

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

In the Matter of)
)
Amendments to Part 11 of the Commission’s Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)

ORDER

Adopted: December 12, 2023

Released: December 12, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) addresses the request filed by GCI Communication Corp., on behalf of itself and its wholly-owned subsidiaries and affiliates and GCI Cable, Inc. (“GCI”), seeking an extension of certain December 12, 2023 Emergency Alert System (“EAS”) compliance deadlines requiring changes to alert displays and code processing adopted by the FCC in the 2022 EAS Report and Order.¹ For the reasons discussed below, the Bureau grants the request.

II. BACKGROUND

2. Overview of the EAS. The EAS is a national system used to disseminate public warnings of impending emergencies over broadcast, cable, and satellite networks to consumers’ radios, televisions, and other audio and video devices.² Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators³ may transmit EAS messages to EAS Participants (for distribution to the public) either over FEMA’s Internet-based platform known as the Integrated Public Alert and Warning System (IPAWS) using the CAP format, or over the so-called “legacy” EAS distribution system, a broadcast-based process in which messages are transmitted via audio channels and relayed from one EAS Participant to another

¹ Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, PS Docket No. 15-94, Report and Order, 37 FCC Rcd 11844 (2022) (2022 Part 11 Report and Order) see also PSHSB Announces Effective Date and Compliance Dates for Certain Emergency Alert System (EAS) Rules, PS Docket No. 15-94, Public Notice, DA 22-1189 (rel. Nov. 10, 2022). The FCC also adopted changes to the language associated with the national emergency code. The compliance deadline for cable systems to implement changes to this language is March 12, 2024, for certain set-top box software and hardware upgrades, and December 12, 2028, for certain set-top box hardware upgrades. GCI is not seeking an extension of these compliance deadlines at this time.

² Id. See 47 CFR § 11.2(b) (defining “EAS Participants”).

³ See 47 CFR § 11.31 (describing “EAS Protocol”); see also FEMA, Alerting Originators, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities#:~:text=An%20Alert%20Originator%20is%20an,composing%20and%20issuing%20the%20alert (last updated June 26, 2023).

throughout a geographic area.⁴ EAS Participants typically receive legacy EAS messages by monitoring audio transmissions from other EAS Participants or other sources. EAS Participants receive IP-based messages transmitted over IPAWS by periodically checking an Internet-connected server (a process known as “polling”) for messages from alert originators in CAP format.⁵ Alert messages transmitted over the legacy EAS are encoded in the Specific Area Message Encoding (SAME) protocol format (developed by the National Weather Service for weather alerts) and consist of audible tones that convey header codes, a two-tone attention signal, an audio stream (typically no longer than two minutes of a person’s voice), and an end-of-message signal.⁶ The header codes identify the type of event covered by the alert, the originator of the message, and the relevant times, locations, and geographic areas. CAP-formatted alerts disseminated over the IPAWS platform can convey considerably more information than legacy EAS-based alerts in the SAME format. For example, CAP alert messages may include detailed directions on how the public should respond to the specific emergency, information in languages other than English, picture and video files, and URLs. This information cannot be relayed when CAP alerts are converted into legacy alerts for distribution over the legacy EAS;⁷ all data other than the header codes are lost in this conversion process.

3. On September 30, 2022, the Commission took measures to promote clarity and accessibility of alerts and to maintain public confidence in the EAS as a reliable source of emergency information.⁸ Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.⁹ With a few enumerated exceptions, the Commission requires EAS Participants, upon receiving a legacy EAS alert message, to check whether a CAP version of the same alert is available by polling the IPAWS feed for CAP-formatted EAS messages.¹⁰ If a CAP version is available, the EAS Participants must transmit the CAP version rather than the legacy version. EAS Participants may not transmit an alert in legacy format until at least 10 seconds after receiving its header codes unless they confirm by polling the IPAWS feed that no matching

⁴ In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant’s local audience, but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert the sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity’s audience, but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and have delivered it to the public.

⁵ See 47 CFR 11.52(e)(2); Federal Emergency Management Agency (FEMA), *EAS Participants*, <https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/emergency-alert-system-participants> (last updated July 28, 2021).

⁶ See 47 CFR § 11.31.

⁷ For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.

⁸ *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

⁹ *2022 Part 11 Report and Order* at 6, para. 14.

¹⁰ This requirement applies only to valid alert messages relating to event categories and locations for which the EAS Participant normally transmits such alerts pursuant to the State EAS Plan. The requirement does not apply to national emergency messages (i.e., alerts with the EAN event code), messages associated with national tests of the EAS (bearing the NPT code), or required weekly test messages (bearing the RWT code).

CAP version of the message is available.¹¹ EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission's rules, by December 12, 2023.¹²

4. *GCI Request.* On December 1, 2023, GCI filed a request for a temporary waiver (i.e., extension) of the December 12, 2023, compliance date for the rules requiring EAS Participants to display the new text for the national alert originator code and the national test code, the rules requiring EAS Participants to display a standard script for national test code alerts issued in legacy format, and the rules requiring EAS Participants to deactivate National Information Center code alert processing.¹³

5. GCI states that it is an EAS Participant as a result of its providing cable television and Multichannel Video Programming Distributor (MVPD) service in the state of Alaska. GCI explains that it utilizes a total of 23 EAS encoder/decoders throughout its service area. While working to upgrade its existing EAS encoder/decoders in order to meet the FCC's new requirements, GCI and its vendor discovered that 17 of GCI's existing EAS encoder/decoders would be unable to process the software updates necessary to come into compliance with the requirements. As a consequence, GCI asserts that it must replace these EAS units with upgraded hardware, which is currently experiencing delivery delays directly impacting GCI's ability to meet the December 12, 2023, compliance deadline.

6. More specifically, GCI asserts that it reasonably believed it would be able to update its EAS encoders/decoders in a timely fashion based on previous experience updating its EAS software and based on the Commission's own statements. GCI states that on August 8, 2022, it updated all of its EAS software after a FEMA advisory and encountered no problems with any of their encoders/decoders, which included all models of encoders/decoders.¹⁴ Further, GCI refers to the Commission's own conclusion, in adopting a one year compliance deadline for the implementation of the new EAS rules, that the necessary changes to EAS participants' systems "could be implemented in that timeframe via software updates to EAS equipment in tandem with 'regularly scheduled maintenance activities' involving minimal cost and effort on the part of EAS manufacturers and participants" and used information from EAS equipment vendors to reach such a conclusion.¹⁵ Instead, however, GCI finds itself in a situation where software updates are not sufficient and must "pursue an alternative path to compliance, which inherently takes more time to implement than a software update."¹⁶

7. GCI thus requests a Partial Temporary Waiver for the EAS units for which the required hardware upgrades will not be complete prior to December 12, 2023, and requests that it be granted an extension until March 11, 2024, to come into full compliance with the Commission's new EAS rules.

III. DISCUSSION

8. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."¹⁷ The Commission may find good cause to extend a waiver "if special circumstances warrant a deviation from the general rule and such deviation will serve

¹¹ 2022 Part 11 Report and Order at 5, para. 11.

¹² See 47 CFR § 11.55(c)(2).

¹³ GCI Request for Temporary Waiver of December 12, 2023 Compliance Deadline, PS Docket No. 15-94, at fn. 8 (filed December 1, 2023), <https://www.fcc.gov/ecfs/document/1201134417815/1> (Extension Request), citing 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii).

¹⁴ Extension Request at 3-4.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 6.

¹⁷ 47 CFR § 1.3.

the public interest.”¹⁸ The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁹ Based on the circumstances described herein, we conclude there is good cause to provide an extension of time until March 11, 2024, to accommodate the anticipated hardware delivery and installation estimated by GCI.

9. Specifically, we find that GCI acted in a reasonable and timely fashion to comply with its obligations, but due to specific factual circumstances related to equipment availability it will be unable to comply with the Commission’s implementation deadline. In furtherance of its waiver, GCI engaged with staff to provide a timetable by which it endeavored to make the necessary software updates but discovered they would instead need new hardware which was suffering from “supply chain shortages and an increase in demand” with “the typical delivery time ... extended to a minimum of 45 days,” creating the current situation in which it is unable to meet the FCC’s compliance deadline.²⁰ According to GCI, in the first week of August, based on their previous software upgrade experience in 2022, GCI reached out to their vendor to implement the necessary work to meet the FCC rule updates discussed in this Extension Request. While working to implement the necessary changes to their EAS systems, GCI and its vendor discovered that many of GCI’s existing EAS 32 bit encoder/decoders would be unable to process the software updates necessary to come into compliance with the requirements and would require hardware upgrades. On August 9, GCI asked its vendor for a quote to understand the extent of the hardware upgrades required. On or about September 22, GCI completed a final purchase order with the vendor. On October 3, GCI executed the purchase order. On October 4, GCI inquired about the possibility of an interim, temporary software patch to achieve compliance for the units requiring hardware upgrades but was informed by the vendor that a software patch was not possible. On December 8, GCI informed the Commission that it had received the first batch of hardware-upgraded units and installation efforts were underway. In summation of these efforts, GCI states that it is prioritizing all efforts to install the new encoder/decoders as quickly as possible once they are delivered to GCI.²¹

10. Finally, GCI states that it has an extensive track record of providing EAS service to Alaskans and ensuring that its network is ready and able to warn Alaska residents of critical emergencies and events. A grant of this waiver will further that effort by helping to ensure that GCI can safely install its new equipment, maintain service to its customers, and continue to provide the public with critical information in the event of an emergency.²²

11. In light of the delays due to supply chain shortages and an increase in demand that GCI has experienced in the delivery of the necessary hardware to update its EAS encoders/decoders, and the diligence with which they acted in seeking to rectify this issue, we find it in the public interest to accommodate the small amount of extra time needed to obtain and install this equipment and grant a reasonable and narrowly-tailored extension of time to support GCI’s receipt and installation of the new hardware. We agree with GCI that the supply chain shortages and increased demand for new hardware needed to comply with the Commission’s CAP prioritization rules justifies waiver of our rules in this instance.²³

12. Also, in order to ensure adequate service to its customers during the pendency of the upgrades, we condition our waiver on the requirement that the EAS equipment now in place will continue

¹⁸ 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)).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d at 1157.

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Id.*

²³ *Id.*

to operate in all respects except for the requirements related to the rules waiver herein until the new equipment is installed, so there will be no interruption to alerting.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, sections 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii) of the Commission's rules, 47 CFR §§ 11.31(d)(2), 11.51(d)(3), and 11.51(d)(3)(iii), ARE WAIVED, for GCI's cable television and MVPD service in the State of Alaska, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED to afford these GCI stations until March 11, 2024.

14. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.²⁴

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

²⁴ See 47 CFR §§ 0.191 and 0.392.