

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

In the Matter of)	
)	
D&P Cable, Inc.)	File No. EB-02-TS-673
)	
Operator of Cable System in:)	
)	
Petersburg, Michigan)	
)	
Request for Waiver of Section 11.11(a) of the Commission's Rules)	

ORDER

Adopted: July 9, 2003

Released: July 14, 2003

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

1. In this *Order*, we grant D&P Cable, Inc. (“D&P Cable”) a temporary waiver of Section 11.11(a) of the Commission’s Rules (“Rules”) for the above-captioned cable television system. 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, 2002.¹

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.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁴ 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).⁵ However, 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*”).

⁵ *Id.* at 15512-13.

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

3. D&P Cable filed a request for a temporary, six-month waiver of Section 11.11(a) for the captioned cable system on October 21, 2002. In support of its waiver request, D&P Cable states that shipment of EAS equipment for this small, rural cable system, with approximately 2,950 subscribers, was scheduled for delivery in August 2002. D&P Cable further states that the EAS equipment was delivered late and once installed did not work properly. D&P Cable submits that although its vendor promised prompt delivery of replacement EAS equipment, there has been a delay. D&P Cable asserts its subscribers will continue to have ready access to national EAS information from other sources, including its cable system. Finally, D&P Cable believes that it can bring the captioned cable system into EAS compliance within the next six months.

4. Based upon our review of the information submitted by D&P Cable, we conclude that a temporary waiver of Section 11.11(a) for the captioned cable system from October 21, 2002 until April 1, 2003 is warranted.⁷ However, we note that D&P Cable did not file its waiver request until October 21, 2002, after the October 1, 2002 deadline for cable systems serving 10,000 or fewer subscribers to install EAS equipment. We find that D&P Cable was in violation of the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002. We admonish D&P Cable for this violation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,⁸ D&P Cable, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules from October 21, 2002 until April 1, 2003 for the captioned cable television system.

6. **IT IS FURTHER ORDERED** that D&P Cable, Inc. is **ADMONISHED** for violating the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002.

7. **IT IS FURTHER ORDERED** that D&P Cable, Inc. place a copy of this waiver in its system file.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for D&P Cable, Inc., Marci E. Greenstein, Esq., Kraskin, Lesse & Cosson, LLP, 2120 L Street, N.W., Suite 520, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division

⁶ *Id.* at 15516-15518.

⁷ We clarify that the waiver we are granting also encompasses the EAS testing and monitoring requirements.

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

Enforcement Bureau