

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

In the Matter of
Eagle West, LLC
Operator of Cable Systems in the States of:
Arizona, New Mexico, Nevada
Request for Waiver of Section 11.11(a) of the
Commission's Rules
File No. EB-02-TS-422

ORDER

Adopted: October 10, 2002

Released: October 16, 2002

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

1. In this Order, we grant Eagle West, LLC ("Eagle West") temporary, 36-month waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 33 cable television systems in the three 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.

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. In 1994, the Commission adopted rules requiring cable systems to participate in EAS. In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems. The

1 47 C.F.R. § 11.11(a).

2 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).

3 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).

4 Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and Order").

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).⁵ 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.⁶ 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.⁷ 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.⁸

3. Eagle West filed a request for a permanent waiver of Section 11.11(a) for 33 cable television systems in the three captioned states on August 14, 2002. Eagle West states that these cable systems serve between 23 and 2,738 subscribers. Eagle West asserts that the cost of EAS equipment will impose a substantial financial hardship on it and provides its financial statements for 1999 and 2000 in support of this assertion. In addition, Eagle West submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. Eagle West also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

4. Based upon our review of the financial data and other information submitted by Eagle West, we conclude that temporary, 36-month waivers of Section 11.11(a) for the 33 cable systems in Attachment A are warranted.⁹

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.¹⁰ Based on comments from equipment

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

⁹ The waiver will extend from October 1, 2002, until October 1, 2005. Additionally, We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

¹⁰ *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).

manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹¹

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹² Eagle West, LLC. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for thirty-three cable television systems listed in Attachment A.

7. **IT IS FURTHER ORDERED** that Eagle West, LLC. place a copy of this waiver 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 Al H. Williams, Consultant, Eagle West, LLC 9333 East Main Street Suite 122 Mesa, Arizona 85207..

FEDERAL COMMUNICATIONS COMMISSION

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

¹¹ 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.

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

Attachment A

Eagle West, LLC

Cable Systems:**Arizona**

Alpine, Arizona
Bagdad, Arizona
Black Canyon City, Arizona
Casa Grande, Arizona
Christopher Creek, Arizona
Concho Valley, Arizona
Eagar/Springerville, Arizona
Florence, Arizona
St. Johns, Arizona
Thompson Draw, Arizona
Williams, Arizona
Yarnell, Arizona
Arizona City, Arizona
Cave Creek, Arizona
Hayden, Arizona
Winkelman, Arizona
Dudleyville, Arizona
Indian Hills, Arizona
Heber, Arizona
Overgaard, Arizona
Kearny, Arizona
Mammoth, Arizona
Oracle, Arizona
Peach Springs, Arizona
San Manuel, Arizona
Superior, Arizona

Waivers:

Granted Until October 1, 2005
Granted Until October 1, 2005

Nevada

Beatty, Nevada
Boulder City, Nevada
Calville Bay, Nevada
Goldfield, Nevada
Tonopah, Nevada

Granted Until October 1, 2005
Granted Until October 1, 2005

New Mexico

Reserve, New Mexico

Granted Until October 1, 2005