

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

In the Matter of)	
)	
Fibervision, Inc.)	File No. EB-02-TS-292
)	
Operator of Cable Systems in:)	
)	
Big Timber, Montana)	
Columbus, Montana)	
Fairchild, Washington)	
Forsyth, Montana)	
Hardin, Montana)	
Laurel, Montana)	
Missoula, Montana)	
Park City, Montana)	
Red Lodge, Montana)	
)	
Request for Waiver of Section 11.11(a) of the Commission's Rules)	

ORDER

Adopted: January 31, 2003

Released: February 5, 2003

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

1. In this *Order*, we grant Fibervision, Inc. (“Fibervision”) temporary waivers of Section 11.11(a) of the Commission’s Rules (“Rules”) for the nine above-captioned cable television systems. Specifically, we grant temporary, 12-month waivers of Section 11.11(a) of the Rules for three cable systems and temporary, 36-month waivers of Section 11.11(a) of the Rules for six cable systems. 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

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).

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 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. Fibervision filed a request for permanent or temporary, 36-monthh waivers of Section 11.11(a) for the nine captioned cable systems on July 9, 2002. In support of its waiver requests, Fibervision states that these are small, rural cable systems with the six systems in Big Timber, Columbus, Forsyth, Hardin, Park City, and Red Lodge, Montana serving between 162 and 955 subscribers and the three systems in Laurel and Missoula, Montana, and Fairchild, Washington serving between 1,387 and 1,760 subscribers. Based on price quotes provided by EAS equipment manufacturers, Fibervision estimates that it would cost more than \$8,500 to install EAS equipment at each of these systems for a total cost of approximately \$94,500. Fibervision asserts that this cost will impose a substantial financial hardship on it and provides financial data for 2000 and 2001 in support of this assertion. Fibervision indicates that subscribers will continue to have ready access to national EAS information from other sources, including many of the programmed channels carried over its cable system. Fibervision further indicates that subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

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.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

4. Based upon our review of the financial data and other information submitted by Fibervision, we find that temporary, 36-month waivers of Section 11.11(a) are not warranted for each of the nine captioned cable systems. However, we conclude that temporary, 12-month waivers of Section 11.11(a) are warranted for the Laurel and Missoula, Montana; and Fairchild, Washington cable systems, and temporary, 36-month waivers of Section 11.11(a) are warranted⁹ for the Big Timber, Columbus, Forsyth, Hardin, Park City, and Red Lodge, Montana cable systems. In particular, we find that the estimated \$94,500 cost of EAS equipment for these small, cable systems could impose a financial hardship on Fibervision.

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 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 Fibervision, Inc. **IS GRANTED** waivers of Section 11.11(a) of the Rules until October 1, 2003 for three cable television systems in Laurel and Missoula, Montana; and Fairchild, Washington and **IS GRANTED** waivers of Section 11.11(a) of the Rules until October 1, 2005 for six cable television systems in Big Timber, Columbus, Forsyth, Hardin, Park City, and Red Lodge, Montana.

7. **IT IS FURTHER ORDERED** that Fibervision, Inc. place a copy of these waivers in its systems files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Fibervision, Inc., Robert L. James, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, Suite 200, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

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

⁹ The 12 month waivers will extend from October 1, 2002, until October 1, 2003 and the 36-months waivers will extend from October 1, 2002 until October 1, 2005. Additionally, 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).

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.