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June 29, 2007

VIA HAND DELIVERY

FILED/ACCEPTED

JUN 29 2007

**Federal Communications Commission
Office of the Secretary**

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

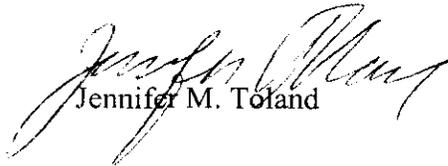
Re: *Petition of Northland Communications Corporation for Waiver from EAS Requirements*

Dear Secretary Dortch:

Enclosed for filing is an original, one Stamp & Return copy, and four copies of the Petition for Waiver for Northland Communications Corporation from the Commission's Emergency Alert System Requirements ("Petition") for thirteen of its cable systems. Also, in conjunction with the Petition is an original and four copies of a request that the Petition be withheld from public inspection pursuant to 47 C.F.R. § 0.459.

If you have any questions regarding this filing, please contact the undersigned at (202) 973-4200.

Sincerely,


Jennifer M. Toland

Enclosures

cc: Derek Poarch, Chief, Public Safety and Homeland Security Bureau

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

**FILED/ACCEPTED
JUN 29 2007
Federal Communications Commission
Office of the Secretary**

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

To: Marlene H. Dortch, Secretary
Office of the Secretary

**REQUEST THAT MATERIALS SUBMITTED TO THE COMMISSION BE
WITHHELD FROM PUBLIC INSPECTION**

Pursuant to 47 C.F.R. § 0.459, Northland Communications Corporation and its subsidiaries and affiliates - Northland Cable Properties Eight Limited Partnership; Northland Cable Properties, Inc.; Northland Cable Ventures LLC; Northland Cable Networks LLC; and Northland Cable Television, Inc. (collectively "Northland") respectfully request that the information being submitted in its latest Petition for Waiver from the Commission's Emergency Alert System ("EAS") Requirements for Cable Television Systems, not be made routinely available for public inspection. Since financial information and other proprietary information about Northland is interspersed throughout, it is not feasible to separate the confidential information from the non-confidential information.

The EAS petition contains highly sensitive business and financial information about the operations of Northland. This includes proprietary subscriber information and general financial background information. Northland has not previously disclosed this information to the public or to third parties who are not fiduciaries or held to confidentiality arrangements. Northland has

taken extensive measures to avoid disclosure of the confidential information to third parties, through employee confidentiality agreements and by limiting access only to key personnel.

If disclosed, the information would likely cause substantial competitive injury to Northland. As explained in the Petition for Waiver from EAS requirements, Northland faces significant competition from DBS providers. Those DBS providers could use the information to their advantage to target Northland's customers.¹

The FCC's public disclosure regulations implement, and incorporate, Exemption 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. See 47 C.F.R. §0.457(c)(5) and (d). Under Exemption 4, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. §552(b)(4). The information covered by this request is exempt from public disclosure under Exemption 4 of the FOIA and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.²

¹ For example, Echostar previously directed a campaign to target the customers of a cable operator who was experiencing financial difficulty, warning the subscribers that the cable operator was about to go out of business and advising them that they would lose video programming unless they signed with Echostar's Dish Network. Monica Hogan, *Rural Weakness? DBS Merger Roils Small Ops' World*, Multichannel News (Jan. 21, 2002) at http://www.findarticles.com/cf_0/m3535/3_23/82626449/print.jhtml.

² Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning", and thus include information in which a submitter has a "commercial interest." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); accord, *Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), cert. denied, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978). The term "person", for FOIA purposes, includes entities such as Northland. See, e.g., *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) ("For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency"). Where submission of information is mandatory,

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to "the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association ..." Information that is exempt from release under Exemption 4 of the FOIA is *prohibited* from being disclosed, under 18 U.S.C. § 1905, unless disclosure is "authorized by law" by another statute other than the FOIA.³ Because no other statute authorizes the release of the information at issue here, disclosure of the Documents is prohibited by the criminal provisions of 18 U.S.C. §1905.⁴

The foregoing demonstrates, by a preponderance of the evidence (*see* 47 C.F.R. § 0.459(d)(2)), that the information at issue is confidential within the meaning of Exemption 4 of the FOIA and the rules of the Federal Communications Commission, and that disclosure is prohibited by 18 U.S.C. §1905. Northland therefore requests that the submitted information be deemed confidential, that the FCC prohibit their public disclosure or inspection, and that Northland be informed of the FCC's determination on this issue.

This petition presents only a preliminary explanation of the basis for this request for confidential treatment. It would be unduly burdensome at this time to provide a more detailed and particularized justification on a page-by-page basis, when it is not presently known whether

information is confidential or privileged under Exemption 4 if, among other things, disclosure is likely to cause substantial harm to the competitive person from whom the information was obtained. *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 28-29 (D.D.C. 2000) (citing *Critical Mass*, 975 F.2d at 878). As explained above, disclosure is likely to cause competitive harm.

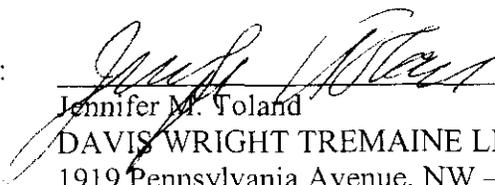
³ *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are "coextensive", and §1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than the FOIA); *see also* 47 C.F.R. § 0.457(c)(5) and (d).

public disclosure of the information will be sought. Accordingly, we request that, in the event a request for disclosure of any of these documents is received by the FCC, Northland be provided with notice of, and an opportunity to object to, any such request prior to release of the Documents. *See* 47 C.F.R. § 0.459(d)(1). Additionally, Northland requests that the information remain confidential and upon the Commission's determination of the EAS petition, it be returned to Northland. If the Commission has any questions regarding this petition, please contact the undersigned at the address below.

Respectfully submitted,

Northland Communications Corporation

By:


Jennifer M. Toland
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, NW – Suite 200
Washington, DC 20006
202.973.4200

June 29, 2007

⁴ *See CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

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

In the Matter of:)	
)	FO Docket No. 91-301
Petition for Waiver of the Commission's)	FO Docket No. 91-171
Emergency Alert Requirements for)	
Cable Television Systems)	
To:		Marlene H. Dortch, Secretary
		Office of the Secretary

PETITION FOR WAIVER

I. Introduction

This petition is submitted on behalf of Northland Communications Corporation and its subsidiaries and affiliates (“Northland”)¹ to request temporary waivers for 13 of its cable systems (the “Northland Systems”) from compliance with the Emergency Alert System (“EAS”) requirements in Section 11.11(a) of the Commission’s rules. Each of these systems has 540 or fewer subscribers, and more than half serve 202 or fewer subscribers.

Specifically, Northland is seeking six-month waivers for its systems in Coolidge, Dublin, and Lake Buchanan, TX. (*See Attachment A.*) Northland is currently implementing a plan to bring these systems into compliance and seeks these three waivers in order to allow Northland to complete the process. In addition, Northland is seeking eighteen-month waivers for the systems listed in **Attachment B**. Northland respectfully requests waivers for these ten systems in order to allow it sufficient time to develop and implement a comprehensive interconnection plan, as it

¹ Northland subsidiaries and affiliates include Northland Cable Properties Eight Limited Partnership; Northland Cable Properties, Inc.; Northland Cable Ventures LLC; Northland Cable Networks LLC; and Northland Cable Television, Inc.

has done for other previously non-compliant systems, or to shut down or sell the systems that are not feasible to consolidate. Although Northland has taken significant steps toward achieving EAS compliance for many of its small systems, bringing these thirteen small systems into immediate compliance with the Commission's EAS requirements would cause significant financial hardship to Northland.

On February 10, 2006, Northland filed a Petition for Waiver from EAS requirements ("February 2006 Petition for Waiver") for seventeen of its smallest cable systems on financial hardship grounds. The 2006 Petition for Waiver requested twelve 36-month waivers, four 12-month waivers, and one 1-month waiver. In its July 3, 2006 Public Notice, the Enforcement Bureau denied Northland's request for waivers on the basis that Northland failed to demonstrate that it would suffer undue financial hardship from complying with the Commission's rules.² Northland filed a Petition for Partial Reconsideration of the Commission's decision on August 2, 2006. A decision has not yet been reached concerning Northland's Petition.

In the sixteen months since Northland filed its February 2006 Petition for Waiver, it has continued to diligently work toward bringing all of its cable headends into compliance with the Commission's EAS requirements. During this timeframe, Northland has interconnected three additional cable systems with headends that were already EAS compliant. These include Millport, Alabama; Five Points, South Carolina; and Malakoff, TX. In addition, Northland shut down its Lushmeadows, CA system after determining that it was not feasible to bring the system into compliance, either by purchasing EAS equipment or by interconnecting the system with an already EAS-compliant one.

² *EAS Waiver Extensions Granted to Very Small Cable Systems*, Public Notice, DA-06-1373, 2006 FCC LEXIS 3671 (released July 3, 2006) (hereafter "Public Notice").

II. Northland's Systems Meets the Criteria for EAS Waivers³

A. *Northland Will Suffer Financial Hardship if Required to Immediately Comply with the Requirements in Section 11.11(a).*

In its Public Notice, the Bureau noted that, although EAS waivers should be limited to the extent possible, immediate imposition of EAS requirements on some of the smaller cable systems could “cause significant economic hardship.”⁴ Northland has taken concrete steps in bringing its systems into full EAS compliance, but bringing these small systems into immediate compliance simply is not economically feasible. The financial position of the Northland Systems is unimproved since Northland filed its February 2006 Petition for Waiver. Indeed, their financial position is precarious at best, as all but one of these systems continues to operate at a loss. Moreover, the losses incurred by many of these systems have notably worsened over time. (See **Attachment C**, comparing year-end losses for 2005 and 2006). For example, in 2005, the Raleigh, MS headend reported a loss of \$5,527. By 2006—only one year later—the Raleigh headend's operating loss had increased to \$30,041. For the Lake Buchanan, TX headend, the 2006 operating loss has climbed as high as \$120,143.

³ See *Amendment of Part 7 of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd 15503 (1997). See also *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) (underscoring that the Commission “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 2002 Report and Order, 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.*

⁴ Public Notice at 2.

The requirement of full EAS compliance by July 1, 2007 would result in serious financial hardship to Northland. Northland estimates that the cost of an EAS system for each cable system headend would be approximately \$7,900.00 per headend, plus 15% for tax, shipping and installation, totaling more than \$118,000.00. This estimate is consistent with the FCC's cost estimates of \$6,000 to \$10,000 per headend, as outlined in the FCC's 1997 Report and Order, *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 (rel. Sep. 29, 1997). However, contrary to what the FCC believed at the time of the Second Report and Order, the anticipated equipment cost reductions that would render compliance for small cable systems less burdensome, has not materialized (even with the availability of decoder-only units). *Id.* at ¶ 25.

The prices for equipment and installation impose significant per-subscriber costs on the Northland Systems, which are already struggling with ever increasing programming costs. To pay for the equipment, the Northland Systems would need to consider rate increases to its subscribers. The additional costs and the rate increases to cover such costs would only serve to further erode the Northland Systems' existing subscriber base in an increasingly competitive industry hit hard by vigorous competition from satellite providers.

The Northland Systems are simply not in a position to raise rates further than is already necessary as nearly every Northland System continues to lose subscribers at a steady rate. *See* Attachments A and B (reflecting subscriber losses since 2005). Between 2005 and 2006, subscribership for all but one of the Northland Systems decreased between 9.5% and 27.0%. The largest subscriber loss occurred in Cut and Shoot, TX headend, which lost more than a quarter of its cable customers.

All of the systems that are the subject of this Petition serve rural areas and are among Northland's smallest systems. Prospects for new subscribers in these communities are not promising. If Northland does not receive waivers for these systems, it will likely have no option but to shut them down, as Northland has already done with the Lushmeadows, CA system.

B. Other Entities in the Area Provide Emergency Alert Information

There are various entities in each of the communities that inform customers of national, and even state and local emergencies. Radio broadcast stations, both on the FM and AM band and TV broadcast stations serving each of the local communities are required to transmit national EAS messages and would also likely provide coverage of state and local emergencies.⁵ Various other entities voluntarily participate in the national level EAS, including major television and cable networks.⁶ For weather-related emergencies (the primary risk facing these communities), many of the communities have sirens in place to warn residents of impending danger.

In the event of a national emergency, Northland's basic tier subscribers would have access to EAS alerts through local broadcast stations (the majority of what is offered on the basic service tier) and the national broadcast programming of ABC, CBS, FOX, NBC and PBS.⁷ For subscribers who also receive expanded basic or other tiers of service, a substantial number of the programming services would transmit national emergency alerts or otherwise provide information about national, state and local emergencies. Those sources include the cable programming networks that voluntarily participate in EAS and who transmit national EAS

⁵ 47 C.F.R. § 11.11(a).

⁶ See 47 C.F.R. § 11.43 (2001) (identifying each of the industry entities voluntarily participating in the national level EAS).

⁷ See 47 C.F.R. § 11.43 (2001).

messages, such as The Weather Channel, ESPN, VH-1, MTV, HBO, Disney Channel, Nickelodeon, Showtime and others.⁸

C. Emergency Risks in Each of the Communities are Localized Risks

The Northland systems that are the subject of this waiver request are unlikely targets for a terrorist attack or other national emergency. The risks faced by these remote communities served by the Northland Systems are predominantly localized weather-related risks. As noted above, in many of the communities where these systems are located, local public safety departments have installed warning sirens, primarily for tornado alerts.

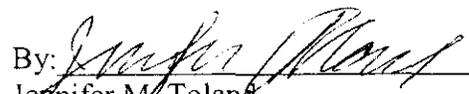
⁸ *Id.*

III. Conclusion

Northland continues to face enormous financial strain in bringing its smallest cable systems into compliance with the Commission's EAS requirements, particularly those systems that serve fewer than 250 customers. While Northland continues to work diligently to bring its small systems into compliance, the granting of an extended waiver would enable Northland to ascertain the most effective and cost efficient manner to bring its remaining systems into EAS compliance, or in the alternative, to shut down or sell these systems.

Respectfully submitted,

Northland Communications Corporation

By: 
Jennifer M. Toland
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, D.C. 20006
(202) 973-4200

June 29, 2007

CERTIFICATION

I, Richard I. Clark, 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 cursive script, reading "Richard I. Clark", is written over a horizontal line.

Richard I. Clark
Executive Vice President
Northland Communications Corporation

June 27, 2007

Attachment A

(Northland Systems Seeking Six-Month Waivers)

Attachment A

**Northland Systems Seeking Six-Month Waiver Extensions
(Until December 31, 2007)**

System	Number of Subscribers December 2005	Number of Subscribers June 2007
Coolidge, TX	119	93
Dublin, TX	413	346
Lake Buchanan, TX	547	495

Attachment B

(Northland Systems Seeking Eighteen-Month Waivers)

Attachment B

Northland Systems Seeking Eighteen Month Waiver Extensions

System	Number of Subscribers December 2005	Number of Subscribers June 2007
California		
Coarsegold	488	540
Mariposa	325	294
Mississippi		
Maben	223	202
Raleigh	243	200
Texas		
Cut and Shoot	174	127
Hamilton	605	510
Hico	225	191
Kerens	148	118
Llano	469	410
Wortham	140	121

Attachment C

(Financial Information for Northland Systems)

CONFIDENTIAL