

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

In the Matter of)	
)	
Wireless Direct Broadcast System)	File No. EB-02-TS-684
)	
Operator of Wireless Cable System in:)	
)	
Bisbee, Arizona)	
)	
Request for Waiver of Section 11.11(a) of the Commission's Rules)	

ORDER

Adopted: August 19, 2003

Released: August 21, 2003

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this *Order*, we grant Wireless Direct Broadcast system (“WDBS”) a temporary waiver of Section 11.11(a) of the Commission’s Rules (“Rules”) for the above-captioned wireless cable television system. Section 11.11(a) requires wireless cable systems serving fewer than 5,000 subscribers from a single transmission site 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 extend the EAS requirements to wireless cable systems and to provide financial relief for small cable systems.⁴ The Commission declined to exempt small cable

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*”).

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. WDBS filed a request for a temporary, 48-month waiver of Section 11.11(a) for the captioned wireless cable system on October 30, 2002. In support of its waiver request, WDBS states that this small, rural wireless cable system serves 935 subscribers. Based on price quotes provided by EAS equipment vendors, WDBS estimates that it would cost approximately \$10,000 to purchase and install EAS equipment at this system. WDBS asserts that this cost will impose a substantial financial hardship on it and provides its financial statement for 2001 in support of this assertion. In addition, WDBS submits that its subscribers will continue to have ready access to national EAS information from other sources including its cable system. WDBS also submits 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 WDBS, we deny WDBS a 48-month waiver of Section 11.11(a) but conclude that a temporary waiver for the captioned wireless cable system from October 30, 2002 until October 1, 2005 is warranted.⁹ However, we note that WDBS did not file its waiver request until October 30, 2002, after the October 1, 2002 deadline for cable systems serving 10,000 or fewer subscribers to install EAS equipment. We find that WDBS was in violation of the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002. We admonish WDBS for this violation.

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 We clarify that the waiver we are granting also encompasses 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 Wireless Direct Broadcast System **IS GRANTED** a waiver of Section 11.11(a) of the Rules from October 30, 2002 until October 1, 2005 for the captioned wireless cable television system.

7. **IT IS FURTHER ORDERED** that Wireless Direct Broadcast System **IS ADMONISHED** for violating the requirement in Section 11.11(a) of the Rules to install EAS equipment by October 1, 2002.

8. **IT IS FURTHER ORDERED** that Wireless Direct Broadcast System place a copy of this waiver in its system file.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Wireless Direct Broadcast System, Suzanne S. Goodwyn, Esq., 1661 Hunting Creek Drive, Alexandria, Virginia 22314.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement 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.