

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

In the matter of
LB Cable Montana LLC
Operator of Cable Systems in:
Belt, Montana
Charlo, Montana
Chester, Montana
Darby, Montana
Dutton, Montana
Ennis, Montana
Hot Springs, Montana
Paradise, Montana
Plains, Montana
St. Ignatius, Montana
St. Regis, Montana
Valier, Montana
Vaughn, Montana

File No.: EB-04-HS-018

Request for Waiver of Section 11.11(a) of the
Commission's rules

ORDER

Adopted: July 6, 2004

Released: July 8, 2004

By the Director, Office of Homeland Security, Enforcement Bureau

1. In this Order, we grant LB Cable Montana LLB (Montana) temporary waivers of section 11.11(a) of the Federal Communications Commission's rules (Rules)1 for the thirteen-above captioned cable television systems in Montana. Section 11.11(a) of the Rules 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, as amended3 and required that cable systems be capable of providing EAS alerts to their subscribers.4 In

1 47 C.F.R. § 11.11(a).

2 Id.

3 The Communications Act of 1934 was amended by the Telecommunications Act of 1996. Pub. L. No. 104-104, 110 Stat. 56 (1996 Act).

1994, the Commission adopted rules requiring cable systems to participate in EAS.⁵ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁶ The Commission declined to exempt small cable systems from the EAS requirements entirely, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁷ The amended rules 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.⁸ 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.⁹

3. On March 2, 2004, LB Cable Montana filed a request for temporary waivers of the EAS requirements for the recently acquired small cable systems in rural Montana, asserting that the cost of immediate installation of EAS equipment in the thirteen systems would cause financial hardship. LB Cable Montana states that it acquired the thirteen systems in a bankruptcy sale on February 2, 2004, and therefore, has not had enough time to generate sufficient revenue to purchase and install EAS equipment at this time. Based on price quotes from EAS equipment manufacturers, LB Cable Montana estimates that it would cost approximately \$130,000 to purchase and install the EAS equipment at the 13 headends. LB Cable Montana asserts that without the requested waivers, it may have to delay or cancel its upgrades and interconnections, which would delay or eliminate the delivery of advanced broadband services to over 1,300 rural subscribers. Finally, LB Cable Montana contends that subscribers will continue to have ready access to national EAS information from other sources, including its cable system and over-the-air reception of broadcast television and radio stations.

4. Based on our review of the information submitted by LB Cable Montana, we conclude that temporary waivers of section 11.11(a) of the Rules for the thirteen above-captioned cable systems, are warranted. In particular, we find that the estimated cost of \$130,000 to purchase and install EAS equipment at these recently acquired cable television systems could impose a financial hardship on LB Cable Montana.

5. Accordingly, **IT IS ORDERED** that, pursuant to sections 0.111, 0.204(b) and 0.311 of the rules,¹⁰ LB Cable Montana LLC's request for temporary waivers of section 11.11(a) of the rules is

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⁴ 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).

⁵ *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, 10 FCC Rcd 1786 (1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

⁶ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503 (1997).

⁷ *Id.* at 15512-13.

⁸ *Id.* at 15516-15518.

⁹ *Id.* at 15513.

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

GRANTED until October 1, 2005, for its thirteen above-captioned cable television systems in Montana.¹¹

6. **IT IS FURTHER ORDERED** that LB Cable Montana LLC place a copy of this waiver in its system files.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for LB Cable Montana LLC, Christopher C. Cinnamon, Esq., Cinnamon Muller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

James A. Dailey
Director, Office of Homeland Security
Enforcement Bureau

¹¹ We clarify that these waivers also encompass the EAS testing and monitoring requirements.