

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: February 7, 2020

Released: February 7, 2020

By the Deputy Chief, Public Safety and Homeland Security Bureau:

I. Introduction

1. In this Order we address five petitions for waiver of the obligation to receive and process Emergency Alert System (EAS) alerts formatted in the Common alerting Protocol (CAP), set forth in Section 11.56 of the Commission’s rules.¹ The petitions were filed by Argent Communications, LLC (Argent);² CableAmerica Missouri, LLC (CableAmerica);³ KJAY, LLC (KJAY);⁴ Universal Cablevision, Inc. (Universal);⁵ and West River Cable Television, Inc. (West River)⁶ (collectively, Petitioners). As set forth herein, we grant, *nunc pro tunc*, the petitions for waiver filed by CableAmerica, KJAY, and West River, and dismiss the petitions for waiver filed by Argent and Universal.

II. Background

2. In the *EAS Second Report and Order* in this docket, the Commission, among other things, required that broadcasters, cable systems, and other service providers required to distribute EAS alerts

¹ 47 CFR § 11.56.

² See Letter from Andrew T. Bauer, Vice President of Business and Marketing, Argent Communications, LLC, to David S. Turetsky, Chief, FCC Public Safety and Homeland Security Bureau, EB Docket 04-296 (filed July 22, 2013) (Argent Petition).

³ See Petition of Cable America Missouri, L.L.C., for Temporary Waiver, EB Docket 04-296 (filed June 28, 2012) (CableAmerica Petition).

⁴ See Petition of KJAY, LLC, for Temporary Waiver, EB Docket 04-296 (filed June 25, 2012) (KJAY Petition).

⁵ See Petition of Universal Cablevision, Inc., for Waiver, EB Docket No. 04-296 (filed Sept. 27, 2012).

⁶ See Petition of West River Cable Television, Inc., for Waiver, EB Docket 04-296 (filed June 28, 2012) (West River Petition).

(hereafter, “EAS Participants”)⁷ to be capable of receiving CAP-formatted alert messages within 180 days after the Federal Emergency Management Agency (FEMA) published its adoption of a CAP standard for use with the Integrated Public Alert and Warning System.⁸ In the *EAS Fifth Report and Order*, the Commission revised the EAS rules to establish requirements governing how EAS Participants must receive and process CAP-formatted alerts.⁹ 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.¹⁰ Accordingly, the Commission concluded that the physical unavailability of broadband Internet service would constitute a presumption in favor of a waiver of the obligation to be able to receive and process CAP-formatted EAS alerts.¹¹ 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.¹² 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 circumstances have not changed.¹³ 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.¹⁴

3. The Petitioners filed requests for waiver of the obligation to receive and process CAP-formatted alerts specified in Section 11.56 of the Commission’s rules on various grounds. Argent requested a temporary waiver of the obligation to receive and process CAP EAS messages due to the physical unavailability of broadband Internet service at one of its cable systems.¹⁵ In addition, Argent requested a three-year waiver covering three other small cable systems located in rural areas on grounds that it was not economically feasible to install CAP EAS equipment at these locations.¹⁶ Because

⁷ The Commission’s rules define EAS Participants as radio broadcast stations, including AM, FM, and low-power FM stations; Class A television and low-power TV stations; cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. See 47 CFR § 11.11(a).

⁸ 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*, EB Docket No. 04-296, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13288, para. 26 (2007) (*EAS Second Report and Order*). On September 30, 2010, FEMA announced that it would adopt certain technical standards and requirements for CAP-formatted EAS alerts, triggering the Commission’s 180-day CAP-adoption deadline. See FEMA, “FEMA Announces Adoption of New Standard for Emergency Alerts,” Release Number: HQ-10-192 (rel. Sept. 30, 2010), <http://www.fema.gov/news/newsrelease.fema?id=52880>. The deadline for compliance was subsequently twice extended until June 30, 2012. See *Review of the Emergency Alert System, Order*, 25 FCC Rcd 16376, para. 1 (2010) (extending the CAP compliance deadline until September 30, 2011); *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*, ET Docket No. 04-296, Fourth Report and Order, 26 FCC Rcd 13710 (2011) (further extending the CAP compliance deadline until June 30, 2012).

⁹ 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*, EB Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642 (2012) (*EAS Fifth Report and Order*).

¹⁰ See *id.*, 27 FCC Rcd 642, 695-96, para. 152.

Argent's petition is incomplete, however, we lack details on the systems and circumstances underlying its waiver request.¹⁷

4. CableAmerica and KJAY requested temporary waivers of the obligation to receive and process CAP EAS messages due to the physical unavailability of broadband Internet service.¹⁸ CableAmerica subsequently updated the record to reflect that all systems covered by its petition were either taken out of service or rendered compliant as of August 1, 2016.¹⁹ KJAY also subsequently updated the record to reflect that it had been rendered compliant as of June 20, 2017.²⁰

5. West River indicated that it was not economically feasible for it to install new CAP-capable equipment and IP connections on the four cable systems identified in its petition.²¹ West River further indicated that if its petition were denied, it would terminate service "within thirty days, or whatever longer or shorter period the Commission and local franchising authorities require."²² West River subsequently updated the record to reflect that all systems covered by its petition had been taken out of service by Nov. 30, 2015.²³

6. Universal also contended that it was not economically feasible to install new CAP-capable equipment and IP connections in its small cable system.²⁴ Universal subsequently went out of business, effective March 24, 2015.²⁵

III. Discussion

7. The Commission has authority to waive its rules if there is "good cause" to do so.²⁶ 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.²⁷ The waiver applicant generally faces a high

¹¹ *See id.*

¹² *See id.*

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See* Argent Petition at 1.

¹⁶ *See id.*

¹⁷ Portions of the Argent Petition appear to have been misfiled. After several attempts to contact Argent, Public Safety and Homeland Security Bureau (Bureau) staff eventually were informed by Argent that its back office had been destroyed by a fire, and that the system records destroyed by the fire likely included any copies Argent had of its petition. Bureau staff communicated to Argent on several occasions that additional information was required to process its waiver requests, however, Argent did not provide any additional information to the Bureau that would allow it to process the Argent Petition.

¹⁸ *See* CableAmerica Petition at 2-3; KJAY Petition at 3.

¹⁹ *See* Letter from Christopher A. Cook, Counsel to CableAmerica Missouri, LLC, Davis Wright Tremaine LLP, to Marlene H. Dortch, Secretary, FCC, EB Docket 04-296 (filed May 22, 2017) (indicating that the Seney, MI, system was taken out of service on May 1, 2013; the Lake Sherwood Estates, MO, system was integrated into CableAmerica's compliant Maryland Heights, MO, system in August 2014; and that the Grand Marais, MI, and Shingleton, MI, systems obtained broadband Internet access on August 1, 2016).

²⁰ *See* Letter from Michael Couzens, Counsel to KJAY, LLC, to David Munson, Attorney Advisor, Policy and Licensing Division, FCC Public Safety and Homeland Security Bureau, EB Docket 04-296 (filed July 14, 2017) (indicating that KJAY established a sufficient broadband connection and became compliant on June 20, 2017).

hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁸ However, as 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.²⁹

8. Because CableAmerica and KJAY lacked access to broadband connections, we find that they 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*.³⁰ We further observe that these Petitioners continued to operate legacy EAS equipment at least until the time of their most recent filings.³¹ Thus, the public has not been deprived of EAS alerts.

9. Accordingly, we grant, *nunc pro tunc*, the temporary waiver of the CAP obligations set forth in Section 11.56 of the Commission's rules requested by CableAmerica and KJAY for the period of June 30, 2012, until the dates upon which the systems identified in their petitions were taken out of service or rendered compliant, as identified in their subsequent updates to the record.³²

10. With respect to West River, we observe that the Commission has granted temporary waivers from CAP obligations to provide time for EAS Participants to discontinue operations of non-compliant systems in a manner that is least disruptive to their subscribers.³³ We find West River's situation to be sufficiently similar to these cases that similar treatment is warranted. Accordingly, we grant, *nunc pro tunc*, the temporary waiver of the CAP obligations set forth in Section 11.56 of the Commission's rules requested by West River for the period of June 30, 2012, until the dates upon which the systems identified in its petition were taken out of service.³⁴

²¹ See West River Petition at 1-4. West River indicated that the Faith cable system (CUID No. SD0104), McLaughlin cable system (CUID No. SD0162), Timber Lake cable system (CUID No. SD0091), and Selfridge cable system (CUID No. ND0228) had 50, 126, 69 and 24 subscribers, respectively. See *id.* at 2. West River further indicated that there "is little or no prospect of any of the four systems becoming profitable during the foreseeable future [and therefore] it makes no economic sense for West River to invest over \$20,600 in new EAS equipment during a time of recession when increasing video content prices and decreasing consumer ability to pay mean continuing losses and inability to recover the new investment." *Id.* at 4.

²² *Id.* at 4.

²³ See Letter from Collie Nash, General Manager, West River Cable Television, Inc., to David Munson, Attorney Advisor, Policy and Licensing Division, FCC Public Safety and Homeland Security Bureau, EB Docket 04-296 (filed May 24, 2017) (indicating that the Faith cable system had been shut down on Nov. 30, 2015, and the McLaughlin, Timber Lake and Selfridge cable systems had been shut down on Oct. 1, 2014).

²⁴ See Universal Petition at 1. Universal estimated the cost of new CAP equipment "in excess of \$5,000.00 (plus installation and ongoing testing costs)," and the cost of a required IP connection at "more than \$1,900.00 and the ongoing monthly bill is \$194.99 plus tax and applicable fees." *Id.* Universal contended that "Since we already suffer financially from an inability to acquire affordable programming, passing on these costs to our subscribers would not only put us 'out of the ball park' with regard to our monthly rates vs. the competition, it could also force us to go out of business as soon as legally and feasibly possible." *Id.*

²⁵ Although Universal did not formally update the record to reflect its discontinuation of service, it notified Bureau staff via telephone, and staff subsequently confirmed that Universal voluntarily dissolved on March 24, 2015. See Florida Dept. of State, Division of Corporations, <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=UNIVERSALCABLEVISION%20F677450&aggregateId=domp-f67745-0041473a-dec5-4215-bb56->

11. With respect to Universal, although it did not expressly request time to wind down its operation in the alternative to a grant of its waiver request, that position appears to be characterized in its petition, which was borne out by its subsequent dissolution.³⁵ Bureau staff were unable, however, to obtain more details concerning the status of Universal's system, such as the date upon which its cable service was discontinued, prior to its dissolution. In light of Universal's dissolution, we dismiss its waiver as moot.

12. With respect to Argent, its petition is incomplete, and it has not provided the additional information required to enable the Bureau to process its waiver requests.³⁶ Accordingly, we dismiss Argent's request for temporary waivers without prejudice to refile a complete submission.

IV. Ordering Clauses

13. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's Rules, 47 CFR § 1.3, and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Petitions for Waiver filed by CableAmerica Missouri, LLC, KJAY, LLC, and West River Cable Television, Inc. ARE GRANTED, as specified herein.

14. IT IS FURTHER ORDERED that pursuant to Section 1.3 of the Commission's Rules, 47 CFR § 1.3, and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the Petition for Waiver filed by Universal Cablevision, Inc., and the Petition for Temporary Waiver filed by Argent Communications, LLP, ARE DISMISSED.

[068a6f55b93b&searchTerm=universal%20cable%20vision&listNameOrder=UNIVERSALCABLEVISION%202876320](https://www.fcc.gov/electroniccommentaries/record.do?commentID=068a6f55b93b&searchTerm=universal%20cable%20vision&listNameOrder=UNIVERSALCABLEVISION%202876320) (last visited July 27, 2017).

²⁶ See 47 CFR § 1.3.

²⁷ 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)).

²⁸ *WAIT Radio v. FCC*, 418 F.2d at 1157.

²⁹ See *EAS Fifth Report and Order*, 27 FCC Rcd 642, 695-96, para. 152.

³⁰ See CableAmerica Petition at 2-3; KJAY Petition at 3.

³¹ See CableAmerica Petition at 3-4; KJAY Petition at 3.

³² See *supra* notes 19, 20.

³³ 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*, EB Docket No. 04-296, Order, 29 FCC Rcd 13987 (PSHSB 2014).

³⁴ See *supra* note 23.

³⁵ See Universal Petition at 1 (indicating that the cost of CAP-capable equipment and of establishing broadband access were "so prohibitive it could force Universal to discontinue operations of its cable system").

³⁶ See *supra* note 17.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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