

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

In the Matter of	)	
	)	
Millennium Digital Media Systems, L.L.C.	)	File No. EB-02-TS-232
	)	
Operator of Cable Systems in the States of:	)	
	)	
Idaho, Michigan, Oregon and Washington	)	
	)	
	)	
Request for Waiver of Section 11.11(a) of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: October 9, 2002**

**Released: October 10, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Millennium Digital Media Systems, L.L.C. (“Millennium”) temporary, 12-month waivers of Section 11.11(a) of the Commission’s Rules (“Rules”) for six cable television systems in two of the above-captioned states and temporary, 36-month waivers of Section 11.11(a) of the Rules for 26 cable television systems in four of the above-captioned states as listed in Attachment A. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System (“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.<sup>1</sup>

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.<sup>2</sup> In 1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>3</sup> In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.<sup>4</sup> The

<sup>1</sup> 47 C.F.R. § 11.11(a).

<sup>2</sup> 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).

<sup>3</sup> *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).

<sup>4</sup> *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*,

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

3. On June 4, 2002, Millennium filed a request for temporary, 36 month waivers of Section 11.11(a) for 32 small, rural cable television systems operating in the four captioned states. In support of its waiver request, Millennium states that six of the cable systems serve between 1,071 and 1,603 subscribers and 26 of the cable systems serve between 37 and 976 subscribers. Based on price quotes provided by EAS equipment manufacturers, Millennium estimates that it would cost a total of \$320,000 to install EAS equipment at these cable systems. Millennium asserts that the cost of installing EAS equipment at these systems will impose a substantial financial hardship on it and provides financial statements for 2000 and 2001 in support of this assertion. In addition, Millennium submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. In this regard, Millennium notes that its subscribers currently have access to national EAS messages on a approximately 38 percent of all programmed channels. Millennium also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations and other sources.

4. Based upon our review of the financial data and other information submitted by Millennium, we do not find that a temporary, 36-month waiver of Section 11.11(a) for each of the 32 cable systems is warranted. However, we find that the estimated \$320,000 cost of EAS equipment for these small cable systems could impose financial hardship on Millennium. Therefore, we conclude that temporary, 12-month waivers of Section 11.11(a) for six of the cable systems in Attachment A and

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*Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Red 15503 (1997) ("*Second Report and Order*").

<sup>5</sup> *Id.* at 15512-13.

<sup>6</sup> *Id.* at 15516-15518.

<sup>7</sup> *Id.* at 15513.

<sup>8</sup> *Id.* at 15513, n. 59.

temporary, 36-month waivers of Section 11.11(a) for 26 of the cable systems in Attachment A are warranted.<sup>9</sup>

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.<sup>10</sup> Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.<sup>11</sup>

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,<sup>12</sup> Millennium Digital Media Systems, L.L.C. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2003 for six of the cable television systems in Attachment A and **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for 26 of the cable television systems listed in Attachment A.

7. **IT IS FURTHER ORDERED** that Millennium Digital Media Systems, L.L.C. place a copy of these waivers in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Millennium Digital Media Systems, L.L.C., Christopher C. Cinnamon, Esq., Cinnamon & Muller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Technical and Public Safety Division  
Enforcement Bureau

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<sup>9</sup> The 12-month waiver will extend from October 1, 2002, until October 1, 2003 and the 36-month waiver will extend from October 1, 2002, until October 1, 2005. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

<sup>10</sup> *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

<sup>11</sup> One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

## Attachment A

Millennium Digital Media Systems, L.L.C.

**Cable Systems:****Temporary Waiver Granted Until:****Idaho**

Buhl, Idaho October 1, 2005  
Shoshone, Idaho October 1, 2005

**Michigan**

Grass Lake, Michigan October 1, 2005  
Union City, Michigan October 1, 2003  
Vermontville, Michigan October 1, 2005

**Oregon**

Salmon River, Oregon October 1, 2005

**Washington**

Anderson Island, Washington October 1, 2005  
Bellingham, Washington October 1, 2005  
Bridgeport Bar, Washington October 1, 2005  
Carson, Washington October 1, 2005  
Chelan, Washington October 1, 2003  
Concrete, Washington October 1, 2005  
Creston, Washington October 1, 2005  
Darrington, Washington October 1, 2005  
Easton, Washington October 1, 2005  
Echo Lake, Washington October 1, 2003  
Entiat, Washington October 1, 2005  
Forks, Washington October 1, 2003  
Key Peninsula, Washington October 1, 2005  
Lake Roesinger, Washington October 1, 2003  
Mansfield, Washington October 1, 2005  
Manson, Washington October 1, 2005  
Marblemount, Washington October 1, 2005  
Napavine, Washington October 1, 2005  
Packwood, Washington October 1, 2005  
Pe Ell, Washington October 1, 2005  
Randle, Washington October 1, 2005  
South Port, Washington October 1, 2005  
Thorpe, Washington October 1, 2005  
Twisp, Washington October 1, 2005  
Waterville, Washington October 1, 2005  
Whidbey Island, Washington October 1, 2003