

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

In the Matter of:	)	
	)	
RB3, LLC and Arklaoktex, LLC	)	
	)	
Petition for a Limited Waiver of the CAP	)	EB Docket No. 04-296
Compliance Obligations Contained in Part 11 of	)	
the Commission's Rules	)	
	)	
To: Chief, Public Safety and Homeland	)	
Security Bureau	)	

**PETITION FOR A LIMITED WAIVER OF THE  
CAP COMPLIANCE OBLIGATIONS**

**I. INTRODUCTION AND SUMMARY**

On behalf of RB3, LLC and Arklaoktex, LLC, d/b/a Reach Broadband (collectively, "Reach Broadband), pursuant to 47 C.F.R. §§ 1.3 and 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). Reach Broadband requests a six-month waiver for 29 small cable systems.

We organize this request as follows:

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

Additionally, we attach the declaration of Tom Semptimphelter, Reach Broadband's President and Chief Executive Officer, as Exhibit A, list the Reach Broadband systems in Exhibit B, and include a copy of the company's CAP-compliant equipment purchase order as Exhibit C.

## I. Reach Broadband company and system background

Reach Broadband owns and operates 29 small, remote cable systems in New Mexico, Oklahoma, and Texas. Altogether, the company serves 5,197 subscribers. All but three of the systems serve fewer than 500 subscribers.

Reach Broadband seeks waivers for all of its systems. The reason for the waivers Reach Broadband seeks fall into four categories:

- Eight of Reach Broadband's systems lack physical access to broadband Internet service.<sup>1</sup>
- Reach Broadband has ordered CAP-compliant equipment for three systems, but does not anticipate receiving the equipment until August at the earliest.<sup>2</sup>
- Due to increasing costs, particularly programming, and declining revenue, particularly from the system's remote locations, Reach Broadband has decided that it must shut down two of its 29 cable systems.<sup>3</sup>
- It is not financially viable for Reach Broadband to install CAP-compliant EAS equipment in the remaining Reach Broadband systems, serving between 23 and 463 subscribers.<sup>4</sup> As a result, if the Commission does not grant this waiver request, Reach Broadband may have to consider shutting down some or all of these systems.

## II. Justification and authority supporting the waivers

### A. Requested waivers and justification

As we outline below, Reach Broadband requests a limited waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) based on four separate fact scenarios. The specific systems to which each waiver category applies are identified in Exhibit B.

**No Physical Access to Broadband Internet Service.** First, Reach Broadband seeks a six-month waiver for the systems identified in Exhibit A because the systems lack the physical access to broadband Internet service necessary for the Systems to

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<sup>1</sup> See *Exhibit A*, Declaration of Tom Semptimphelter, ¶ 2 ("*Semptimphelter Declaration*").

<sup>2</sup> *Semptimphelter Declaration*, ¶¶ 9-10.

<sup>3</sup> *Id.*, ¶ 7.

<sup>4</sup> *Id.*, ¶¶ 4-6.

receive CAP-formatted emergency alert messages. Accordingly, Reach Broadband is entitled to a presumption in favor of a waiver.<sup>5</sup> For these Systems, Reach Broadband further requests an additional six-month waiver because it does not expect circumstances to change, especially since the Systems are remote and unlikely to obtain broadband Internet access in the foreseeable future.<sup>6</sup> Reach Broadband will monitor the marketplace for the availability of broadband Internet service.<sup>7</sup>

**Equipment Delay.** Second, Reach Broadband seeks a 120-day waiver for three of its systems identified in Exhibit A because the CAP-compliant equipment is back-ordered and cannot be delivered for at least another month to six weeks – likely August at the earliest. The National Cable Television Cooperative has informed Reach Broadband that the delay is due to the large number of EAS participants ordering equipment for delivery at roughly the same time. Reach Broadband cannot comply with the CAP requirement for these systems until it receives the required equipment. Reach Broadband anticipates that if all of the ordered equipment is delivered within the next six weeks, it can complete the installation and testing necessary to bring the Systems into compliance within eight weeks.

**System Shutdowns.** Third, Reach Broadband has decided to shut down its Matador and Silverton, Texas systems by December 31, 2012, serving 21 and 37 subscribers, respectively.<sup>8</sup> To accomplish this in an orderly and efficient manner, with the least possible disruption, and to satisfy the Commission’s notice requirements,

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<sup>5</sup> *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*”).

<sup>6</sup> *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.”).

<sup>7</sup> *Semptiphelter Declaration*, ¶ 3.

<sup>8</sup> *Id.*, ¶ 7.

Reach Broadband has developed a system shutdown implementation plan that proposes shutting down these systems before December 31, 2012.

**Financial Hardship.** Finally, Reach Broadband seeks a financial hardship waiver for the remaining systems. These systems are not currently profitable, and it is not financially feasible for Reach Broadband to install CAP-compliant equipment in these systems.<sup>9</sup> Reach Broadband will continue to operate the systems, with standard EAS equipment installed, provided that the Commission grants this waiver request.

**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.”<sup>10</sup> 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.<sup>11</sup> Reach Broadband is entitled to this presumption in favor of a waiver for the systems identified in Exhibit B for which Internet services are physically unavailable at the Systems’ headends.<sup>12</sup>

Moreover, the Commission may waive its rules for good cause shown.<sup>13</sup> Here, grant of the waiver will serve the public interest. First, with regard to the waiver sought

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<sup>9</sup> *Id.*, ¶¶ 4-6.

<sup>10</sup> *EAS Fifth Report and Order*, ¶ 152 (“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.”).

<sup>11</sup> *Id.*

<sup>12</sup> See *Semptimphelter Declaration*, ¶ 2.

<sup>13</sup> 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

due to equipment delay, the Commission has previously found that a delay in the delivery of equipment required for EAS compliance supports waiver of an EAS compliance requirement.<sup>14</sup> Second, with regard to the systems that Reach Broadband plans to shut down, requiring the company to purchase and install CAP-compliant equipment that it cannot use – or will not use in the shut down systems – 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.<sup>15</sup> The Commission has also granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.<sup>16</sup> Finally, with regard to the requested hardship waiver, granting this waiver will allow Reach Broadband to continue operating its systems, which provide service to remote communities of New Mexico, Oklahoma, and Texas.

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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.).

<sup>14</sup> *In the Matter of Winnebago Cooperative Telephone Association; Operator of Cable System in: Thompson, Iowa; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-664, 18 FCC Rcd 14332 (2003) (granting six month waiver of EAS rules where equipment delivery delayed); *In the Matter of D&P Cable, Inc.; Operator of Cable System in: Petersburg, Michigan; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-673, 18 FCC Rcd 14336 (2003) (granting six month waiver of EAS rules where equipment delivery delayed); *In the Matter of Coleman County Telephone Cooperative, Inc.; Operator of Cable System in: Santa Anna, Texas; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-696, 18 FCC Rcd. 12656 (2003) (granting six month waiver of EAS rules where equipment delivery delayed).

<sup>15</sup> *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”).

<sup>16</sup> *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 Reach Broadband waiver request is consistent with Commission precedent.

**III. Availability of EAS information if waiver request is granted**

Reach Broadband will operate legacy EAS equipment in the systems. For those without broadband Internet access, Reach Broadband will monitor the marketplace for the availability of broadband Internet service.<sup>17</sup>

**IV. Conclusion and requested relief**

As set forth above, Reach Broadband requests a waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a). Moreover, Reach Broadband requests that the Commission grant an additional six-month waiver for the eight systems without a physical broadband connection. For these reasons, Reach Broadband requests that the Commission waive its CAP-compliance deadline as described above.

Sincerely,



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Scott C. Friedman

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

Attorneys for RB3, LLC

June 28, 2012

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<sup>17</sup> *Semptiphelter Declaration*, ¶ 3.

**EXHIBIT A**

**DECLARATION OF TOM SEMPTIMPHELTER**

1. My name is Tom Semptimpfelter and I am President and Chief Executive Officer of RB3, LLC and Arklaoktex, LLC, d/b/a Reach Broadband (collectively, "Reach Broadband").
2. Reach Broadband does not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following systems:

<b>System Name</b>	<b>FCC CUIDs</b>	<b>PSID</b>	<b>Number of Subscribers</b>
<b>Coleman</b>	TX0042, TX1641	003442	160
<b>Eden</b>	TX0304	000038	105
<b>Erick</b>	OK0024	007452	61
<b>Goliad</b>	TX0390	006551	130
<b>Hart</b>	TX0916	001460	23
<b>Menard</b>	TX0163	000037	118
<b>Santa Rosa</b>	NM0099	005772	144
<b>Three Rivers</b>	TX0493	000887	138

3. Reach Broadband will monitor the marketplace for the availability of broadband Internet service at these systems' headends.
4. It is not financially feasible for Reach Broadband to install CAP-compliant equipment in the following systems:

<b>System Name</b>	<b>FCC CUIDs</b>	<b>PSID</b>	<b>Number of Subscribers</b>
Clifton	TX0873	008515	211
Comanche	TX0156	006418	81
Crosbyton	TX0448	008596	117
DeLeon	TX0001	002421	254
Devine	TX1309, TX1310, TX1311	010559	152
Gorman	TX0845	001342	115
Lockney	TX1315	011507	131
Mart	TX0872	008514	128
Mason	TX0306, TX0431	000486	169
Memphis	TX0023, TX1123	001922	139
Muleshoe	TX0102, TX0823, TX0832, TX1345	004371	463
Pleasanton	TX0668, TX1383	004752	258
Ralls	TX0449	000512	103
Valley Mills	TX1151	000689	51
West	TX0871	008513	208
Whitney	TX1025, TX1024	008601	67

EXHIBIT A CONT.

**DECLARATION OF TOM SEMPTIMPHELTER**

5. Reach Broadband has experienced negative cash flow from its system operations over the past three years.
6. Unless the Commission grants this "Request for Temporary Waiver of 47 C.F.R. § 11.56" (the "Waiver Request"), Reach Broadband will be forced to consider shutting down some or all of the systems listed above.
7. Reach Broadband will shut down the following systems by December 31, 2012

System Name	FCC CUIDs	PSID	Number of Subscribers
Matador	TX0144	007728	21
Silverton	TX0127	002697	37

8. For the systems listed in paragraphs two, four, and seven, Reach Broadband will continue to operate its legacy EAS equipment in the systems.
9. Reach Broadband has ordered CAP-Compliant equipment for the following systems:

System Name	FCC CUIDs	PSID	Number of Subscribers
Eufaula	OK0058, OK0084, OK0616, OK0626	007482	527
Hondo	TX0605, TX1308, TX1384	008841	570
Kenedy	TX0334, TX0572, TX2230	007762	516

10. Because the CAP-compliant equipment is back-ordered, Reach Broadband does not expect to receive the equipment until August at the earliest.
11. I have read the foregoing Waiver Request and I am familiar with its contents.
12. 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.

  
Tom Semptimpfelter  
President and Chief Executive Officer  
RB3, LLC

June 28, 2012

**EXHIBIT B****REACH BROADBAND SYSTEMS**

<b>System Name</b>	<b>FCC CUIDs</b>	<b>PSID</b>	<b>Number of Subscribers</b>	<b>Reason for Waiver</b>
<b><i>Coleman</i></b>	TX0042, TX1641	003442	160	Broadband Internet access unavailable
<b><i>Eden</i></b>	TX0304	000038	105	Broadband Internet access unavailable
<b><i>Erick</i></b>	OK0024	007452	61	Broadband Internet access unavailable
<b><i>Goliad</i></b>	TX0390	006551	130	Broadband Internet access unavailable
<b><i>Hart</i></b>	TX0916	001460	23	Broadband Internet access unavailable
<b><i>Menard</i></b>	TX0163	000037	118	Broadband Internet access unavailable
<b><i>Santa Rosa</i></b>	NM0099	005772	144	Broadband Internet access unavailable
<b><i>Three Rivers</i></b>	TX0493	000887	138	Broadband Internet access unavailable
<b><i>Eufaula</i></b>	OK0058, OK0084, OK0616, OK0626	007482	527	EAS CAP-Compliant equipment on order
<b><i>Hondo</i></b>	TX0605, TX1308, TX1384	008841	570	EAS CAP-Compliant equipment on order
<b><i>Kenedy</i></b>	TX0334, TX0572, TX2230	007762	516	EAS CAP-Compliant equipment on order
<b><i>Clifton</i></b>	TX0873	008515	211	Financial Hardship
<b><i>Comanche</i></b>	TX0156	006418	81	Financial Hardship
<b><i>Crosbyton</i></b>	TX0448	008596	117	Financial Hardship
<b><i>DeLeon</i></b>	TX0001	002421	254	Financial Hardship
<b><i>Devine</i></b>	TX1309, TX1310, TX1311	010559	152	Financial Hardship
<b><i>Gorman</i></b>	TX0845	001342	115	Financial Hardship
<b><i>Lockney</i></b>	TX1315	011507	131	Financial Hardship
<b><i>Mart</i></b>	TX0872	008514	128	Financial Hardship
<b><i>Mason</i></b>	TX0306, TX0431	000486	169	Financial Hardship
<b><i>Memphis</i></b>	TX0023, TX1123	001922	139	Financial Hardship
<b><i>Muleshoe</i></b>	TX0102, TX0823, TX0832, TX1345	004371	463	Financial Hardship
<b><i>Pleasanton</i></b>	TX0668, TX1383	004752	258	Financial Hardship
<b><i>Ralls</i></b>	TX0449	000512	103	Financial Hardship
<b><i>Valley Mills</i></b>	TX1151	000689	51	Financial Hardship
<b><i>West</i></b>	TX0871	008513	208	Financial Hardship
<b><i>Whitney</i></b>	TX1025, TX1024	008601	67	Financial Hardship
<b><i>Matador</i></b>	TX0144	007728	21	System scheduled for 2012 shutdown
<b><i>Silverton</i></b>	TX0127	002697	37	System scheduled for 2012 shutdown

**EXHIBIT C**

**CAP-COMPLIANT EQUIPMENT PURCHASE ORDER**



**NATIONAL  
CABLE TELEVISION  
COOPERATIVE, INC.**

11200 Corporate Ave. Lenexa, KS 66219 (913) 599-5900

<b>REVISED PO</b>
PO233201 - 2012-062212EASCA
6/25/2012

<b>Supplier</b>	<b>Contact</b>	<b>Ship To</b>
Monroe Electronics, Inc. 100 HOUSEL AVE PO BOX 535 LYNDONVILLE NY 14098 Tel: (585)-765-2254 Fax: (585)-765-9330	MONROE ELECTRONICS INC PATTY CARPENTER 100 HOUSEL AVE LYNDONVILLE NY 14098 UNITED STATES Tel: (585)-765-2254 Fax: (585)-765-9330	TSC020 TS COMMUNICATIONS INC KERRY STRATTON 2701 AVENUE E HONDO TX 78861 UNITED STATES Tel: (806)-773-6183 Fax: (903)-251-1700 Email: kstratton@reachbroadband.net

<b>Account</b>	<b>Terms</b>	<b>Sales Order#</b>	<b>Purchase Rep</b>	<b>Ship Date</b>
6MON500	Hardware Discount - 1% 10 Net 30	259286	Heather Stafford	6/25/2012
<b>Quotation</b>	<b>FOB</b>		<b>Ship VIA</b>	<b>Page</b> <b>Printed</b>
PQ-233172			Drop Ship	1      6/26/2012 3:45:24PM

I Model / Description	Ordered	UM	Price	Amount
1 R189SE-3-DEC-NCTC-MON One-Net Decoder only, Includes Software	1	EA	\$2,603.00000	\$2,603.00
2 CAP-PLUS-MON CAP Software Option for R189 One-Net EAS	2	EA	\$868.00000	\$1,736.00
3 Please be sure to email dacosta@reachbroadband.net with all information pertaining to this order.				

Prepay Bill Freight & Ship Best Way.  SUPPLIER - DO NOT PROCESS PURCHASE ORDER IF THERE ARE ANY DISCREPANCIES. NOTIFY NCTC IMMEDIATELY AND WAIT FOR REVISED PURCHASE ORDER.	<b>Payment Details</b>	<table> <tr><td><b>Taxable</b></td><td style="text-align: right;">\$0.00</td></tr> <tr><td><b>Total Tax</b></td><td style="text-align: right;">\$0.00</td></tr> <tr><td><b>Exempt</b></td><td style="text-align: right;">\$4,339.00</td></tr> <tr><td><b>Total</b></td><td style="text-align: right;">\$4,339.00</td></tr> <tr><td><b>Paid</b></td><td style="text-align: right;">\$0.00</td></tr> <tr><td><b>Balance</b></td><td style="text-align: right;">\$4,339.00</td></tr> <tr><td><b>Dep. Avail</b></td><td style="text-align: right;">\$0.00</td></tr> </table>	<b>Taxable</b>	\$0.00	<b>Total Tax</b>	\$0.00	<b>Exempt</b>	\$4,339.00	<b>Total</b>	\$4,339.00	<b>Paid</b>	\$0.00	<b>Balance</b>	\$4,339.00	<b>Dep. Avail</b>	\$0.00
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<b>Total Tax</b>	\$0.00															
<b>Exempt</b>	\$4,339.00															
<b>Total</b>	\$4,339.00															
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<b>Balance</b>	\$4,339.00															
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<b>Thank You</b>																