subject system of the New Ulm Petition remained physically unavailable and that they system was deactivated on Mar. 1, 2014); Letter from Peter Tannenwald, Fletcher, Heald and Hildreth, to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (originally filed via email to Mr. Beers on Sept. 4, 2012; subsequently filed in EB Docket No. 04-296 on Mar. 20, 2014) (indicating that the subject system of the OARC Petition was compliant with CAP requirements as of Sept. 4, 2012); Letter from David J. Remund, Townsquare Media Oneonta License, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed Mar. 20, 2014) (indicating that the subject system of the Townsquare Petition was compliant with CAP requirements as of August 28, 2012); Letter from Peter Tannenwald, Fletcher, Heald and Hildreth, to Thomas J. Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (originally filed via email to Mr. Beers on Aug. 23, 2012; subsequently filed in EB Docket No. 04-296 on Mar. 20, 2014) (indicating that the subject system of the WORC Petition would be compliant with CAP requirements by Aug. 31, 2012); and Letter from Anthony T. Lepore, Esq., on behalf of WVCH Communications, Inc., to Thomas J. Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (originally mailed directly to Mr. Beers on May 9, 2013; subsequently filed in EB Docket No. 04-296 on Mar. 20, 2014) (indicating that WVCH had established a broadband connection enabling CAP compliance and requesting their waiver request be dismissed as moot).

<sup>20</sup> *See* 47 C.F.R. § 1.3.

<sup>21</sup> *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

<sup>22</sup> *See* WAIT Radio v. FCC, 418 F.2d 1153, 1157.

indicated above, with respect to applicants for waivers of the CAP-related obligations set forth in Section 11.56 of the Commission's rules, the Commission has established a presumption in favor of granting temporary waivers based upon the physical unavailability of broadband Internet service.<sup>23</sup>

5. We find that the Petitions all meet the presumption for temporary waiver of the CAP-related obligations set forth in Section 11.56 of the Commission's rules, as established by the Commission in the *EAS Fifth Report and Order*.<sup>24</sup> We further observe that Petitioners continued to operate legacy EAS equipment at all times, thus, the public was not deprived of EAS alerts.<sup>25</sup> Finally, we note that Petitioners have subsequently notified the Commission that all of the systems subject to their waiver requests are in compliance with Section 11.56 or, in the case of New Ulm, no longer in service.<sup>26</sup>

6. Accordingly, we grant, *nunc pro tunc*, the Petitioners' temporary waiver requests for the period of June 30, 2012, until the date upon which the systems subject to the temporary waiver requests became compliant with the CAP obligations set forth in Section 11.56 of the Commission's rules, as identified in the Petitioners' correspondence identified above.<sup>27</sup>

#### IV. Ordering Clauses

7. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, the "Requests for Temporary Waiver" filed by Charter Communications; Comcast Cable Communications, LLC; Kenai Broadcasting, LLC; New Ulm Telecom, Inc.; Oregon Amateur Radio Club; Townsquare Media Oneonta License, LLC; Western Oregon Radio Club, Inc.; and WVCH Communications, Inc., ARE GRANTED, as specified herein.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David G. Simpson  
Rear Admiral (Ret.), USN  
Chief, Public Safety and Homeland Security Bureau

<sup>23</sup> See *EAS Fifth Report and Order*, 27 FCC Rcd 642, 695-96, ¶ 152.

<sup>24</sup> See *id.* at 644, ¶ 3; see also *supra* n.18.

<sup>25</sup> See Charter Petition at 4; see also Comcast Petition at 5; New Ulm Petition at 3; OARC Petition at 1; Townsquare Petition at 2; WORC Petition at 1; and WVCH Petition at 3.

<sup>26</sup> See *supra* n.22.

<sup>27</sup> See *supra* n.22. We note that, in light of their ultimate compliance with the Commission's CAP requirement, Petitioners Charter, Comcast, and Kenai request to withdraw their petitions and WVCH requests that its petition be dismissed as moot. We note that notwithstanding these Petitioners' ultimate compliance with the Commission's CAP rules, all were out of compliance for some period of time. Accordingly, and for the reasons discussed in the body of this order, the appropriate relief for all the above-referenced Petitioners is grant of their waiver petitions for their stated periods of non-compliance.