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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Petition of Eagle Media, LLC ) FO Docket No. 91-301  
for Waiver of the Commission's ) FO Docket No. 91-171  
Emergency Alert Requirements for )  
Cable Television Systems )

To: Chief, Technical & Public Safety Division  
Enforcement Bureau

**PETITION FOR WAIVER**

*I. Introduction*

This petition is submitted on behalf of Eagle Media, LLC ("Eagle") to request a waiver or alternatively a 5-year extension of time, to comply with the Emergency Alert System ("EAS") requirements in Section 11.11(a) of the Commission's rules.<sup>1</sup> This rule requires that by October 1, 2002 all cable systems with less than 5,000 subscribers must provide national level EAS messages on all channels, or have EAS equipment capable of providing audio alert and video interrupt on all channels, and EAS messages on one channel.

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<sup>1</sup> In its recent Report and Order, the Commission clarified that it "will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship." *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, EB Docket No. 0166, RM-9156, RM-9215; ¶ 73 (Rel. Feb. 26, 2002). The Commission reiterated the information that must be contained in the waiver request: "(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." *Id.* This petition addresses each of the four areas.

Eagle operates the following 22 cable television systems all of which serve fewer than 500 subscribers with 18 serving fewer than 200 subscribers and 11 serving fewer than 100:

<u>Headend</u>	<u>No. of Subscribers</u>
Chicken Creek, OK	47
Cookson, OK	34
Elk Creek, OK	89
Paradise Hill, OK	142
Park Hill	132
Woodall, OK	57
Apache, OK	430
Alex, OK	103
Cement, OK	124
Sterling, OK	168
Randlett, OK	45
Grandfield, OK	214
Mountain View, OK	348
Dougherty, OK	130
Booneville BHDC, AR	71
Branch/Ratcliff, AR	129
Casa, AR	30
Greenwood, AR	103
Knoxville, AR	99
Scranton, AR	77
Subiaco, AR	73
Wicherville, AR	26

## *II. Financial Status of Company*

Because of the small size of these cable systems and their financial condition, it is not economically feasible for the Company to purchase and install the necessary EAS equipment at this time. Attached hereto as Attachment A are copies of the federal tax returns for 2000 and 2001 showing financial information regarding the cable systems. Although the Company does not break down this financial information on a system-by-system basis, it is evident that all of these small systems have extremely limited financial resources. Significantly, the tax returns show net losses for 2000 and 2001. The company can ill afford any additional expenses that will further worsen its already weak financial position.

These cable systems are located in small rural communities where the population density and homes per mile is relatively low, thus requiring a larger per-subscriber investment in cable plant and facilities than in cable systems serving more densely populated areas. Each of the 22 cable systems must maintain a cable headend and associated equipment. Requiring full EAS compliance by October of this year would result in serious economic harm to the Company.

The Commission has estimated EAS equipment costs at \$6,000 to \$10,000 per headend, as described in its in the Commission's 1997 EAS decision. *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd. 15503, ¶ 23 (Sep. 29, 1997). However, contrary to what the Commission expected at the time of its Second Report and Order, the "anticipated equipment cost reductions" that would render compliance for small systems less burdensome, has not materialized. *Id.* at ¶ 25. Current estimates from equipment vendors indicate costs of approximately \$8,500 per cable system headend for equipment alone. The cost per subscriber is significant and increases in systems with fewer subscriber. For example, for Eagle's largest system, Apache, OK, the cost per subscriber is \$19.77. For Cement, OK, which is in the middle range of Eagle's systems, the cost per subscriber is \$68.55. The cost jumps to \$326.92 for Wicherville, AR, Eagle's smallest system.

These cable systems cannot support additional rate increases to cover EAS compliance requirement costs. Such increases would further erode the Company's subscriber base. This is particularly true because of the significant competition these rural systems face from direct broadcast satellite ("DBS") services.<sup>2</sup>

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<sup>2</sup> See e.g., Monica Hogan, *DBS Merger Roils Small Ops' World*, Multichannel News, Jan. 21, 2002, at [http://www.findarticles.com/cf\\_0/m3535/3\\_23/82626449/print.jhtml](http://www.findarticles.com/cf_0/m3535/3_23/82626449/print.jhtml) (noting efforts of DBS providers to drive small cable operators out of business); John M. Higgins, *Rural Ops Face Financial Squeeze*, Broadcasting & Cable, Dec. 18, 2001, at [http://www.findarticles.com/cf\\_0/m0BCA/52\\_130/68738765/print.jhtml](http://www.findarticles.com/cf_0/m0BCA/52_130/68738765/print.jhtml) (noting the difficulty rural operators face because of "being hammered by competition from DBS, [which] scar[es] off new investors.").

Eagle is aware of the Commission's decision which provided relief to small systems for EAS requirements in the form of allowing them to install an FCC-certified decoder, if such device is available by October 1, 2002, in lieu of an encoder/decoder unit. *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, EB Docket No. 01-66, RM-9156, RM 9215, ¶ 71 (rel. Feb. 26, 2002). There are two reasons that this relief is not sufficient for Eagle. First, the decoder-only unit will likely not be available until August 2003, well after the October 2002 deadline. Second, even if it becomes available, it does not provide sufficient relief for Eagle. We understand that decoder only equipment would be only approximately \$1,000 less expensive than the encoder/decoder unit, *i.e.*, approximately \$7,500. Using the decoder only equipment to comply would still be cost prohibitive for Eagle under the circumstances.

### *III. Alternative Sources of Emergency Alert System Information*

In addition to financial hardship, the availability of numerous alternative sources of emergency alert information supports this waiver request. Eagle carries the off-the-air television broadcast signals on the basic tier of each of its cable systems. Moreover, most systems have at least one 24-hour cable news channel which ensures that subscribers have access to breaking national news events. Moreover, most of the systems carry The Weather Channel, which provides updated information on national as well as local weather events. In addition to cable service, television broadcast stations and AM and FM radio stations available off-the-air in many of these communities carry emergency alert information. Furthermore, some communities have civil defense siren or other warning systems in place as an additional emergency alert source. Although there generally are no other cable television systems serving these communities, DBS service is available, which includes news and other programming containing emergency information. If there were a national emergency, Eagle's subscribers would be notified by

existing non-cable alerting systems, as well as by the cable news channels, and over-the-air television broadcast stations carried by the cable systems.

*IV. Likelihood of Hazardous Risks*

Since Eagle's cable systems are located in the states of Arkansas and Oklahoma, the most likely hazardous risks are weather related, such as tornadoes. Civil defense siren systems in many communities provide notice of tornadoes and serious weather systems. Citizens are also usually aware of heavy rains that may cause flooding hazards. Emergency weather information is available on the local stations carried on the basic tier and through The Weather Channel. Eagle personnel attempt to provide for the continued operation of its cable systems through weather emergencies. Furthermore, the Commission's EAS rules do not require small cable systems to carry state and local weather and emergency information. *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and FNPRM, 10 FCC Rcd 1786, ¶ 66 (rel. Dec. 9, 1994)*. This is especially noteworthy since those are the primary risks in the communities that Eagle serves. Because the Company's systems are overwhelmingly in rural areas, they are not likely to be subject to nuclear or terrorist attacks. Also, Eagle's cable systems are not located near nuclear reactors, major airports or international borders.

We ask the Commission to recognize the serious financial implications for Eagle of complying with the EAS requirements. It is simply not economically feasible for the Company to comply because of the extremely small cable systems it operates and the significant financial losses that are already being incurred.

Accordingly, for the foregoing reasons, Eagle hereby requests waiver of the EAS requirements for all of its cable systems. Alternatively, we request a 5-year extension of time to

enable Eagle to improve the financial condition of these systems and increase the possibility that compliance with the Commission's EAS requirements would become economically feasible.

If any additional information is required to support approval of this waiver request, please contact Robert James or Tim Tobin at the address below.

Respectfully submitted,

EAGLE MEDIA, LLC

By:



Robert L. James

Timothy P. Tobin

COLE, RAYWID & BRAVERMAN, LLP

1919 Pennsylvania Avenue, NW – Suite 200

Washington, DC 20006

202.659.9750

July 9, 2002

Attachment A: Financial Information

**ATTACHMENT A**

Form **1065**

**U.S. Return of Partnership Income**

OMB No. 1545-0099

For calendar year 2000, or tax year beginning \_\_\_\_\_, and ending \_\_\_\_\_

**2000**

Department of the Treasury  
Internal Revenue Service

▶ See separate instructions.

<b>A</b> Principal business activity <b>CABLE TV</b>	Use the IRS label. Otherwise, print or type.	Name of partnership <b>EAGLE MEDIA, L.L.C.</b>	<b>D</b> Employer identification number <b>73-1574586</b>
<b>B</b> Principal product or service <b>CABLE TV</b>		Number, street, and room or suite no. If a P.O. box, see page 13 of the instructions. <b>5147 S. HARVARD PMB 255</b>	<b>E</b> Date business started <b>10/01/99</b>
<b>C</b> Business code number <b>513200</b>		City or town, state, and ZIP code <b>TULSA OK 74135</b>	<b>F</b> Total assets (see page 13 of the instructions) <b>\$ 2,051,371</b>

**G** Check applicable boxes: (1)  Initial return (2)  Final return (3)  Change in address (4)  Amended return

**H** Check accounting method: (1)  Cash (2)  Accrual (3)  Other (specify) ▶

**I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ **10**

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	<b>1a</b> Gross receipts or sales	<b>1a</b>	<b>626,142</b>		
	<b>b</b> Less returns and allowances	<b>1b</b>		<b>1c</b>	<b>626,142</b>
	<b>2</b> Cost of goods sold (Schedule A, line 8)			<b>2</b>	<b>296,715</b>
	<b>3</b> Gross profit. Subtract line 2 from line 1c			<b>3</b>	<b>329,427</b>
	<b>4</b> Ordinary inc. (loss) from other partnerships, estates, & trusts (att. sch.)			<b>4</b>	
	<b>5</b> Net farm profit (loss) (attach Schedule F (Form 1040))			<b>5</b>	
	<b>6</b> Net gain (loss) from Form 4797, Part II, line 18			<b>6</b>	
	<b>7</b> Other income (loss) (attach schedule)			<b>7</b>	
<b>8</b> Total income (loss). Combine lines 3 through 7			<b>8</b>	<b>329,427</b>	
Deductions (see pg. 14 of the instructions for limitations)	<b>9</b> Salaries and wages (other than to partners) (less employment credits)			<b>9</b>	<b>98,476</b>
	<b>10</b> Guaranteed payments to partners			<b>10</b>	
	<b>11</b> Repairs and maintenance			<b>11</b>	
	<b>12</b> Bad debts			<b>12</b>	
	<b>13</b> Rent			<b>13</b>	<b>4,775</b>
	<b>14</b> Taxes and licenses		<b>SEE STMT 1</b>	<b>14</b>	<b>11,152</b>
	<b>15</b> Interest			<b>15</b>	<b>142,840</b>
	<b>16a</b> Depreciation (if required, attach Form 4562)	<b>16a</b>	<b>48,319</b>		
	<b>b</b> Less depreciation reported on Schedule A and elsewhere on return	<b>16b</b>		<b>16c</b>	<b>48,319</b>
	<b>17</b> Depletion (Do not deduct oil and gas depletion.)			<b>17</b>	
	<b>18</b> Retirement plans, etc.			<b>18</b>	
	<b>19</b> Employee benefit programs			<b>19</b>	
	<b>20</b> Other deductions (attach schedule)		<b>SEE STMT 2</b>	<b>20</b>	<b>151,030</b>
<b>21</b> Total deductions. Add the amounts shown in the far right column for lines 9 through 20			<b>21</b>	<b>456,592</b>	
<b>22</b> Ordinary income (loss) from trade or business activities. Subtract line 21 from line 8			<b>22</b>	<b>-127,165</b>	

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member: *[Signature]* Date: **4/15/01**

**Paid Preparer's Use Only**

Preparer's signature: *[Signature]* Date: **4/12/01** Check if self-employed:  Preparer's SSN or PTIN: **P00054433**

Firm's name (or yours if self-employed): **BRISCOE, BURKE & GRIGSBY LLP** EIN: **73-1293012**

address, and ZIP code: **TULSA, OK 74135-3633** Phone no.: **918-749-8337**

Form **1065**

**U.S. Return of Partnership Income**

OMB No. 1545-0099

For calendar year 2001, or tax year beginning \_\_\_\_\_, and ending \_\_\_\_\_

**2001**

Department of the Treasury  
Internal Revenue Service

▶ See separate instructions.

<b>A</b> Principal business activity CABLE TV	Use the IRS label. Otherwise, print or type.	Name of partnership EAGLE MEDIA, L.L.C.	<b>D</b> Employer identification number 73-1574586
<b>B</b> Principal product or service CABLE TV		Number, street, and room or suite no. If a P.O. box, see page 13 of the instructions. 5147 S. HARVARD PMB 255	<b>E</b> Date business started 10/01/99
<b>C</b> Business code number 513200		City or town, state, and ZIP code TULSA OK 74135	<b>F</b> Total assets (see page 14 of the instructions) \$ 2,508,001

**G** Check applicable boxes: (1)  Initial return (2)  Final return (3)  Name change (4)  Address change (5)  Amended return

**H** Check accounting method: (1)  Cash (2)  Accrual (3)  Other (specify) ▶

**I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 9

**Caution:** Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

<b>Income</b>	<b>1a</b> Gross receipts or sales	<b>1a</b>	808,134	
	<b>b</b> Less returns and allowances	<b>1b</b>		<b>1c</b> 808,134
	<b>2</b> Cost of goods sold (Schedule A, line 8)	<b>2</b>		391,563
	<b>3</b> Gross profit. Subtract line 2 from line 1c	<b>3</b>		416,571
	<b>4</b> Ordinary inc. (loss) from other partnerships, estates, & trusts (att. sch.)	<b>4</b>		
	<b>5</b> Net farm profit (loss) (attach Schedule F (Form 1040))	<b>5</b>		
	<b>6</b> Net gain (loss) from Form 4797, Part II, line 18	<b>6</b>		-1,194
	<b>7</b> Other income (loss) (attach schedule)	<b>7</b>		93
<b>8</b> Total income (loss). Combine lines 3 through 7	<b>8</b>		415,470	
<b>Deductions</b> (see pg. 15 of the instructions for limitations)	<b>9</b> Salaries and wages (other than to partners) (less employment credits)	<b>9</b>		120,766
	<b>10</b> Guaranteed payments to partners	<b>10</b>		
	<b>11</b> Repairs and maintenance	<b>11</b>		
	<b>12</b> Bad debts	<b>12</b>		20,284
	<b>13</b> Rent	<b>13</b>		5,460
	<b>14</b> Taxes and licenses	<b>14</b>	SEE STMT 1	12,792
	<b>15</b> Interest	<b>15</b>		201,161
	<b>16a</b> Depreciation (if required, attach Form 4562)	<b>16a</b>	103,460	
	<b>b</b> Less depreciation reported on Schedule A and elsewhere on return	<b>16b</b>		<b>16c</b> 103,460
	<b>17</b> Depletion (Do not deduct oil and gas depletion.)	<b>17</b>		
	<b>18</b> Retirement plans, etc.	<b>18</b>		
<b>19</b> Employee benefit programs	<b>19</b>			
<b>20</b> Other deductions (attach schedule)	<b>20</b>	SEE STMT 2	199,573	
<b>21</b> Total deductions. Add the amounts shown in the far right column for lines 9 through 20	<b>21</b>		663,496	
<b>22</b> Ordinary income (loss) from trade or business activities. Subtract line 21 from line 8	<b>22</b>		-248,026	

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instructions)?  Yes  No

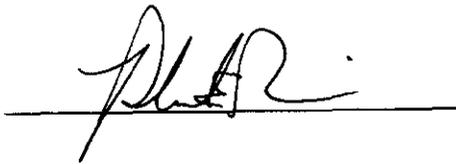
Signature of general partner or limited liability company member \_\_\_\_\_ Date \_\_\_\_\_

**Paid Preparer's Use Only**

Preparer's signature <i>Michael Grigsby</i>	Date 3/13/02	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00054433
Firm's name (or yours if self-employed), address, and ZIP code BRISCOE, BURKE & GRIGSBY LLP 4120 EAST 51ST STREET, SUITE 100 TULSA, OK 74135-3633	EIN ▶ 73-1293012	Phone no. 918-749-8337	

**CERTIFICATION**

I, Robert E. Price, hereby certify that statements made in the foregoing Petition for Waiver are made in good faith and are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'R. Price', is written over a horizontal line.

Robert E. Price

Manager

Eagle Media, LLC

July 8, 2002