

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

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AUG 27 2002

In the Matter of)
)
Waiver of the Rules of the Federal)
Communications Commission Relating)
to Implementation of the Emergency)
Broadcast System)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FO Docket Nos. 91-171/91-301

Com-Link, Inc.

To: Chief, Technical & Public Safety Division, Enforcement Bureau

**PETITION FOR WAIVER OF
EMERGENCY ALERT SYSTEM REQUIREMENTS**

Com-Link, Inc. (hereinafter "Petitioner"), by its attorneys, respectfully requests a waiver of Section 11.11(a) of FCC Rules, 47 U.S.C. § 11.11.(a) Specifically, Petitioner seeks a 36-month waiver of the requirement that cable television system operators implement Emergency Alert System ("EAS") equipment and procedures by October 1, 2002. Section 11.11(a) requires small cable television systems serving fewer than 5,000 subscribers either to provide the national level EAS message on all programmed channels - including the required testing - or to install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and visual messages on at least one programmed channel by October 1, 2002.

As set forth below, circumstances exist wherein EAS-compliant technology compatible with Petitioner's cable television system facilities is not yet commercially available at a financially reasonable expense, and may not be available for an undetermined period of time. Installation at current prices threatens the financial viability of Petitioner's system. For the reasons shown herein,

Petitioner requests a temporary, 36-month waiver of the EAS requirements, and particularly of the requirement that EAS implementation be achieved by October 1, 2002.

Petitioner relies herein upon the mechanism for waiver established in the Second Report and Order in FO Docket Nos. 91-301 and 91-171, 12 FCC Rcd at 15513, n.59 (1997) ("2nd Report and Order"), and confirmed in the Report and Order in EB Docket No. 01-66 FCC 02-64 (by the Commission), released February 26, 2002 ("Report and Order"). As demonstrated herein, good cause exists for this waiver because it is economically and technically infeasible for Petitioner to comply with the October 1, 2002 deadline for EAS implementation.^{1/}

Background and Facts

1. The FCC has adopted rules to implement Section 624(g) of the Communications Act, as amended by the Cable Act of 1992, fulfilling the Congressional directive that every cable television operator ensure that viewers of video programming on cable systems are afforded the same information as is afforded by the emergency broadcasting system.^{2/} The Commission began by replacing the Emergency Broadcast System with the Emergency Alert System ("EAS").^{3/}

^{1/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

^{2/} See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §16(b), 106 Stat. 1460 (1992).

^{3/} Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786 (1994),
(continued...)

Subsequently, the Commission declined to provide an exemption for small systems or to adopt a specific waiver policy.^{4/} However, the Commission did establish a policy whereby it would receive requests for individual relief, to be considered on a case-by-case basis, and to be granted in appropriate circumstances upon sufficient showing of need. That policy has been confirmed as a means of relief for small system operators who make a showing of financial hardship.^{5/} The Commission has indicated that requests for waiver are required to contain at least the following:

1. justification for the waiver;
- 2) information about the financial status of the entity, such as a balance sheet and income statement for the past two years (audited, if available);
- 3) the number of other entities that serve the requesting entity's coverage area and that are expected to install new EAS equipment; and
- 4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.^{6/}

2. Petitioner has made efforts to assess what steps it would need to take to meet the October 1, 2002 deadline, and has determined that compliance is presently unfeasible due to the unavailability of equipment to facilitate compliance with Section 11.11(a) in an economically reasonable manner. Specifically, Petitioner has procured information from its engineering consultants concerning the cost

^{3/}(...continued)

reconsideration granted in part, denied in part, Memorandum Opinion and Order, 10 FCC Rcd 11494 (1995).

^{4/} Second Report and Order, 15 FCC Rcd 15503, at ¶19 and ¶38 (1997)

^{5/} Report and Order, at ¶73.

^{6/} Id.

of equipment. Petitioner has sought guidance from its advisors and industry colleagues to find affordable solutions for small, independent cable operators. However, no satisfactory solution has been identified that would allow Petitioner to become EAS compliant by October 1, 2002.

Petitioner's System and EAS Cost Estimates

3. Petitioner is a coaxial cable television system operator. It serves 94 subscribers from a headend located in Autaugaville, Alabama, community unit identification number ("CUID") AL0588. Petitioner also serves 493 subscribers from a headend located in Notasulga, Alabama, CUID AL0518.^{7/} These systems are accordingly in the category of cable television systems serving fewer than 5,000 subscribers.

4. In adopting the EAS requirements, the FCC estimated that the cost of becoming capable of providing audio and video EAS messages on one channel, along with an audio alert message and a video interrupt on all programmed channels, would be approximately \$6,000 to \$10,000 per headend for coaxial cable systems.^{8/} The FCC furthermore estimated that the cost per subscriber for a 1,000 subscriber system would be approximately twelve cents per month over a seven year period, and that the cost per subscriber for a 100 subscriber system would be \$1.20 per month over a seven year period.^{9/} At the same time the Commission recognized that smaller systems do not have access to the financial resources, purchasing discounts and other efficiencies of larger companies. In this context the Commission chose to make no distinction between those cable systems which are

^{7/} The Notasulga headend also serves the community of Loachapoka, Alabama, CUIDAL0713.

^{8/} Id., at ¶23.

^{9/} Id.

affiliated with larger companies and those which are not.^{10/}

5. The Commission's estimates are born out by Petitioner's own research. Petitioner's EAS equipment costs are quoted at \$7,402 per headend, excluding installation, which would add about \$500 per headend. Having obtained these figures, Petitioner has investigated financing possibilities for the purchases. Petitioner's efforts have proven unsuccessful because of leverage restrictions placed upon these systems operations by Petitioner's existing lenders.

6. Assuming that favorable financing terms were to become available, Petitioner estimates that it would have to spend over \$10,000 per headend over seven years to implement EAS. The cost of EAS is too great a burden to place upon these two small systems. The Autaugaville system's entire operation cumulatively showed a net income loss of \$5,858 in year 2001, and a net income loss of \$8,033 in year 2000. The Notasulga system's entire operation cumulatively showed a net income loss of \$2,000 in year 2001 and a net income gain of only \$9,587 in year 2000.^{11/} The financial burden of EAS implementation would have a severe impact on these operations, which are struggling to maintain service to rural communities. The Notasulga system, in particular, faces competition from a much larger cable television operator, Charter Communications. This circumstance necessitates frequent expenditures in order to maintain a competitive system.

^{10/} Id., at ¶26. The fact that Petitioner is an affiliate of Ropir Industries, Inc., which holds additional catv as well as telecommunications interests, is therefore not a subject for consideration in this matter.

^{11/} Copies of the unaudited adjusted income statements and balance sheets for years 2001 and 2000 for both the Autaugaville and Notasulga operations are attached hereto.

Alternative Sources of Emergency Alerting, and Types and Frequency of Risks

7. Petitioner carries on its systems all of the local broadcasting affiliates for ABC, CBS, NBC, FOX and PBS. All of those stations carry weather crawlers and are active in interrupting programs to show weather and other emergency developments throughout Petitioner's service area. Both systems are served by at least one 24-hour news network (CNN), making national breaking news available to all subscribers on the basic tier. The basic tier of each system also includes The Weather Channel, which carries local weather information and updates, as well as national alerts. Finally, local and county Civil Defense systems are installed to cover the communities served by Petitioner. No other MDS or cable television systems serve the Autaugaville headend's service area, so there are none that would be expected to install new EAS equipment in the Autaugaville service area. The Notasulga headend's service area is served by a competing operator, Charter Communications, which is expected to install EAS equipment at its regional, consolidated headend facilities in Alexander City, Alabama.

8. The main risk to Petitioner's served communities that involves emergency alerting is the occasional weather emergency. Tornadoes, hurricanes, hail and floods are the common hazards. Petitioner strives to keep the systems operating during times of danger so that viewers can tune into local broadcast stations for specific alert information. Many of Petitioner's subscribers live on working farms and maintain constant views of developing local weather. They are well aware of the hazards of severe weather systems and of the precautions to be taken to mitigate damage and avoid personal injury. Many of Petitioner's customers own their own weather radios.

9. The likelihood of the occurrence of an unusual or surprise national emergency that would directly affect Petitioner's subscribers is remote. The served communities are not in close proximity

to a nuclear reactor or major airport. Nor are they located near an international border, and no major prisons, reservoirs, hospital, military or weapons facilities are installed nearby. It is therefore likely that if a national emergency were to occur, Petitioner's subscribers would be informed by the existing alerting systems and by the television programming that Petitioner now provides. For this reason it is in the subscribers' interests that Petitioner's operations remain in service, at low monthly rates, and that they not be compromised by the financial burden of a specially installed EAS system.

Justification for Waiver

10. As demonstrated herein, Petitioner's compliance with the EAS by October 1, 2002 is not reasonably achievable because it is technically and economically infeasible. Petitioner continues to work closely with suppliers and programmers to find EAS solutions for use by small cable systems, including FCC-certified decoder-only units, recently approved by the Commission in its Report and Order, should such units become available on the market. Petitioner remains willing to install compliant EAS equipment. To do so by the October 1, 2002 deadline, however, would require a \$10,000 expenditure at each system and place Petitioner's respective operations at serious business risk. The cost of EAS will be reduced as alternative small system solutions are adopted. Petitioner and its customers will benefit if Petitioner's installation of EAS is postponed until such time.

11. Grant of Petitioner's request for a waiver of Section 11.11(a) is in the public interest. The unique and unusual circumstances surrounding the Petitioner's inability to comply with the implementation deadline is due to some of the very circumstances which were contemplated by the Commission as being grounds for relief from EAS obligations. Special consideration is warranted

under the circumstances presented, which, while common among small systems, have been demonstrated herein to be uniquely applicable to Petitioner's operation and efforts in this matter.

12. Enforcement against Petitioner would threaten the ongoing viability of Petitioner's rural cable television systems at Autaugaville and Notasulga. Petitioner consistently attempts to offer the best service possible to its subscribers, some of whom would otherwise not receive local programming and other services in the remote areas where they reside. In this case, Petitioner requests the opportunity to continue to provide the high quality of service that it presently offers to its customers, without the risk of jeopardy resulting from the high cost of EAS implementation.

CONCLUSION

For the reasons explained, Petitioner requests that it be relieved of the obligation to provide EAS, and in particular, that it be granted a temporary, 36-month waiver of the October 1, 2002 date for commencement of compliance with Section 11.11(a) of the FCC's rules at the systems served by the Autaugaville and Notasulga headend facilities. The Petitioner's showing herein is consistent with the requirements for relief set forth in the FCC's Report and Order in this matter. Furthermore, the public interest benefit of such grant equals or exceeds that which the Commission has found in other instances to be sufficient for waiver of the EAS requirements. Accordingly, Petitioner requests that a waiver be granted as proposed.

The Commission may contact Larry C. Grogan, Executive Vice President, Com-Link, Inc., P.O. Box 240967, Montgomery, Alabama 36124-0967, phone:(334) 279-8201, with any questions regarding this request. Please direct a copy of any written communications to Petitioner to Lukas,

Nace, Gutierrez & Sachs, Chtd., Attention Pamela L. Gist, Esq., 1111 19th Street N.W. Suite 1200,
Washington, D.C. 20036; Phone: (202) 828-9473; Fax: (202) 828-8408; Email: pgist@fcclaw.com.

Respectfully submitted,

COM-LINK, INC.

By: 
Pamela L. Gist
Its Attorney

Date: August 27, 2002

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street N.W., Suite 1200
Washington, D.C. 20036
Ph# 202-857-3500

AUTAUGAVILE INCOME STATEMENT AND BALANCE SHEET

COM-LINK, INC.

LOCATION: AUTAUGAVILLE

INCOME STATEMENT	YEAR TO DATE 12-31-01	YEAR TO DATE 12-31-00
OPERATING REVENUES:		
BASIC SERVICE	30,478.42	31,762.58
PREMIUM SERVICE	6,493.82	7,518.67
ADDITIONAL OUTLETS	1,841.59	2,299.39
ADVERTISING		
MISCELLANEOUS	2,711.20	3,616.98
UNCOLLECTIBLES	(1,213.29)	(1,351.78)
TOTAL REVENUES	40,311.74	43,845.84
OPERATING EXPENSES:		
SYSTEM MAINTENANCE	(7,319.50)	(12,404.41)
SYSTEM UTILITIES	(2,154.47)	(2,896.68)
BILLING & COLLECTIONS	(1,643.28)	(1,624.46)
DUES & SUBSCRIPTIONS	(353.59)	(405.05)
POLE ATTACHMENTS	(1,966.95)	(2,480.11)
BASIC SIGNAL RENT	(6,771.67)	(6,185.19)
PEMIUM SIGNAL RENT	(4,067.23)	(4,275.06)
TOTAL OPER EXPENSES	(24,276.69)	(30,270.96)
GENERAL & ADMINISTRATIVE		
GENERAL & ADMIN	(2,101.51)	(2,284.54)
INSURANCE	(687.77)	(695.14)
OFFICE SUPPLIES	(7.10)	(4.88)
TAXES & LICENSES	(444.82)	(435.00)
PROPERTY TAXES	(736.46)	(444.60)
LEGAL & ACCOUNTING	(705.11)	(582.73)
GENERAL MISC.	(3.96)	(19.15)
TOTAL G&A	(4,686.73)	(4,466.04)
NET OPERATING INCOME	11,348.32	9,108.84
DEPRECIATION EXPENSE	(15,982.24)	(14,919.84)
INTEREST EXPENSE	(1,223.76)	(2,221.62)
INCOME TAXES	-	-
NET INCOME	(5,857.68)	(8,032.62)

COM-LINK, INC.

LOCATION: AUTAUGAVILLE, ALABAMA

BALANCE SHEET

	DEC.31, 2001	DEC.31, 2000
CURRENT ASSETS:		
CASH	3,677.42	888.27
ACCOUNTS RECEIVABLE	694.16	2,021.20
PREPAYMENTS	1,153.45	1,353.49
TOTAL CURRENT ASSETS	5,525.03	4,262.96
PROPERTY, PLANT, & EQUIPMENT		
PP&E IN SERVICE	242,753.81	242,332.39
PLANT UNDER CONSTRUCTION	-	-
LESS: DEPRECIATION RESERVE	(163,445.79)	(147,463.55)
NET PRO. PLANT & EQUIP.	79,308.02	94,868.84
TOTAL ASSETS	84,833.05	99,131.80
LIABILITIES:		
ACCOUNTS PAYABLE	(3,491.85)	(4,722.60)
CUSTOMER DEPOSITS	(1,850.52)	(2,254.86)
ACCRUED INCOME TAXES	(17,330.91)	(11,960.76)
MISC. CURRENT LIABILITIES	(163.14)	51.68
TOTAL LIABILITIES	(22,836.42)	(18,886.54)
LONG TERM DEBT	(23,540.02)	(31,469.91)
INTER-COMPANY	(80,561.78)	(86,975.65)
RETAINED EARNINGS	42,105.17	38,200.30
TOTAL LIAB. & RET. EARNINGS	(84,833.05)	(99,131.80)

NOTASULGA INCOME STATEMENT AND BALANCE SHEET

COM-LINK, INC.

LOCATION: NOTASULGA, AL

INCOME STATEMENT	YEAR TO DATE 12-31-01	YEAR TO DATE 12-31-00
OPERATING REVENUES:		
BASIC SERVICE	134,952.39	149,521.36
PREMIUM SERVICE	24,215.62	29,402.97
CABLE PLUS	53,995.97	53,004.50
ADDITIONAL OUTLETS	10,798.86	13,413.80
MISCELLANEOUS	14,782.84	14,195.76
UNCOLLECTIBLES	(4,052.59)	(3,678.93)
TOTAL REVENUES	234,693.09	255,859.46
OPERATING EXPENSES:		
SYSTEM MAINTENANCE	(29,857.31)	(30,396.00)
SYSTEM UTILITIES	(7,081.55)	(6,142.33)
BILLING & COLLECTIONS	(8,987.58)	(9,695.68)
DUES & SUBSCRIPTIONS	(1,185.16)	(1,742.85)
POLE ATTACHMENTS	(9,237.27)	(11,241.17)
BASIC SIGNAL RENT	(16,389.10)	(15,244.35)
PEMIUM SIGNAL RENT	(15,011.04)	(17,880.23)
CABLE PLUS SIGNAL RENT	(40,285.51)	(36,279.72)
TOTAL OPER EXPENSES	(128,034.52)	(128,622.33)
GENERAL & ADMINISTRATIVE		
GENERAL & ADMIN	(12,609.50)	(13,682.97)
INSURANCE	(4,115.86)	(4,193.26)
OFFICE SUPPLIES	(42.66)	(29.22)
TAXES & LICENSES	(2,646.70)	(2,618.62)
PROPERTY TAXES	(9,026.14)	(9,761.50)
LEGAL & ACCOUNTING	(4,019.85)	(3,344.71)
GENERAL MISC.	(22.44)	(114.35)
TOTAL G&A	(32,483.15)	(33,744.63)
NET OPERATING INCOME	74,175.42	93,492.50
DEPRECIATION EXPENSE	(72,238.75)	(72,111.43)
INTEREST EXPENSE	(3,936.95)	(7,292.91)
INCOME TAXES	-	(4,501.64)
NET INCOME	(2,000.28)	9,586.52

COM-LINK, INC.

LOCATION: NOTASULGA, ALABAMA

BALANCE SHEET

	DEC. 31, 2001	DEC. 31, 2000
CURRENT ASSETS:		
CASH	18,410.05	5,627.24
ACCOUNTS RECEIVABLE	5,317.94	8,247.18
PREPAYMENTS	2,806.17	4,304.52
TOTAL CURRENT ASSETS	26,534.16	18,178.94
PROPERTY, PLANT, & EQUIPMENT		
PP&E IN SERVICE	1,098,344.23	1,092,447.18
PLANT UNDER CONSTRUCTION		928.75
LESS: DEPRECIATION RESERVE	(589,575.73)	(517,336.98)
NET PRO. PLANT & EQUIP.	508,768.50	576,038.95
TOTAL ASSETS	535,302.66	594,217.89
LIABILITIES:		
ACCOUNTS PAYABLE	(17,481.03)	(29,918.03)
CUSTOMER DEPOSITS	(10,866.42)	(14,898.71)
ACCRUED INCOME TAXES	(86,762.74)	(75,772.33)
MISC. CURRENT LIABILITIES	(5,033.85)	(508.94)
TOTAL LIABILITIES	(120,144.04)	(121,098.01)
LONG TERM DEBT	(64,224.97)	(71,237.08)
INTER-COMPANY	179,586.55	129,970.07
RETAINED EARNINGS	(530,520.20)	(531,852.87)
TOTAL LIAB. & RET. EARNINGS	(535,302.66)	(594,217.89)

DECLARATION

I, Larry C. Grogan, hereby state and declare:

1. I am Executive Vice President for Com-Link, Inc., cable television operator and petitioner herein.
2. I am familiar with the facts contained in the foregoing Petition For Waiver of Emergency Alert System Requirements, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of August, 2002.


Larry C. Grogan
Executive Vice President

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 27th day of August, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER OF EMERGENCY ALERT SYSTEM REQUIREMENTS to the following:

Joseph P. Casey, Chief
Technical & Public Safety Division
Enforcement Bureau
445 12th St., S.W., Room 7-A843
Federal Communications Commission
Washington, D.C. 20554


Loren Costantino