



A Professional Limited Liability Company

307 North Michigan Avenue, Suite 1020
Chicago, Illinois 60601
Telephone: 312-372-3930
Facsimile: 312-372-3939

Washington, D.C.
1333 New Hampshire Ave, NW, Fl 2
Washington, DC 20036

St. Louis
1714 Deer Tracks Trail, Ste 215
St. Louis, MO 63131

Kansas City
302 S. Platte Clay Way, Suite 101
Kearney, MO 64060

Scott C. Friedman
Admitted in Illinois and Wisconsin

June 28, 2012

David S. Turetsky
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: James Cable, LLC (“James Cable”); Request for Temporary Waiver of 47 C.F.R. § 11.56; EB Docket No. 04-296

Dear Mr. Turetsky:

On behalf of James Cable, pursuant to 47 C.F.R. § 11.52(d)(4), we submit this request for a waiver of the Common Alerting Protocol (“CAP”) compliance deadline in 47 C.F.R. § 11.56(a). James Cable requests a six-month waiver for five small cable systems.

Three of the systems (the “Systems”) lack physical access to broadband Internet service. Accordingly, James Cable is entitled to a presumption in favor of a waiver.¹ In addition, because James Cable does not expect the circumstances to change at the expiration of the waiver’s initial six-month period, we request that the Commission grant the waiver request for an additional six-month term. James Cable will monitor the marketplace for the availability of broadband Internet service, and will come into full compliance when it becomes available.²

For the other two systems (the “Financial Hardship Systems”), totaling 48 subscribers, James Cable seeks a six-month financial hardship waiver of the CAP-compliance deadline. James Cable will continue to operate the systems, with standard EAS equipment installed, provided that the Commission grants this waiver request. Alternatively, James Cable will have to shut down the systems.

We organize this request as follows:

- James Cable company and system background
- Justification and authority supporting the waiver request
- Availability of EAS information if waiver request is granted
- Conclusion and requested relief

We also attach the declaration of Gil Nichols, James Cable’s Chief Operating Officer, as Exhibit A.

¹ *In the Matter of Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642, ¶ 152 (rel. Jan. 10, 2012) (“*EAS Fifth Report and Order*”).

² See Declaration of Gil Nichols, attached as *Exhibit A* (“*Nichols Declaration*”).

I. James Cable company and system background

A. The company

James Cable is organized as a Delaware limited liability company with its principal office in Braintree, MA. James Cable's business consists of owning and operating 49 cable systems with 23 headends in Colorado, Florida, Georgia, Louisiana, Oklahoma, Tennessee, Texas, and Wyoming. Most of these systems serve small, rural communities. Altogether, the 23 headends and 49 systems currently serve about 39,000 basic subscribers, with 16 headends each serving fewer than 1,000 subscribers. This includes the Systems, as detailed below.

While preparing for the EAS CAP compliance deadline, James Cable determined that the Systems listed below do not have access to the broadband Internet connectivity necessary for each headend to receive CAP-formatted emergency alert messages.³ Excluding the Financial Hardship Systems, James Cable's other 18 headends, encompassing 44 cable systems, are CAP-compliant.⁴

B. The systems

James Cable seeks a six-month waiver of the CAP-compliance deadline for the following three systems that lack broadband Internet access:

Name of System	PSID	CUIDs	Number of Subscribers
Orange Lake	005358	FL0793	161
Hawthorne	006835	FL0440	75
Huntington	005270	TX1410	67

In addition, it is not financially feasible for James Cable to install CAP-compliant equipment in these two systems:

Name of System	PSID	CUIDs	Number of Subscribers
Hanna	008481	WY0083	36
Encampment/Riverside	001497	WY0141, WY0124	12

II. Justification and authority supporting the waivers

A. Requested waivers and justification

James Cable requests a six-month waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) for two reasons. First, James Cable seeks a waiver because the Systems lack physical access to broadband Internet service, necessary for the Systems to receive CAP-formatted emergency alert messages. For these Systems, James Cable further requests an additional six-month waiver.⁵ James Cable seeks this additional six-month waiver because it does not expect

³ *Nichols Declaration*, ¶ 2.

⁴ *Id.*, ¶ 7.

⁵ *EAS Fifth Report and Order*, ¶ 152 (“[W]e believe that any waiver based on the physical unavailability of broadband Internet access likely would not exceed six months, with the option of renewal if circumstances have not changed.”).

circumstances to change, especially since the Systems are remote and unlikely to obtain broadband Internet access in the foreseeable future.

Second, James Cable seeks a waiver for the Financial Hardship Systems. It is not financially feasible for James Cable to install CAP-compliant equipment in these systems.

B. Commission authority supporting the waivers

In the *EAS Fifth Report and Order*, the Commission held that “the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”⁶ The Commission created this presumption in an effort to avoid EAS Participants having to purchase CAP-compliant equipment that could not be utilized due to lack of access to CAP-formatted alerts transmitted over the Internet.⁷ James Cable is entitled to this presumption in favor of a waiver established because broadband Internet services are physically unavailable at the Systems’ headends.⁸

Moreover, the Commission may waive its rules for good cause shown.⁹ Here, grant of the waiver will serve the public interest. For the Systems, requiring James Cable to purchase and install CAP-compliant equipment that it cannot use would be economically wasteful. In the *EAS Fifth Report and Order*, the Commission acknowledged that there are costs associated with upgrading and installing the equipment necessary for CAP compliance and crafted its rules to avoid, where possible, any unnecessary and unjustified costs associated with CAP compliance.¹⁰ The Commission has also granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.¹¹ Moreover, granting this waiver as to the Financial Hardship Systems will avert the need to shut down those systems, which provide service to the remote communities of Hanna and Encampment/Riverside, Wyoming.

⁶ *Id.* (“Because it is important that any of our regulatory requirements, particularly where costs are involved, provide the benefits for which they are designed, we do not believe that it would be appropriate to require EAS Participants to purchase and install equipment that they could not use. Accordingly, we conclude that the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”).

⁷ *Id.*

⁸ See *Nichols Declaration*, ¶ 2.

⁹ 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.”); See *WAIT Radio v. FCC*, 4 18 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) (The Commission may exercise its waiver authority where grant of the waiver does not undermine the policy served by the rule, and where particular facts make strict compliance inconsistent with the public interest.).

¹⁰ *EAS Fifth Report and Order*, ¶ 72 (allowing the use of intermediary devices because “imposition of the costs associated with the purchase of replacement EAS equipment is unnecessary and unjustified”).

¹¹ *In the Matter of Mediacom Communications Corporation; Operator of Cable Systems in the States of: Alabama, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri and Wisconsin; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, File No. EB-02-TS-617, 18 FCC Rcd 7656, ¶¶ 3-4 (rel. April 21, 2003) (granting a 12-month waiver of the October 1, 2002 EAS implementation deadline because requiring strict compliance would result in economic waste).

Accordingly, granting James Cable waiver request is consistent with Commission precedent.

III. Availability of EAS information if waiver request is granted

James Cable will continue to operate its legacy EAS equipment in the Systems, and will monitor the marketplace for the availability of broadband Internet service at the Systems.¹² James Cable's cable systems not subject to this waiver request will be fully compliant with the EAS CAP requirements set forth in the *EAS Fifth Report and Order* by June 30, 2012.¹³

IV. Conclusion and requested relief

As set forth above, James Cable requests a waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) for three systems lack physical access to broadband Internet service. Moreover, James Cable requests a waiver for two systems where it is not financially feasible for James Cable to install CAP-compliant equipment. For these reasons, James Cable requests that the Commission waive its CAP-compliance deadline as described above.

Sincerely,



Scott C. Friedman

Cinnamon Mueller
307 N. Michigan Avenue, Suite 1020
Chicago, Illinois 60601
(312) 372-3930 (voice)
(312) 372-3939 (fax)

Attorneys for James Cable, LLC

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¹² *Nichols Declaration*, ¶¶ 3-4.

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Name of System	PSID	CUIDs	Number of Subscribers
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Moreover, the Commission may waive its rules for good cause shown.⁹ Here, grant of the waiver will serve the public interest. For the Systems, requiring James Cable to purchase and install CAP-compliant equipment that it cannot use would be economically wasteful. In the *EAS Fifth Report and Order*, the Commission acknowledged that there are costs associated with upgrading and installing the equipment necessary for CAP compliance and crafted its rules to avoid, where possible, any unnecessary and unjustified costs associated with CAP compliance.¹⁰ The Commission has also granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.¹¹ Moreover, granting this waiver as to the Financial Hardship Systems will avert the need to shut down those systems, which provide service to the remote communities of Hanna and Encampment/Riverside, Wyoming.

⁶ *Id.* (“Because it is important that any of our regulatory requirements, particularly where costs are involved, provide the benefits for which they are designed, we do not believe that it would be appropriate to require EAS Participants to purchase and install equipment that they could not use. Accordingly, we conclude that the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”).

⁷ *Id.*

⁸ See *Nichols Declaration*, ¶ 2.

⁹ 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.”); See *WAIT Radio v. FCC*, 4 18 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) (The Commission may exercise its waiver authority where grant of the waiver does not undermine the policy served by the rule, and where particular facts make strict compliance inconsistent with the public interest.).

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EXHIBIT A

DECLARATION OF GIL NICHOLS

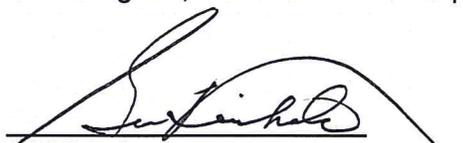
1. My name is Gil Nichols and I am Chief Operating Officer for James Cable, LLC ("James Cable").
2. James Cable does not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following systems:

Name of System	PSID	CUIDs	Number of Subscribers
Orange Lake	005358	FL0793	161
Hawthorne	006835	FL0440	75
Huntington	005270	TX1410	67

3. James Cable will continue to operate its legacy EAS equipment in the Systems.
4. James Cable will monitor the marketplace for the availability of broadband Internet service at the Systems' headends and will come into full compliance when it becomes available.
5. It is not financially feasible for James Cable to install CAP-compliant equipment in the following two systems.

Name of System	PSID	CUIDs	Number of Subscribers
Hanna	008481	WY0083	36
Encampment/Riverside	001497	WY0141, WY0124	12

6. Unless the Commission grants this "Request for Temporary Waiver of 47 C.F.R. § 11.56" (the "Waiver Request"), James Cable will be forced to shut down the Hanna and Encampment/Riverside systems.
7. James Cable's 18 other headends, encompassing 44 cable systems, have CAP-compliant equipment installed.
8. I have read the foregoing Waiver Request and I am familiar with its contents.
9. I declare under penalty of perjury that the facts contained herein and within the foregoing Waiver Request are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Waiver Request 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.



Gil Nichols
Chief Operating Officer
James Cable, LLC

June 27, 2012