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

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| In the Matter of | ) | |
| | ) | |
| Review of the Emergency Alert System; | ) | |
| | ) | EB Docket No. 04-296 |
| Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; | ) | |
| | ) | |
| Randy Gehman Petition for Rulemaking | ) | |

**ORDER**

**Adopted: November 21, 2014** **Released: November 21, 2014**

By the Chief, Public Safety and Homeland Security Bureau:

## I. Introduction

1. In this Order we address the petitions for temporary waiver of Section 11.56 of the Commission's rules,[1] filed by Allegiance Communications, LLC (Allegiance);[2] Broadband Cablevision, Inc., Clark Cablevision, Inc., and Etan Industries, Inc. (collectively "CMA Communications");[3] Cequel Communications, LLC, d/b/a Suddenlink Communications (Suddenlink);[4] Citizens Telephone Company

[1] 47 C.F.R. § 11.56.

[2] *See* Allegiance Communications, LLC, Request for Waiver, EB Docket No. 04-296 (filed June 28, 2012) (Allegiance Petition). Subsequent to its filing, the small cable systems covered by the Allegiance Petition were sold to Vyve Broadband A, LLC, and are now the subject of a waiver petition filed by Vyve Broadband A, LLC. *See infra* n.12.

[3] *See* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 27, 2012) (CMA Petition); *see also* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Dec. 31, 2012). CMA sold the systems covered by the CMA Petition to New Wave on June 1, 2013, which New Wave incorporated into its own wavier petition. *See infra* n.11.

[4] *See* Cequel Communications, LLC d/b/a Suddenlink Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed June 19, 2012), *amended by* Cequel Communications, LLC d/b/a Suddenlink Communications, Minor Amendment to Petition of Cequel Communications, LLC for Temporary Waiver, EB Docket No. 04-296 (filed June 28, 2012) (as amended, "Suddenlink Petition"); *see also* Cequel Communications, LLC d/b/a Suddenlink Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed Dec. 27, 2012) (renewing waiver request with respect to systems lacking access to broadband Internet service and noting that systems covered by the Suddenlink Petition requiring a 90-day waiver to complete installation and testing were fully compliant) (Suddenlink Dec. 27, 2012, Waiver Petition Renewal); Cequel Communications, LLC d/b/a Suddenlink Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed June 28, 2013); Cequel Communications, LLC d/b/a Suddenlink Communications, Petition for Temporary Waiver, EB Docket No. 04-296 (filed Dec. 30, 2013); Letter from Jennifer Towland Frewer, Davis Wright Tremaine LLP, to Gregory Cooke, Associate Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No.

(CTC);[5] Daystar Radio, Ltd. (KLLV);[6] James Cable, LLC (James Cable);[7] JB Cable TV Company (JB Cable);[8] Maddock Cable TV (Maddock);[9] NATCO Video, LLC (NATCO);[10] Telecommunications Management, LLC d/b/a New Wave Communications (New Wave);[11] Vyve Broadband A, LLC (Vyve);[12]

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04-296 (filed Apr. 1, 2014) (Suddenlink April 1, 2014, Letter).

[5] *See* Citizens Telephone Company, Request for Waiver, EB Docket No. 04-296 (filed June 28, 2012) (CTC Original Petition); *see also* Letter from Clint Ledger to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (filed Feb. 7, 2014) (CTC Petition Renewal Request).

[6] *See* Letter from Dave Williams to Marlene H. Dortch, Secretary, FCC, EB Docket No. 04-296 (originally filed Aug. 23, 2012; subsequently filed in EB Docket No. 04-296 on Apr. 14, 2014) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56 on the basis of no available broadband service) (KLLV Petition); *see also* Letter from Dave Williams to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (originally filed via email to Mr. Beers on Mar. 24, 2012; subsequently filed in EB Docket No. 04-296 on Apr. 14, 2014) (renewing waiver request on the basis of no available broadband service).

[7] *See* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 28, 2012) (James Cable Original Petition); *see also* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Dec. 28, 2012) (renewing original waiver request and stating that two of the five systems encompassed by the original waiver request were sold to Altitude Communications); Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 30, 2013) (collectively, "James Cable Petition"). Subsequent to its filing, the three small cable systems covered by the James Cable Petition were sold to Vyve Broadband A, LLC, and are now the subject of a waiver petition filed by Vyve Broadband A, LLC. *See infra* n.12.

[8] *See* JB Cable TV Company, Petition for Waiver, EB Docket No. 04-296 (filed Feb. 22, 2013) (JB Cable Petition); *see also* JB Cable TV Company, Petition for Waiver, EB Docket No. 04-296 (renewal of waiver request filed Sept. 18, 2013); JB Cable TV Company, Petition for Waiver, EB Docket No. 04-296 (renewal of waiver request filed Mar. 18, 2014).

[9] *See* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 28, 2012) (Maddock Petition); *see also* Letter from Scott C. Friedman, Cinnamon Mueller, to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Mar. 7 , 2014) (Maddock Petition Amendment, in which counsel notes Maddock's intent to migrate as of June 1, 2014 its 100 customers to a provider capable of complying with the CAP rules, and to cease operations on that date).

[10] *See* NATCO Video, LLC, Petition for Extension of Waiver of Common Alerting Protocol Compliance Obligations, EB Docket No. 04-296 (filed June 11, 2013) (NATCO Petition); *see also* Letter from Gerard J. Duffy, Blooston, Mordkofsky, Dickens, Duffy and Prendergast, LLP, to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed on Apr. 4, 2014) (NATCO Waiver Renewal). The small cable system for which NATCO seeks a waiver was acquired from Yelcot Video Group, Inc., by NATCO in 2013, and was one of the systems covered under a similar CAP waiver petition filed by Yelcot Video Group, Inc. *See infra* n.13.

[11] *See* Letter from James N. Moskowitz, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 29, 2012) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56 for certain small cable systems operated by New Wave) (New Wave Original Petition); *see also* Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Dec. 30, 2012) (renewing the New Wave Original Petition with respect to systems therein lacking access to broadband Internet service); Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 28, 2013) (renewing the New Wave Original Petition with respect to systems therein lacking access to broadband Internet service, except for three systems it subsequently sold and one system it upgraded, incorporating systems acquired on June 1, 2013, from Broadband Cablevision, Inc., Clark Cablevision, Inc., and Etan Industries, Inc., and confirming that its Steele, MO system was compliant) (New Wave Consolidated

and Yelcot Video Group, Inc. (Yelcot)[13] (collectively, "Petitioners"). Section 11.56 of the Commission's rules requires Emergency Alert System (EAS) Participants[14] to have installed operational equipment that can receive and process EAS alerts formatted in the Common Alerting Protocol (CAP) by June 30, 2012.[15] As set forth herein, we grant, *nunc pro tunc*, the petitions for waiver filed by CMA

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Petition); Letter from Scott C. Friedman, Cinnamon Mueller, to David S. Turetsky, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed Dec. 31, 2013) (renewing the New Wave Consolidated Petition, except for five systems therein that were subsequently shut down, and two systems that were subsequently interconnected with a compliant headend) (New Wave Dec. 31, 2013 Letter); Letter from Scott C. Friedman, Cinnamon Mueller, to David G. Simpson, Chief, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (filed June 30, 2014) (renewing the New Wave Consolidated Petition and requesting a six-month waiver, based on broadband unavailability, for its Winnsboro, LA system, which it purchased on February 1, 2014, from CableSouth Media III, LLC) (New Wave June 30, 2014 Letter). We observe that the Public Safety and Homeland Security Bureau partially denied the New Wave Original Petition with respect to certain systems for which the waiver request was based upon vendor delays, but did not address any of the other systems covered by the New Wave Original Petition. *See* Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket No. 04-296, *Order*, 28 FCC Rcd 10181 (PSHSB 2013). We also observe that the systems identified in the New Wave Consolidated Petition acquired from CMA Communications on June 1, 2013 were the subject of a CAP waiver petition filed by CMA Communications. *See* CMA Petition; *supra* n.3.

[12] *See* Letter from Stephen Ross, on behalf of Vyve Broadband A, LLC, to Gregory M. Cooke, Associate Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (publicly filed Apr. 3, 2014) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56 for certain small cable systems formerly owned and operated by Allegiance Communications, LLC) (Vyve Petition 1); *see also* Letter from Stephen Ross, on behalf of Vyve Broadband A, LLC, to Gregory M. Cooke, Associate Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, EB Docket No. 04-296 (publicly filed Apr. 3, 2014) (seeking a waiver of the CAP-related requirements in 47 C.F.R. § 11.56 for certain small cable systems formerly owned and operated by James Cable, LLC) (Vyve Petition 2). We observe that the small cable systems covered by the Vyve Petition 1 were covered by the Allegiance Petition, and the small cable systems covered by the Vyve Petition 2 were covered by the James Cable Petition. *See infra* nn.2, 7.

[13] *See* Yelcot Video Group, Inc., Petition for a Limited Waiver of the CAP Compliance Obligations, EB Docket No. 04-296 (filed June 29, 2012) (Yelcot Original Petition); *see also* Yelcot Video Group, Inc., Petition for Extension of a Limited Waiver of the CAP Compliance Obligations, EB Docket No. 04-296 (filed Dec. 31, 2012); Yelcot Video Group, Inc., Petition for Extension of a Limited Waiver of the CAP Compliance Obligations, EB Docket No. 04-296 (filed June 28, 2013); Yelcot Video Group, Inc., Petition for Extension of a Limited Waiver of the CAP Compliance Obligations, EB Docket No. 04-296 (filed Dec. 31, 2013) (Yelcot Petition Renewal Request). As noted above, one of the systems identified in Yelcot's original petition was sold to NATCO, which filed its own waiver covering that system. *See supra* n.10.

[14] EAS Participants are the FCC-regulated entities required to receive and broadcast EAS alerts. These entities are defined in Section 11.11(a) of the Commission's rules and include radio and television broadcast stations, cable systems, wireline video systems, wireless cable systems, direct broadcast satellite (DBS) service providers, and digital audio radio service (SDARS) providers. *See* 47 C.F.R. § 11.11(a). The EAS is a hierarchical alert message distribution system that delivers alerts initiated by federal, state and local alerting authorities utilizing the transmission facilities of radio and television broadcast stations, cable operators and other EAS Participants. An overview of the EAS is contained in the *Fifth Report and Order* in this docket. *See* Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief; Randy Gehman Petition for Rulemaking, EB Docket No. 04-296, *Fifth Report and Order*, 27 FCC Rcd 642, 646-47, ¶¶ 6-7 (2012) (*EAS Fifth Report and Order*).

[15] *See* 47 C.F.R. §11.56(a). CAP is an open, interoperable XML-based standard that allows an alert initiator to deliver information-rich alerts to multiple devices. *See EAS Fifth Report and Order*, 27 FCC Rcd 642, 648 ¶ 10.

Communications, CTC, KLLV, JB Cable, Maddock, NATCO, New Wave, Suddenlink, Vyve and Yelcot, and dismiss as moot the petitions for waiver filed by Allegiance and James Cable.

## II. Background

2. In its *EAS Fifth Report and Order*, the Commission observed that because the primary method of distributing CAP messages will be via broadband Internet connections, the physical availability of broadband Internet access would be a predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.[16] Accordingly, the Commission concluded that the physical unavailability of broadband Internet service offered a presumption in favor of a waiver.[17] The Commission also observed, however, that broadband Internet access might become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, might also become available, thus obviating the basis for granting the waiver.[18] For this reason, the Commission indicated that any waiver based on the physical unavailability of broadband Internet access likely would not exceed six months, with the option of renewal if circumstances have not changed.[19] Finally, the Commission concluded that, in all events, to the extent a waiver applies, the affected party would be required to continue to operate its legacy EAS equipment.[20]

3. The Petitioners filed requests for temporary waiver of the obligation to receive and process CAP-formatted alerts specified in Section 11.56 of the Commission's rules on various grounds. CMA Communications, JB Cable, KLLV, Maddock, New Wave and Suddenlink requested temporary waivers of the obligation to receive and process CAP EAS messages due to the physical unavailability of broadband Internet service.[21] Suddenlink also sought a 90-day waiver of CAP obligations for some of its systems to allow for completion of installation and testing of CAP equipment.[22] CTC, NATCO, Vyve and Yelcot based their waiver requests on grounds that they are all in the process of either shutting down or constructing new digital systems that will replace the systems covered by their waiver requests, and that purchasing and installing CAP equipment to make the old systems compliant for the brief interim until construction of the new digital systems is complete would be economically wasteful and unjustified.[23] New Wave similarly sought a temporary waiver for one of its systems on economic waste grounds due to that system's imminent integration with a CAP compliant system.[24] Allegiance grounded

[16] *See EAS Fifth Report and Order*, 27 FCC Rcd 695-96, ¶ 152.

[17] *See id*.

[18] *See id*.

[19] *See id*.

[20] *See id*.

[21] *See* CMA Petition at 2; *see also* JB Cable Petition at 1; KLLV Petition at 1; Maddock Petition at 1; New Wave Original Petition at 2; New Wave Consolidated Petition at 2-3; Suddenlink Petition at 4-5. Suddenlink Dec. 27, 2012, Waiver Petition Renewal at 2 (indicating that all the systems requiring additional time to complete installation and testing of CAP equipment were compliant). New Wave also requested a six-month waiver from CAP obligations with respect to its Steele, MO system for purposes of integrating that system with one of its CAP-compliant systems. *See* New Wave Original Petition at 3. New Wave subsequently confirmed in its waiver renewal letter dated June 28, 2013 that such integration had been completed, although it did not provide the actual date of completion. *See* New Wave Consolidated Petition at n.2.

[22] *See* Suddenlink Petition at 3-4.

[23] *See* CTC Original Petition at 2-3; *see also* NATCO Petition at 4-5; Vyve Petition 1 at 2-4; Vyve Petition 2 at 2; Yelcot Original Petition at 4.

[24] *See* New Wave Original Petition at 5 (seeking a temporary waiver of the CAP-related requirements in 47 C.F.R. §

its waiver request on claims of financial hardship.[25] James Cable grounded its waiver request on claims of both financial hardship and physical unavailability of broadband Internet service.[26]

## III. Discussion

4. The Commission has authority to waive its rules if there is "good cause" to do so.[27] The Commission may find such good cause where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[28] The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[29] However, as indicated above, with respect to applicants for waivers of the CAP-related obligations set forth in Section 11.56 of the Commission's rules, the Commission has established a presumption in favor of granting temporary waivers based upon the physical unavailability of broadband Internet service.[30]

5. We find that JB Cable, KLLV, Maddock, New Wave, Suddenlink and CMA all meet the presumption for temporary waiver of the CAP-related obligations set forth in Section 11.56 of the Commission's rules, as established by the Commission in the *EAS Fifth Report and Order*.[31] We further observe that these Petitioners continued to operate legacy EAS equipment at least until the time of their most recent filings.[32] Thus, the public has not been deprived of EAS alerts. The foregoing findings and observations also apply to the systems covered by the CMA Petition, during the period they were owned and operated by CMA prior to their sale to New Wave.[33]

6. Accordingly, we grant, *nunc pro tunc*, the temporary waiver of the CAP obligations set forth in Section 11.56 of the Commission's rules requested by JB Cable, KLLV, Maddock, New Wave and Suddenlink for the period of June 30, 2012, until May 21, 2015, six months from the date this order is adopted.[34] We also grant, *nunc pro tunc*, the temporary waiver of the CAP obligations set forth in Section

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11.56 for its Steele, MO system on grounds that it was in the process of integrating that system with its CAP-compliant system in Dexter, MO, and that acquiring CAP equipment for the brief interim until the integration was completed would amount to economic waste).

[25] *See* Allegiance Petition at 2-4.

[26] *See* James Cable Original Petition at 1.

[27] *See* 47 C.F.R. § 1.3.

[28] *See* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir.1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

[29] WAIT Radio v. FCC, 418 F.2d at 1157.

[30] *See EAS Fifth Report and Order*, 27 FCC Rcd 642, 695-96, ¶ 152.

[31] *See* JB Cable Petition at 1; *see also* KLLV Petition at 1; Maddock Petition, Exhibit A (Declaration of Byron Elingson); New Wave Original Petition, Exhibit A (Declaration of Jim Gleason); New Wave Consolidated Petition, Exhibit A (Declaration of Phil Spencer); Suddenlink Petition at 4-5. With respect to CMA, this finding applies to the systems covered by the CMA Petition during the period CMA owned and operated such systems. As indicated above, CMA sold these systems to New Wave on June 1, 2013, and New Wave incorporated them into its own waiver petition. *See supra* nn.3, 11.

[32] *See* JB Cable Petition at 2; *see also* KLLV Petition at 1; Maddock Petition at 3; New Wave Consolidated Petition at 4; Suddenlink Petition at 5.

[33] *See supra* nn.3, 11.

[34] With respect to New Wave and Suddenlink, this grant applies to the systems they identified as lacking access to broadband Internet service. *See* New Wave Original Petition, Exhibit A (Declaration of Jim Gleason); *see also* New

11.56 of the Commission's rules requested by CMA Communications for the period of June 30, 2012, until June 1, 2013, at which point ownership of the systems covered by the CMA Petition transferred to New Wave and became subject to New Wave's waiver petition.[35] As indicated in the *EAS Fifth Report and Order*, these parties have the option of renewing their waiver requests if circumstances have not changed by the time their waiver authorization expires.[36] The Bureau, in its review of any request for a waiver extension, expects that the petitioner will show good cause by having conducted a diligent search for available broadband at the broadcast facilities, cable headends, or equivalent facilities serving the systems for which the petitioner would be seeking the waiver extension. Petitioners may conduct such a search by entering the street address for the above referenced facilities into the web site for the National Broadband map (http://www.broadbandmap.gov). Should the Bureau determine that broadband service is available at any location for which a waiver has been requested, the Bureau would not be inclined to grant the request.

7. We further find that granting the waiver requests filed by CTC, NATCO, Vyve and Yelcot, as well as the portion of the New Wave Original Petition related to its Steele, MO system, is justified in light of their underlying circumstances. We observe that the individual systems covered by these waiver requests serve very few subscribers, and that these petitioners have been diligently working towards constructing new CAP-compliant digital headend facilities, laying fiber connections to which the existing subscribers of the systems subject to these waivers will be interconnected, or deactivating systems that cannot otherwise be made compliant in an economical manner.[37] We also observe that completion of these activities, and the ensuing compliance with CAP obligations (or system deactivation) are expected to be completed by the end of 2014.[38] We agree with Yelcot that granting temporary waivers in these circumstances "is consistent with the Commission's efforts to avoid unnecessary and unjustified costs associated with CAP compliance," and with prior Commission actions involving similar facts.[39] We also find this economic waste rationale to be equally applicable to cases such as Vyve's, in which a system is scheduled for near-term deactivation.[40] Our findings are buttressed by the fact that the systems covered by these waivers have functional legacy EAS equipment, thus the public will not be deprived of EAS alerts while these systems are in operation.[41] We also observe that NATCO and Vyve

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Wave Consolidated Petition, Exhibit A (Declaration of Phil Spencer); New Wave June 30, 2014, Letter, Exhibit A (Declaration of Phil Spencer); Suddenlink Petition, Exhibit B.

[35] *See supra* nn.3, 11.

[36] *See EAS Fifth Report and Order*, 27 FCC Rcd 642, 695-96, ¶ 152.

[37] *See* CTC Petition Renewal Request; *see also* NATCO Petition at 2-3; New Wave Original Petition at 3 (describing the merger of its Steele, MO system with its CAP-compliant system in Dexter, MO); Vyve Petition 1 at 2-4; Vyve Petition 2 at 2; Yelcot Petition Renewal Request at 2-4.

[38] *See* CTC Petition Renewal Request at 2; *see also* NATCO Waiver Renewal at 2; New Wave Original Petition at 5; Vyve Petition 1 at 3; Vyve Petition 2 at 2; Yelcot Petition Renewal Request at 2-3.

[39] *See* Yelcot Petition Renewal Request at 4-5 (citing Mediacom Communications Corporation; Operator of Cable Systems in the States of: Alabama, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri and Wisconsin; Request for Waiver of Section 11.11(a) of the Commission's Rules, *Order*, File No. EB-02-TS-617, 18 FCC Rcd 7656, ¶ 3 (2003) (granting a 12-month waiver of the October 1, 2002 EAS implementation deadline for 107 small cable systems on grounds that requiring purchase of EAS equipment before the in-progress interconnection and consolidation of these systems had been completed would result in economic waste) (*Mediacom*).

[40] *See* Vyve Petition 2 at 2.

[41] *See* Allegiance Petition at 2; *see also* CTC Original Petition at 3; James Cable Original Petition at 4; NATCO Petition at 5; New Wave Original Petition at 6; Yelcot Original Petition at 3-4.

acquired the systems covered by their waiver requests in non-compliant condition well after the June 30, 2012, CAP deadline had already passed, and therefore were not in a position to make them compliant by that deadline.[42]

8. We also conclude that Suddenlink's request for an extra 90 days to complete testing of equipment installed in 58 of its smaller systems is justified under the circumstances.[43] Suddenlink began the process of rendering all of its systems CAP-compliant in 2011, starting with its largest systems, and by the deadline had completed the CAP transition in systems serving 98 percent of its subscribers.[44] Suddenlink stated, with respect to the 58 systems requiring the 90-day waiver, that the CAP equipment for each of these systems had been received prior to the deadline, but that it required a short-term waiver to ensure that the new CAP equipment was properly installed and tested.[45] In particular, based on its prior experience installing CAP equipment, Suddenlink concluded that it needed to perform system testing of the equipment installed in each of these sites to ensure that the equipment would function correctly within the Suddenlink network.[46] Suddenlink further explained, "Given the importance of an effective emergency warning system, it would be inconsistent with the public interest to deploy new CAP equipment before Suddenlink's engineers have been able to verify that the equipment at these remaining sites is correctly installed, or before they have had an opportunity to thoroughly test its operational readiness."[47]

9. We believe that Suddenlink's request is justified under the circumstances, and is a justified exception to the general rule that vendor delay alone does not ordinarily constitute the "special circumstances" that would justify a waiver, based on the specific facts of Suddenlink's petition.[48] First, Suddenlink's performance throughout the CAP installation process, particularly its effecting compliance for systems serving the vast majority of its customers prior to the deadline, evidences Suddenlink's commitment to our rules and gives credibility to its request. Further, we believe that the requested 90 days is an appropriate period of time, particularly in light of the number and scale of system retrofits involved. Finally, we note that had Suddenlink merely installed the equipment to meet the deadline,

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[42] *See* NATCO Petition at 2; *see also* Vyve Petition 1 at 2; Vyve Petition 2 at 2.

[43] *See* Suddenlink Petition at 2-4.

[44] *See id.* at 2.

[45] *See id*. at 3-4. Section 11.56 of the Commission's rules requires EAS Participants to have installed operational equipment that can both receive and process EAS alerts formatted in the CAP. *See* 47 C.F.R. § 11.56.

[46] *See id*. Suddenlink indicated in its initial waiver renewal request filed in December 2012 that it had completed the testing process and that all of the 58 systems were CAP-compliant. *See* Suddenlink Dec. 27, 2012, Waiver Petition Renewal at 2.

[47] Suddenlink Dec. 27, 2012, Waiver Petition Renewal at 3.

[48] *See*, *e.g.*, Wendell & Associates Request to Waive the Period to Construct Unbuilt Station WKNJ (AM) Harriman, New York, File No. BMAP-200001023ACF, *Memorandum Opinion and Order*, 17 FCC Rcd 18576, 18578, ¶ 7 (2002) ("vendor problems, whatever their cause, are ordinary risks for which businesses should prudently plan, and would not generally form the basis for a waiver"). *See also* Application for Review of Specialized Mobile Radio Station WZZ–545, licensed to Motek Engineering San Jose, California, *Memorandum Opinion and Order*, 98 F.C.C.2d 323, 324, 326, ¶¶ 4, 10 (1984) ("delays in the manufacture or shipment of equipment provide no basis for an extension . . . The nature of [the licensee's] relationship with its supplier is the result of [its] independent business judgment and may not be used to absolve [it] or any other licensee from the . . . requirements [of] our rules."); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18330, 18354 Statement of Commissioner Michael Copps (2001) ("waivers will not be granted merely . . . because of delays by a vendor").

without taking the additional time to perform system testing, and then suffered equipment malfunction, Suddenlink would have been entitled under Section 11.35 of the Commission's EAS rules to a 60-day repair period without notice to the Commission, followed by a written request process to the Commission local field office.[49] We believe that Suddenlink's waiver request was a more forthcoming approach, consistent with Suddenlink's overall approach to CAP compliance, and that granting its request is in the public interest. We also observe that Suddenlink continued to operate legacy EAS equipment at all times, thus ensuring that the public was never deprived of EAS alerts.[50]

10. Accordingly, we grant, *nunc pro tunc*, the temporary waiver of the CAP obligations set forth in Section 11.56 of the Commission's rules requested by CTC, NATCO, New Wave, Suddenlink, Vyve and Yelcot for the period of June 30, 2012, until the sooner of December 31, 2014, or the date upon which CAP-compliance is achieved or the system is deactivated.[51] We observe that each of the waiver petitions filed by CTC, NATCO, New Wave, Suddenlink, Vyve and Yelcot indicate that the systems were or should be deactivated or rendered CAP-compliant within this time period.[52]

11. Finally, we dismiss as moot the waiver requests filed by Allegiance and James Cable. As noted herein, the small cable systems covered by the Allegiance Petition and James Cable Petition were acquired by Vyve, which has filed its own waiver requests covering these systems.[53]

## IV. Ordering Clauses

12. Accordingly, IT IS ORDERED that, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the "Requests for Waiver" filed formally and informally, and variously renewed, by Broadband Cablevision, Inc., Clark Cablevision, Inc., and Etan Industries, Inc. (filing jointly as CMA Communications); Cequel Communications, LLC, d/b/a Suddenlink Communications; Citizens Telephone Company; Daystar Radio, Ltd.; JB Cable TV Company; Maddock Cable TV; NATCO Video, LLC; Telecommunications Management, LLC d/b/a New Wave Communications; Vyve Broadband A, LLC; and Yelcot Video Group, Inc.; ARE GRANTED, as specified herein.

13. IT IS FURTHER ORDERED that pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, and Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the "Requests for Waiver," filed formally and informally, and variously renewed by Allegiance Communications, LLC, and James Cable, LLC, ARE DISMISSED.

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[49] *See* 47 C.F.R. §11.35.

[50] *See* Suddenlink Petition at 6.

[51] With respect to New Wave, this grant applies to its Steele, MO system (MO0047). *See* New Wave Original Petition at 3. With respect to Suddenlink, this grant applies to the systems identified in the Suddenlink Petition, Exhibit A.

[52] *See* CTC Petition Renewal Request at 2; *see also* NATCO Waiver Renewal at 2; New Wave Original Petition at 5; Suddenlink Dec. 27, 2012, Waiver Petition Renewal at 2. Vyve Petition 1 at 3; Vyve Petition 2 at 2; Yelcot Petition Renewal Request at 2-3.

[53] *See supra* nn.2, 7, 12.

14. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David G. Simpson
Rear Admiral (Ret.), USN
Chief, Public Safety and Homeland Security Bureau