

**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)

To: David S. Turetsky
Chief, Public Safety and Homeland Security Bureau

PETITION FOR TEMPORARY WAIVER

Pursuant to 47 C.F.R. § 1.3 and 47 C.F. R § 11.52(d)(4), this petition is submitted on behalf of KJAY, LLC (“Company”) to request temporary wavier from compliance with the Emergency Alert System (“EAS”) requirements in Section 11.56 of the Federal Communication Commission’s (“Commission”) rules. Section 11.56 requires EAS Participants to be able to receive alerts formatted with the Common Alert Protocol (“CAP”) by June 30, 2012.¹ Company requests this temporary waiver because it

¹ The June 30, 2012 compliance deadline was adopted in the Commission’s *EAS Fourth Report & Order*. See Review of the Emergency Alert System; 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, EB Docket No. 04-296, *Fourth Report & Order*, 26 FCC Rcd 13710 (2011) (“*EAS Fourth Report & Order*”). In its *EAS Fifth Report & Order*, the FCC revised its Part 11 Rules to specify the manner in which EAS Participants must be able to receive alert messages formatted in the CAP. See Review of the Emergency Alert System; 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, EB Docket No. 04-296, *Fifth Report & Order*, 27 FCC Rcd 642 (2012) (“*EAS Fifth Report & Order*”).

currently lacks the physical broadband Internet access necessary to receive CAP-formatted alerts.

I. BACKGROUND

The Commission required EAS Participants to utilize EAS equipment that can receive and transmit messages in the EAS format called the Specific Area Message Encoding (SAME). The deadline for such compliance, as established in the *Fourth EAS Report & Order*, is June 30, 2012.² In the *Fifth EAS Report & Order*, the Commission identified broadband Internet as the “primary method for distributing CAP messages.”³ In addition, the Commission recognized that “the physical availability of broadband Internet access would be a physical predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.”⁴ The Commission concluded that “the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”⁵ Company satisfies the presumption set forth in the *EAS Fifth Report & Order* because Company does not have access to broadband Internet.

II. WAIVER REQUEST

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

³ *EAS Fifth Report & Order* at ¶152

⁴ *Id.*

⁵ *Id.*

Company satisfies the presumption set forth in the *EAS Fifth Report & Order* since there is not any physical broadband Internet connection existing or available at the transmitter site. No regular internet service provider is able to serve this location in West Sacramento. Company has investigated satellite internet delivery, and learned that this is infeasible because of obstruction to the view of the geostationary arc. Until some new pathway is found to secure reliable high-speed (non-dial-up) internet at the site, Company will not be able to receive the CAP-EAS messages nor use any CAP-compliant equipment. For this reason, Company seeks a temporary waiver for these systems because receipt of CAP messages is not possible at this time.

III. LEGACY EAS EQUIPMENT

In its *EAS Fifth Report & Order*, the Commission states that to the extent that waivers are granted, the subject systems “would be required to continue to operate its legacy EAS equipment”.⁶ In that the Company takes its responsibilities to comply with the Commission’s rules seriously, including participation in the CAP-EAS reporting when logistically possible, Company commits to continuing to operate its legacy EAS equipment during the duration of the requested waiver. Company will continue to determine whether broadband Internet access has become physically available at the transmitter site. If broadband Internet access remains physically unavailable, Company will request a six-month extension of the waiver. At the time broadband Internet becomes available, Company will alert the Commission that it plans to come into full compliance with the CAP Rules.

⁶ *EAS Fifth Report & Order* at ¶152

IV. CONCLUSION

Given the physical unavailability of broadband Internet access at the Company's transmitter site, Company submits that it would not serve the public interest for the Commission to enforce CAP rules when the physical predicate for compliance with those rules is not present. As such, Company respectfully requests a waiver for the CAP Rules with respect to Company until such time that broadband Internet becomes physically available at the Company's transmitter site.

Respectfully submitted

By: _____

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June 26, 2012

**Before the
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DECLARATION OF TIFFANY M. POWELL

I, Tiffany M. Powell, managing partner of KJAY, LLC, hereby certify that factual statements as to the KJAY facility, made in the foregoing "Petition for Temporary Waiver," are from personal knowledge and are sworn to under the penalties for perjury provided in the laws of the United States.



Tiffany M. Powell
Managing partner - KJAY, LLC