

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

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In the Matter of)
)
Review of the Emergency Alert System)
)
AT&T Petition for Limited Waiver)
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FEDERAL COMMUNICATIONS COMMISSION
EB Docket No. 04-296

ORDER

Adopted: March 25, 2008

Released: March 25, 2008

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 12, 2007, the Commission adopted the *Second Report and Order* revising the Part 11 Emergency Alert System (EAS) rules and extending to wireline video providers the requirement to provide EAS messages to subscribers.¹ The Commission required such providers to become EAS compliant within 30 days of the *Second Report and Order's* publication in the Federal Register, or 60 days from Congress' receipt from the Commission of a report on its EAS modifications pursuant to the Congressional Review Act, whichever came later.² This requirement went into effect on December 3, 2007.³

2. On November 14, 2007, AT&T, Inc. (AT&T) filed a request for limited waiver of the *Second Report and Order's* extension of the EAS rules to wireline video providers upon the effective date.⁴ As explained more fully below, AT&T seeks a limited waiver of the EAS rules until July 31, 2008, in order to implement phased upgrades to its Internet Protocol-based (IP) U-Verse video service offering. We find that limited relief from the Commission's EAS rules is warranted for AT&T and grant AT&T's request as described herein. We condition the grant of waiver on AT&T informing its U-Verse TV service subscribers of the extent to which it currently provides EAS messages and its schedule to become fully compliant with the Commission's EAS rules. Further, we condition grant of waiver by requiring AT&T to certify to the Commission that it has met its implementation benchmarks. Given the important role that EAS serves in the nation's public safety awareness and response, we emphasize that, based on the detailed and specific assurances made by AT&T in its waiver petition, we will not look favorably upon any future request for additional waiver relief.

¹ Review of the Emergency Alert System; Independent Spanish Broadcaster Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, EB Docket No. 04-296, *Second Report and Order and Further Notice of Proposed Rule Making*, 22 FCC Rcd 13275 (2007) (*Second Report and Order*; *FNPRM*).

² *Second Report and Order*, 22 FCC Rcd at 13298, 13310 ¶¶ 48, 83, as modified by *Erratum* (2007).

³ See 72 Fed. Reg. 62,123 (2007).

⁴ AT&T Petition for Limited Waiver, EB Docket No. 04-296 (filed Nov. 14, 2007) (*AT&T Petition*). The Public Safety and Homeland Security Bureau (PSHSB) released a Public Notice seeking comment on the petition on December 19, 2007. See Public Safety and Homeland Security Bureau Seeks Comments on AT&T Petition for Limited Waiver of the Commission's Second Report and Order Concerning the Emergency Alert System, *Public Notice*, 22 FCC Rcd 21771, DA 07-5064 (2007).

II. BACKGROUND

3. The Commission may waive its rules for good cause shown.⁵ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule.⁶ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁷ We conclude that a limited waiver, as conditioned herein, should be granted because AT&T has demonstrated unique and unusual factual circumstances warranting relief. We also find that the conditions we impose will ensure that the limited waiver relief we grant will not undermine the policy of the rule.

A. AT&T Request for Waiver

4. AT&T asserts that, “due to the technological characteristics of its IP-based network architecture, it is technically infeasible for AT&T to deploy EAS capability for its U-Verse TV service in compliance with the Second Report and Order prior to July 31, 2008.”⁸ Specifically, AT&T represents that the two-way nature of its IP network makes it much more technically difficult to implement EAS capabilities than in a traditional cable network.⁹ AT&T requests a time-limited waiver of the deadline by which it was required to implement EAS capability for its U-Verse TV service. AT&T states that it has evaluated the necessary modifications to its IP network to provide EAS, procured the necessary hardware and software, and has completed laboratory testing of the software.¹⁰ AT&T states that it will implement a “comprehensive solution to support Presidential Alerts by ‘force tuning’ subscribers viewing a national broadcast channel to another single national-broadcast channel ... selected by AT&T for Presidential alerts.”¹¹

5. AT&T reports that deployment of EAS capability requires installation of new EAS receiver equipment in each local video market; deployment of new servers and software in its IP television server complex in each local video market, in order to receive, translate, and send EAS alerts; and deployment of new client software to all set-top boxes (STBs).¹² AT&T states that it initiated implementation of an EAS capability in 2006, when it requested “its equipment and software vendors (respectively, Trilithic, Inc. and Microsoft, Inc.) to provide an EAS receiver function and to supply the IPTV server and client software.”¹³ AT&T reports that it received the necessary components on April 15, 2007, at which point it initiated approximately six months of laboratory testing of the software, which concluded in October 2007.¹⁴ AT&T states its scheduled field testing was to be completed in December

⁵ 47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁷ See *id.* (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); Birach Broadcasting Corporation, *Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

⁸ *AT&T Petition* at 7.

⁹ *Id.* at 1, 4.

¹⁰ *Id.* at 9; Declaration of Matthew Wallace, EB Docket No. 04-296 (filed Nov. 14, 2007) (*Wallace Declaration*) at 3-5.

¹¹ *Wallace Declaration* at 3.

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

¹⁴ *Id.* AT&T states that six months of laboratory testing was necessary because the EAS components required significant changes to the network architecture and the software upgrades had to be tested in relation to other pieces of software in the system. In addition, the EAS-related software provided by Microsoft not only provides EAS functionality, but is part of a generally available software release used by Microsoft customers around the globe that

2007.¹⁵ According to AT&T, “the methodical approach needed to protect customer service while these procedures are being carried out constrains [its] ability concurrently to deploy EAS capability in multiple markets . . . AT&T has hired additional personnel, and has secured contract resources to further augment those personnel, to facilitate the deployment insofar as possible, consistent with maintaining customer service requirements.”¹⁶

6. AT&T describes a two-phased implementation schedule involving its super hub office (SHO) and multiple video hub offices (VHO).¹⁷ According to AT&T, no later than March 31, 2008, it “will transmit the Presidential emergency message via a serial digital interface (“SDI”) switch operation performed at the SHO to all standard definition and 1080i high definition national channels such as HBO, ESPN, etc. (except for occasional and blackout channels).”¹⁸ In the second phase, AT&T states that the EAS implementation “will occur on a DMA-by-DMA basis at the VHOs, and will be completed no later than July 31, 2008.”¹⁹

B. Opposition to Waiver

7. The National Association of Telecommunications Officers and Advisors (NATOA) opposes the AT&T Petition arguing that AT&T has changed its estimated date of compliance on numerous occasions.²⁰ In addition, NATOA argues that the *Second Report and Order* extends the authority to activate EAS alerts to state governors, yet AT&T’s waiver petition pertains only to its present inability to deliver Presidential alerts, thus ignoring its requirements as they pertain to state alerts.²¹ In reply, AT&T argues that its waiver request is limited to Presidential alerts and that it will comply with its state EAS obligations prescribed by the Commission when those requirements take effect.²²

8. NATOA further argues that, if the Commission grants AT&T a waiver, it should require the company to submit periodic progress reports to the Commission and provide compliance updates to its subscribers and appropriate state and local public safety officials.²³ Specifically, NATOA argues that the current inability of AT&T’s video service to provide EAS communications is a public safety issue and

includes other feature functionality. AT&T states that “it not only had to test the upgrade process and the EAS functionality, but had to subject the entire system and network to regression testing to ensure proper customer experience.” *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 6-7.

¹⁷ *AT&T Petition* at 4-5; *Wallace Declaration* at 3-4. According to AT&T, the U-Verse TV service network architecture consists of a single SHO and multiple VHOs serving local markets. The SHO processes and distributes national channels to VHOs for transmission to U-Verse subscribers. The VHOs receive, process and transmit local broadcast channels and certain other programming, such as video on demand and interactive guides, to subscribers. *See Wallace Declaration* at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* According to AT&T, this portion of the implementation will be performed by force tuning the subscriber’s set-top box to a single national channel selected by AT&T for Presidential alerts. In addition, AT&T states that this phase will include “720p high definition channels, music channels, blackout channels, occasional channels, Pay-Per-View (“PPV”) [channels], Video on Demand, pre-recorded content, PEG channels, the on-screen menu, the interactive guide, and game channels.” *Id.*

²⁰ Comments of the National Association of Telecommunications Officers and Advisors in Opposition to AT&T’s Request for Limited Waiver, EB Docket No. 04-296 (filed Dec. 17, 2007) (NATOA Comments) at 2.

²¹ *Id.* at 2.

²² AT&T Inc. Reply, EB Docket No. 04-296 (filed Jan. 22, 2008) (AT&T Reply) at 2-3.

²³ NATOA Comments at 2-3.

subscribers should be aware of any EAS limitations.²⁴ Therefore, NATOA adds, AT&T should notify its current and future U-Verse subscribers of the system's inability to fully comply with EAS mandates.²⁵ AT&T disagrees with NATOA's proposed conditions, arguing that its deployment of Presidential EAS capability to all channels is on schedule, and periodic status reporting in the first half of 2008 would be "unnecessary and unduly burdensome," in addition to being "seriously misleading, and confusing to those subscribers as U-Verse undergoes further EAS deployment."²⁶

9. The National Cable and Telecommunications Association (NCTA) asserts that AT&T "incorrectly states that the manner in which cable systems deliver EAS messages differs from the manner in which its 'IP-based switched data services network' would deploy EAS."²⁷ NCTA requests that, should the Commission grant a waiver to AT&T, it not do so "based on false assertions about cable systems and the nature in which EAS messages are delivered."²⁸

III. DISCUSSION

10. In the *Second Report and Order*, the Commission found that a viewer's reasonable expectation regarding the availability of alerts over television programming is identical, whether the programming is over-the-air broadcasting, cable, DBS, or a new wireline video service.²⁹ The Commission thus extended EAS requirements to wireline video service providers. In this limited waiver context, however, we find that, consistent with Section 1.3 and *WAIT Radio*, AT&T has demonstrated unique factual circumstances,³⁰ *i.e.*, that technical limitations of its system architecture, affecting both hardware and software equipment, prevent it from complying with the deadline in the *Second Report and Order* and that, absent an upgrade of its hardware and software facilities, it has no reasonable alternative by which to provide EAS on all of the channels it carries prior to its proposed implementation date.

11. With respect to NATOA's argument that AT&T has misrepresented the expected date by which it could become EAS compliant, we find that, beginning in 2006, the record demonstrates that AT&T has continually informed the Commission of its efforts, providing detailed explanations of its intended upgrades, the amount of time required to test those upgrades, and its expected deadline for meeting its obligations under our rules.³¹ In its petition for waiver, AT&T firmly committed to being fully compliant by July 31, 2008.³² Furthermore, NATOA's concerns about mandatory transmission of

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ AT&T Reply at 3.

²⁷ Comments of National Cable and Telecommunications Association (NCTA), EB Docket No. 04-296 (filed Dec. 3, 2007) (NCTA Comments) at 14. *See also*, Letter from Daniel Brenner and Loretta Polk, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in EB Docket No. 04-296 (filed Jan. 22, 2008) (reiterating and incorporating by reference its comments in *FNPRM* regarding AT&T's petition).

²⁸ NCTA Comments at 15.

²⁹ *Second Report and Order*, 22 FCC Rcd at 13297 ¶ 46.

³⁰ *See AT&T Petition* at 3-7; *Wallace Declaration* at 3-5.

³¹ *See, e.g.*, AT&T Comments, EB Docket No. 04-296 (filed Jan. 24, 2006) at 2, in response to Review of the Emergency Alert System, EB Docket No. 04-296, *First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 18625 (2005); Letter from Thomas S. Hughes, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in EB Docket No. 04-296 (filed Apr. 6, 2007) (stating that AT&T "anticipates having EAS capability by the end of 2007" and that "all its Video Hub Offices will have the requisite EAS capability no later than June 30, 2008"); Letter from Thomas S. Hughes, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in EB Docket No. 04-296 (filed May 23, 2007).

³² *See, e.g.*, *AT&T Petition* at 1 (stating that AT&T is "strongly committed to the provision of EAS messages to U-Verse TV subscribers"), 4 (stating that AT&T has been "working diligently with its vendors to modify U-Verse TV

state and local EAS alerts that are originated by governors or their designees are misplaced because the Commission has required that such messages be transmitted only after the Common Alerting Protocol signaling is introduced and state EAS plans have been modified.³³ Neither of these conditions has occurred to date. Based on our review of the record, and with conditions and requirements explained below, we grant a limited waiver of the *Second Report and Order* until July 31, 2008.

12. We find that NCTA's concerns regarding any differences between cable systems and IP-based TV systems are inapposite, as any distinction that may exist between the encryption methodologies used by cable operators and by IP-based video systems does not bear directly on our determination of whether to grant AT&T additional time to comply with our EAS rules. The issue of encryption matters only to the extent that AT&T is not able to maintain its encryption methodology and provide EAS by the December 3, 2007, deadline. We find that AT&T has demonstrated a unique limitation in its system design preventing it from meeting our deadline, but has developed a solution to neutralize that limitation and come into compliance with the EAS rules in a reasonable time frame.

13. *Conditions.* We agree with NATOA that, as a matter of public safety, subscribers should be aware of the current inability of AT&T to provide EAS messages on all channels. Accordingly, within 30 days of the release date of this Order, we require AT&T to inform its subscribers of the extent to which it provides EAS messages, its efforts to provide such messages on all channels, and the specific dates on which it expects to become compliant.³⁴ We reject AT&T's contentions that imposing these requirements is unreasonable, and that communicating this information is either misleading or confusing to U-Verse subscribers. On the contrary, we find that U-Verse subscribers watching non-broadcast channels may be under the mistaken impression that, in the event of an emergency, they will receive the mandated EAS message. Furthermore, because EAS is a critical part of the nation's public safety early warning system, we require AT&T to inform prospective subscribers to its service the precise limitations of its provision of EAS, including providing clear information of which channels support EAS, the channels not supporting EAS, and the dates by which the channels presently not supporting EAS will be EAS compliant. We find that, consistent with *WAIT Radio*, imposing these conditions will help to ensure that the underlying purpose of the EAS requirements will not be undermined, and that the limited waiver relief we grant is in the public interest. These requirements shall remain in effect until, as discussed below, AT&T has certified to the Commission that its entire wireline video platform is EAS compliant.

14. *Reporting Requirements.* To ensure that AT&T is meeting its requirements with respect to EAS, we require that AT&T file with the Commission certifications, executed by an appropriate company official, attesting to the implementation of EAS capability as described herein. Specifically, on April 1, 2008, AT&T shall file a certification that it has completed the first phase of its EAS implementation, certifying that, as of March 31, 2008, it is capable of transmitting the required EAS alerts via a serial digital interface ("SDI") switch operation performed at AT&T's SHO to all standard definition and 1080i high definition national channels. Further, AT&T shall file a second certification on August 1, 2008, stating that, as of July 31, 2008, it completed the second phase of its implementation, and is capable of transmitting the required EAS alerts to all of the VHOs in each of the DMAs where AT&T provides its U-Verse service. We reiterate that we expect AT&T to meet all of its benchmarks. If AT&T

service to implement by no later than July 31, 2008 a comprehensive, two phased solution to support EAS alerts"), and 7 (stating that "AT&T's current planning estimates . . . indicate that EAS deployment will be completed for all video markets that AT&T serves by, or prior to, July 31, 2008").

³³ See *Second Report and Order*, 22 FCC Rcd at 13277, 13288 ¶¶ 1, 26.

³⁴ We believe 30 days is a reasonable amount of time within which AT&T can communicate with its subscriber base. We recognize that it is standard industry practice to use billing statements to communicate important information about the services offered by an operator, but we also recognize the direct messaging capability to viewers afforded by the U-Verse service. We do not, therefore, direct AT&T to use any particular notification device to communicate with its subscriber base. AT&T may use any means available reasonably calculated to reach those affected subscribers and provide meaningful notice.

fails to do so, the Bureau will consider all appropriate action, including recommendations regarding enforcement.

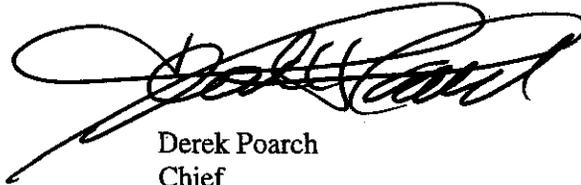
IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, THIS ORDER in EB Docket No. 04-296 IS ADOPTED.

16. IT IS FURTHER ORDERED that the Petition filed by AT&T, Inc. on November 7, 2007, IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for AT&T's compliance with Part 11 of the Commission's Rules, 47 C.F.R. Part 11, is July 31, 2008.

17. 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



Derek Poarch
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