

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

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)	

**WINDSTREAM LAKEDALE, INC.
PETITION FOR TEMPORARY WAIVER OF CAP OBLIGATIONS**

Windstream Lakedale, Inc. (“Windstream Lakedale”), pursuant to Section 1.3 of the Federal Communications Commission’s (“Commission’s”) rules, 47 C.F.R. § 1.3, hereby respectfully requests a temporary waiver of the obligations set forth in Part 11 of the Commission’s rules, 47 C.F.R. Part 11, regarding monitoring for, receiving, and processing Common Alerting Protocol (“CAP”) formatted messages (the “CAP Rules”) with respect to its video operations. This request for temporary waiver is necessitated by an unexpected delay in delivery of equipment necessary for compliance. The delay is expected to be brief, and once the equipment is received, it will be installed, tested, and made operational promptly. At that time, Windstream Lakedale will notify the Commission that it is in compliance with Part 11 and that the temporary waiver is no longer needed.

BACKGROUND

In the *Fifth EAS Report & Order*,¹ the Commission required Emergency Alert System (“EAS”) Participants to utilize EAS equipment that can receive and transmit messages in the EAS format called the Specific Area Message Encoding. The deadline for such compliance, as established in the *Fourth EAS Report & Order*, is June 30, 2012.²

Windstream Lakedale is the operator of a wireline video system in 14 mostly rural communities in Minnesota. In order to receive and transmit CAP-formatted messages, Windstream Lakedale needs to install a CAP-to-EAS converter to work in tandem with Windstream Lakedale’s existing equipment.

Windstream Lakedale exercised diligence in placing an order for the CAP-to-EAS converter that would be delivered prior to June 1, 2012 to allow sufficient time to install and test the new equipment prior to the implementation deadline. Unfortunately, Windstream Lakedale recently learned that delivery of its order has been delayed until mid-July, reportedly due to the large number of other EAS participants ordering such equipment for delivery at roughly the same time so as to comply with the Commission’s mandate.

WINDSTREAM LAKEDALE MEETS THE STANDARD FOR WAIVER

The Commission may waive its rules for good cause shown.³ The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a temporary waiver would not undermine the

¹ *Review of the Emergency Alert System, Fifth Report & Order*, 27 FCC Rcd. 642 (2012) (“*Fifth EAS Report & Order*”).

² *Review of the Emergency Alert System, Fourth Report & Order*, 26 FCC Rcd 13710 (2011) (“*Fourth EAS Report & Order*”).

³ 47 C.F.R. § 1.3. *See also Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“FCC has authority to waive its rules if there is ‘good cause’ to do so.”)

policy served by the rule.⁴ Windstream Lakedale takes its EAS responsibilities seriously and has made a good-faith effort to comply with the Commission's upcoming mandate. But for vendor delays likely caused by a rush of orders from other EAS Participants also making a good-faith effort to comply with the Commission's mandate, Windstream Lakedale would have been able to install and test the CAP-to-EAS converter well in advance of the implementation deadline. Windstream believes that good cause exists for granting its requested temporary waiver.

Due to the current urgent demand for CAP-to-EAS converters, Windstream Lakedale does not have a practical option other than to wait for its ordered equipment to be delivered. Windstream Lakedale is told that other EAS Participants find themselves in similar situations, meaning that CAP-to-EAS converters provided by other suppliers are committed to other EAS Participants or are on back order. If the CAP-to-EAS converter is received on the currently-stated delivery date, Windstream Lakedale expects its compliance would be delayed by no more than three weeks (allowing for time to install and test).

Grant of Windstream Lakedale's request for temporary waiver would not undermine the Commission's public policy goals. Windstream Lakedale is compliant with current EAS obligations and will continue to maintain its legacy EAS equipment while awaiting delivery, installation, and testing of the CAP-to-EAS converter. Emergency alerts will continue to be distributed; they merely will not be received in the soon-to-be-updated manner. In light of Windstream Lakedale's current compliance and the expected short-term nature of the delay in its compliance with the CAP rules, a temporary waiver of Windstream Lakedale's Part 11 obligations is warranted.

⁴ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972).

As discussed above, Windstream Lakedale commits to installing, testing, and making operational its CAP-to-EAS converter promptly upon receipt. Once this process is complete, Windstream Lakedale will promptly notify the Commission that it is in compliance with Part 11 and that the temporary waiver need no longer be effective.⁵

CONCLUSION

For all the reasons stated herein, Windstream Lakedale respectfully requests that the Commission expeditiously grant this Petition for Temporary Waiver of Part 11 of the Commission's rules.

Respectfully submitted,

/s/ Edward B. Krachmer
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Dated: June 14, 2012

Its Attorney

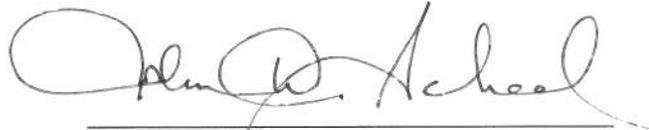
⁵ Windstream Lakedale attaches hereto the Declaration of John Scheel, Area Manager-Operations, attesting to the facts stated herein.

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DECLARATION OF JOHN SCHEEL

1. My name is John Scheel and I am Area Manager-Operations of Windstream Lakedale, Inc. (“Windstream Lakedale”).

2. I declare under penalty of perjury that the facts contained herein and within the foregoing Petition for Temporary Waiver are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Petition is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.

A handwritten signature in black ink that reads "John W. Scheel". The signature is written in a cursive style with a large initial "J" and "S".

John Scheel, Area Manager-Operations
Windstream Lakedale, Inc.
40 Eagle Lake Road North
Big Lake, MN 55309