

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

In the Matter of)
Craig Wireless Honolulu Inc.) File No. EB-03-TS-101
Operator of Wireless Cable System in:)
Oahu, Hawaii)
Request for Waiver of Section 11.11(a) of the)
Commission's Rules)

ORDER

Adopted: October 7, 2003

Released: October 9, 2003

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we grant Craig Wireless Honolulu Inc. ("Craig") 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 more than 5,000 but fewer than 10,000 subscribers from a single transmission site to install Emergency Alert System ("EAS") equipment and begin providing EAS audio and video messages on all channels by October 1, 2002.1 Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a single transmission site to either provide national level 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.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 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

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

3. On September 30, 2002, Craig filed a request for a permanent waiver of the requirements of Section 11.11(a) applicable to wireless cable systems with more than 5,000 but fewer than 10,000 subscribers or in the alternative, a five-year extension of time to comply with these requirements for the captioned wireless cable system. In support of its waiver request, Craig states that the captioned system is an all-digital wireless cable television system which serves 8,780 subscribers. Craig submits that it already provides a complete EAS message on one channel with audio and video alerts on all of its other programmed channels. Craig notes that its EAS system currently conforms to the EAS requirements for wireless cable system with 5,000 or fewer subscribers, but does not conform to the additional requirements for those systems with more than 5,000 subscribers. Based on a price quote from an EAS equipment manufacturer, Craig estimates that it would cost a total of approximately \$255,000 to install the required EAS equipment at the captioned system's transmission site because it must insert the EAS video and audio content into its encoded digital systems. Craig asserts that this cost will impose a substantial financial hardship on it and provides its financial statements for 2002 and 2003 in support of this assertion. Craig submits that it provides a complete EAS message on one channel with audio and video alerts on all of its other programmed channels. Craig asserts that its subscribers will continue to have ready access to national EAS information from other sources, including its cable system. Craig further submits that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

4. We note that in September 2002, another digital wireless cable system filed a request for a permanent waiver of Section 11.11(a) to enable it to use an alternative method for providing EAS alerts, asserting that compliance with the EAS requirements impose substantially greater costs on wireless cable systems using digital technology than on other cable systems.⁷ We declined to grant the system a permanent financial hardship waiver, concluding that the system was seeking what was in effect a revision of the EAS rules to reflect the impact of the use of digital technology by wireless cable systems. However, we granted the system a limited, 30-day waiver of Section 11.11(a) to enable a revision of the Commission's EAS rules to be requested through the petition for rulemaking process. In addition, we stated that if a petition for rulemaking is filed, this waiver would be automatically extended until either the effective date of any changes adopted by the Commission to the EAS rules for wireless cable systems using digital technology, or 90 days after the Commission issues a decision declining to adopt any such

Order”).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *W.A.T.C.H. TV and Benton Ridge Telephone Co.*, 17 FCC Rcd 18329 (Enf. Bur., Tech. & Pub. Safety Div., 2002).

changes. On October 31, 2002, the Wireless Communications Association International, Inc. filed a petition for rulemaking requesting an amendment of the EAS rules for digital wireless cable systems.⁸ A public notice seeking comment on this petition for rulemaking was released on December 18, 2002.⁹

5. Craig is seeking either a permanent waiver of the requirements of Section 11.11(a) applicable to wireless cable systems with more than 5,000 but fewer than 10,000 subscribers, or a five-year extension of time to comply with those requirements. We believe that the issues raised by Craig concerning the impact of the EAS rules on digital wireless cable systems are more appropriately addressed in the proceeding described above. Accordingly, while we decline to grant Craig Wireless's waiver request on financial hardship grounds, we grant Craig Wireless a waiver of the requirements of Section 11.11(a) applicable to wireless cable systems with more than 5,000 but fewer than 10,000 subscribers until either the effective date of any changes adopted by the Commission to the EAS rules for wireless cable systems using digital technology, or 90 days after the Commission issues a decision declining to adopt any such changes.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹⁰ Craig Wireless Honolulu Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules as specified herein and in all other respects its request for a waiver of Section 11.11(a) of the Rules **IS DENIED**.

7. **IT IS FURTHER ORDERED** that Craig Wireless Honolulu 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 Craig Wireless Honolulu Inc., Peter D. Shields, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

⁸ The Wireless Communications Association International, Inc., Petition for Rulemaking to Request Amendment of the Commission's Rules to Permit Use of "Force Tune" Technology by Digital Wireless Cable Systems, RM-10619 (filed October 31, 2002).

⁹ Public Notice, Consumer & Government Affairs Bureau Reference Information Center Petitions for Rulemaking Filed, Report No. 2589 (December 18, 2002).

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