

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

In the Matter of)	
)	
Pacific Sun Cable Partners, LP)	File No. EB-02-TS-200
)	
Operator of Cable System in:)	
)	
Groveland, California)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 2003

Released: May 2, 2003

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

1. In this *Memorandum Opinion and Order*, we grant a petition for reconsideration filed by Pacific Sun Cable Partners, LP (“Pacific Sun”) of an *Order* denying Pacific Sun’s request for a temporary, 36-month waiver, and instead granting Pacific Sun a temporary, 12-month waiver, of Section 11.11(a) of the Commission’s Rules (“Rules”) for the above-captioned cable television system.¹ 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

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.³ In 1994, the Commission adopted rules requiring cable systems to participate in EAS.⁴ In 1997, the

¹ *Pacific Sun Cable Partners, LP*, 17 FCC Rcd 18974 (Enf. Bur., Tech. & Pub. Safety Div., 2002) (“*Waiver Order*”).

² 47 C.F.R. § 11.11(a).

³ 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).

⁴ *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), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

Commission amended the EAS rules to provide financial relief for small cable systems.⁵ The 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).⁶ 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.⁷ 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.⁸ 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.⁹

3. On May 21, 2002, Pacific Sun filed a request for a temporary, 36-month waiver of Section 11.11(a) of the Rules for the captioned cable system. In its waiver request, Pacific Sun noted that its small cable system served approximately 1,052 subscribers. In support of its waiver request, Pacific Sun provided financial data for 2001 and asserted that the estimated \$17,000 cost to install EAS equipment at its system would impose a substantial financial hardship on it. On October 4, 2002, we denied Pacific Sun's request for a 36-month waiver and instead granted Pacific Sun a 12-month waiver of Section 11.11(a) for its small cable system.¹⁰ We concluded that the financial data and other information submitted by Pacific Sun did not justify its request for a 36-month waiver.

4. On November 4, 2002, Pacific Sun filed a petition for reconsideration of the *Waiver Order*. Pacific Sun asserts that reconsideration is appropriate under Section 1.106(b)(2)(i) and (c)(1) of the Rules because of substantial changes in relevant facts and circumstances since it filed its original waiver request.¹¹ Specifically, Pacific Sun states that, in the six months since it filed its original waiver request, its system's customer base has declined to fewer than 930 subscribers and its finances have deteriorated significantly. Pacific Sun asserts that the estimated \$17,000 cost of installing EAS equipment at the system within the 12-month waiver period will impose a serious financial hardship on it. Pacific Sun provides its financial statement for the first seven months of 2002 in support of this assertion.

⁵ *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).

⁶ *Id.* at 15512-13.

⁷ *Id.* at 15516-15518.

⁸ *Id.* at 15513.

⁹ *Id.* at 15513, n. 59.

¹⁰ 17 FCC Rcd at 18975.

¹¹ *See* 47 C.F.R. § 1.106(b)(2)(i) and (c)(1).

5. Based upon our review of the new financial data and other information submitted by Pacific Sun, we conclude that Pacific Sun has justified a 36-month waiver of Section 11.11(a) of the Rules for the captioned small cable system.¹² Accordingly, we grant Pacific Sun's petition for reconsideration.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹³ and Sections 0.111, 0.204(b), 0.311 and 1.106 of the Rules,¹⁴ Pacific Sun Cable Partners, LP's petition for reconsideration **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that Pacific Sun Cable Partners, LP **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the captioned cable television system.

8. **IT IS FURTHER ORDERED** that Pacific Sun Cable Partners, LP place a copy of this waiver in its system file.

9. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Pacific Sun Cable Partners, LP, Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² The waiver will extend from October 1, 2002 until October 1, 2005. We clarify that the waiver we are granting also encompasses the EAS testing and monitoring requirements.

¹³ 47 U.S.C. § 405.

¹⁴ 47 C.F.R. §§ 0.111, 0.204(b), 0.311 and 1.106.