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**James N. Moskowitz**  
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June 29, 2012

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

**Re: Telecommunications Management, LLC and Avenue Broadband Communications, Inc. (collectively, "New Wave"); Request for Temporary Waiver of 47 C.F.R. § 11.56; EB Docket No. 04-296**

Dear Mr. Turetsky:

On behalf of Telecommunications Management, LLC and Avenue Broadband Communications, Inc. ("New Wave"), 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). New Wave requests a six-month waiver for 18 small cable systems that lack physical access to broadband Internet service. Accordingly, New Wave is entitled to a presumption in favor of a waiver for these systems.<sup>1</sup> New Wave requests that the Commission grant the waiver request for an additional six-month term because it does not expect the circumstances to change at the expiration of the waiver's initial six-month period. New Wave will monitor the marketplace for the availability of broadband Internet service at the Systems, and will come into full compliance when it becomes available.<sup>2</sup>

In addition, New Wave seeks a four-month waiver for five systems because of an unexpected delay in the delivery of equipment necessary to upgrade them. Finally, New Wave seeks a waiver, through March 31, 2013, of the CAP-compliance deadline for its Steele, MO system. New Wave plans to merge its Steele system into its fully CAP-compliant Dexter, MO system by the first quarter of 2013.

We organize this request as follows:

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

<sup>1</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>2</sup> See Declaration of Jim Gleason, attached as *Exhibit A* ("Gleason Declaration").

**I. New Wave company and system background**

**A. The company**

New Wave Communications is the business name for Telecommunications Management, LLC and Avenue Broadband Communications, Inc. New Wave operates 28 cable headends in six states, with its principal office in Sikeston, Missouri. Most of the communities served by these headends provide services to small, rural communities. New Wave takes its EAS responsibilities seriously and has exercised due diligence in undertaking the steps necessary to ensure that it will be in full compliance with the EAS CAP requirement for the systems under its control. All of New Wave systems are compliant with the current EAS rules, and except for the systems listed in this Petition for which waivers are sought, all New Wave systems are CAP-complaint.

**B. The systems without access to broadband Internet connectivity**

While preparing for the EAS CAP compliance deadline, New Wave 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.<sup>3</sup> New Wave seeks a CAP-compliance waiver for these systems.

<b>Name of System</b>	<b>Communities Served</b>	<b>PSID</b>	<b>CUIDs</b>	<b>Subscribers</b>
Avilla, IN	Avilla	010654	IN0512	121
Cairo, IL	Cairo	010975	IL0941	284
Chesterfield, SC	Chesterfield, Ruby	010799	SC0278, SC0619	229
Convoy, OH	Convoy	010842	OH1310	103
Covington, IN	Covington	004340	IN0013	391
Evansville, IL	Evansville, Prairie Du Rocher, Ruma	012107	IL1264, IL1265, IL1266	69
Flora, IN	Bringhurst, Burlington, Camden, Carroll County, Clinton, Delphi, Flora, Pittsburg, Rockfield	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	1,191
Fowler, IN	Fowler	003259	IN0037	218
Monroeville, IN	Monroeville	010655	IN0513	125
Monrovia, IN	Monrovia, Morgan County, Paragon	014078	IN1083, IN0909, IN1183	518
Montpelier, IN	Montpelier	004247	IN0285	165
Morgantown, IN	Morgantown	012414	IN0857	64
Morgan County, IN	Camby, Centerton, Morgan County, Mooresville	011644	IN0574, IN1074, IN1075, IN 1076	212
Pageland, SC	Pageland, Chesterfield County	010798	SC0257, SC0385	509
Payne, OH	Payne	010846	OH1311	151
Tamms, IL	Tamms	012106	IL1267	29
Veedersburg, IN	Veedersburg	005581	IN0283	199
Wadesville, IN	New Harmony, Posey County, Vanderburgh County	010258	IN0527, IN0528, 9N0529	78

<sup>3</sup> Gleason Declaration, ¶ 2.

**C. Systems for which equipment is on back-order**

New Wave recently learned that the equipment necessary for several headends in Illinois and Arkansas is back-ordered and cannot be delivered for at least another month to six weeks. This delay is presumably due to the large number of other EAS participants ordering equipment for delivery at roughly the same time as they prepare to meet the Commission's CAP compliance deadline. New Wave has ordered this equipment but cannot comply with the CAP requirement for these systems until it is received. New Wave anticipates that if all of the ordered equipment is delivered within the next six weeks, it will be able to complete the installation and testing necessary to bring the Systems into compliance within eight weeks.

<b>Name of System</b>	<b>Communities Served</b>	<b>PSID</b>	<b>CUIDs</b>
Ashdown, AR	Ashdown, Little River County	006592	AR0109, AR0679
Brazil	BRAZIL, CARBON, CLAY (NORTH CENTRAL), HARMONY, KNIGHTSVILLE, SEELYVILLE, STAUNTON, TERRE HAUTE, VIGO (N)	002817	IN0096, IN1044, IN0098, IN1045, IN0100, IN1046, IN0099, IN1049, IN1050
Clinton, IN	CLINTON, FAIRVIEW PARK, PARKE, ROSEDALE, UNIVERSAL, VERMILLION, VIGO, VIGO (N)	021382	IN0012, IN0175, IN0559, IN1022, IN0431, IN1133, IN0368, IN0174, IN0558, IN1024
Westville, IL	BELGIUM, CATLIN, CENTRAL PARK, DANVILLE, EDGAR, GEORGETOWN, HEGELER, HOME GARDENS, HOOPESTON, MILFORD, PARIS, ROSSVILLE, TILTON, VERMILION, WELLINGTON, WESTVILLE	002860	IL0064, IL0065, IL0066, IL0092, IL0067, IL1720, IL0068, IL0069, IL0093, IL0145, IL0034, IL0196, IL0013, IL0194, IL0070, IL1721, IL1722, IL0195, IL0071, IL0072
Coatesville, IL	AMO, CLAYTON, STILESVILLE, COATESVILLE, HENDRICKS (SOUTHERN)	010263	IN0572, IN0573, IN0571, IN0560, IN0575

**D. Systems that are being merged**

New Wave plans to collapse its Steele, MO system (Steele, MO0047), into its fully CAP-compliant Dexter, MO system (serving Pemiscot, MO0138) by the first quarter of 2013. New Wave seeks a six-month waiver of the CAP-compliance deadline for its Steele system to cover the period of time before the merger of these two systems is completed. In the interim, New Wave will continue to operate the system, with standard EAS equipment installed, provided that the Bureau grants this waiver request.

## II. Justification and authority supporting the waivers

### A. The systems without access to broadband Internet connectivity

New Wave requests a six-month waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) for the systems listed in section I.B above. New Wave seeks this waiver because the systems lack physical access to broadband Internet service, necessary for the systems to receive CAP-formatted emergency alert messages. New Wave further requests an additional six-month waiver for these same systems.<sup>4</sup> New Wave seeks this 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. New Wave will monitor the marketplace for the availability of broadband Internet service, and will come into full compliance when it becomes available.

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>5</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>6</sup> New Wave is entitled to this presumption in favor of a waiver because broadband Internet services are physically unavailable at the Systems’ headends.<sup>7</sup>

### B. Systems for which equipment is on back-order

The Commission may waive its rules for good cause shown<sup>8</sup> and where grant of the waiver does not undermine the policy served by the rule.<sup>9</sup> The Commission has previously found that a delay in the delivery of equipment required for EAS compliance is good cause supporting a temporary waiver of an EAS compliance requirement.<sup>10</sup> Granting the waiver requested by New Wave is consistent with this Commission precedent.

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<sup>4</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>5</sup> *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.”).

<sup>6</sup> *Id.*

<sup>7</sup> See *Gleason Declaration*, ¶ 2.

<sup>8</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.”).

<sup>9</sup> 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).

<sup>10</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-

New Wave has taken the steps necessary to ensure that it will be in full compliance with the EAS CAP requirement for the systems under its control. With regard to the systems listed in Section I.C above, New Wave has made a good-faith effort to comply with the Commission's CAP mandate, and would be in compliance had the equipment that it order been delivered in a timely manner prior to the compliance deadline. However, New Wave has learned that the equipment it needs for CAP compliance is back-ordered and will not be delivered before the June 30, 2012 deadline. New Wave does not know with certainty when the ordered equipment will be delivered but is hopeful that it will be delayed no more than one month to six weeks. Once the equipment is delivered, New Wave will be able to complete the installation and testing necessary to bring the Systems into compliance within approximately two weeks. New Wave requests a four-month waiver to avoid the need for seeking an extension in the event delivery is delayed longer than anticipated.

### C. Systems that are being merged

Finally, New Wave seeks a waiver for a system that is schedule to be merged with a CAP-compliant system in March, 2013. Granting this waiver will serve the public interest because it will avoid unnecessary waste. It will be economically wasteful to require New Wave to purchase and install CAP-compliant equipment that it cannot use, or in the case of its Steele, MO system, would not use after March 2013, at which time the equipment would simply be discarded. 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>11</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>12</sup> Granting New Wave's waiver request is consistent with these Commission precedents, which were aimed at avoiding unnecessary and unjustified costs associated with compliance with the EAS rules.

Granting New Wave's request will not undermine the Commission's policy goals of making the EAS system more flexible and robust, able to accommodate a wide array of modern digital communications media, and able to integrate EAS with other public alert and warning systems.<sup>13</sup>

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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>11</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>12</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).

<sup>13</sup> *In the Matter of Review of the Emergency Alert System, Fifth Report and Order*, 27 FCC Rcd 642, ¶ 2 (rel. Jan. 10, 2012) ("*EAS Fifth Report and Order*").

New Wave intends to merge these systems before the end of March 2013.<sup>14</sup> In the interim, the Steele, MO system will continue to receive and transmit EAS messages as before, and will carry broadcast channels that should be CAP compliant. As a result, the impact on consumers will be negligible and for a limited time.

### III. Conclusion and requested relief

As set forth above, New Wave requests a waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) for its systems that lack physical access to broadband Internet service and for which equipment has been ordered but cannot be delivered because it is on back-order. In addition, New Wave also requests a waiver through March 31, 2012 for its Steele, MO system, as New Wave will consolidate the Steele system into its CAP-compliant Dexter, MO system in the first quarter of 2013.

Respectfully submitted,



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June 29, 2012

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<sup>14</sup> See *Gleason Declaration*, ¶ 5.

**EXHIBIT A**

**DECLARATION OF JIM GLEASON**

1. My name is Jim Gleason and I am President and Chief Executive Officer for Telecommunications Management, LLC ("New Wave Communications").
2. New Wave Communications does not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following systems:

<b>Name of System</b>	<b>Communities Served</b>	<b>PSID</b>	<b>CUIDs</b>	<b>Subscribers</b>
Avilla, IN	Avilla	010654	IN0512	121
Cairo, IL	Cairo	010975	IL0941	284
Chesterfield, SC	Chesterfield, Ruby	010799	SC0278, SC0619	229
Convoy, OH	Convoy	010842	OH1310	103
Covington, IN	Covington	004340	IN0013	391
Evansville, IL	Evansville, Prairie Du Rocher, Ruma	012107	IL1264, IL1265, IL1266	69
Flora, IN	Bringinghurst, Burlington, Camden, Carroll County, Clinton, Delphi, Flora, Pittsburg, Rockfield	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	1191
Fowler, IN	Fowler	003259	IN0037	218
Monroeville, IN	Monroeville	010655	IN0513	125
Monrovia, IN	Monrovia, Morgan County, Paragon	014078	IN1083, IN0909, IN1183	518
Montpelier, IN	Montpelier	004247	IN0285	165
Morgantown, IN	Morgantown	012414	IN0857	64
Morgan County, IN	Camby, Centerton, Morgan County, Mooresville	011644	IN0574, IN1074, IN1075, IN 1076	212
Pageland, SC	Pageland, Chesterfield County	010798	SC0257, SC0385	509
Payne, OH	Payne	010846	OH1311	151
Tamms, IL	Tamms	012106	IL1267	29
Veedersburg, IN	Veedersburg	005581	IN0283	199
Wadesville, IN	New Harmony, Posey County, Vanderburgh County	010258	IN0527, IN0528, 9N0529	78

3. New Wave Communications 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.
4. The equipment for the following system has been ordered but is on back-order and will not be delivered in time for it to be installed and made operational for the following systems:

<b>Name of System</b>	<b>Communities Served</b>	<b>PSID</b>	<b>CUIDs</b>
Ashdown, AR	Ashdown, Little River County	006592	AR0109, AR0679
Brazil	BRAZIL, CARBON, CLAY (NORTH CENTRAL), HARMONY, KNIGHTSVILLE, SEELYVILLE, STAUNTON, TERRE HAUTE, VIGO	002817	IN0096, IN1044, IN0098, IN1045, IN0100, IN1046, IN0099, IN1049, IN1050

	(N)		
Clinton, IN	CLINTON, FAIRVIEW PARK, PARKE, ROSEDALE, UNIVERSAL, VERMILLION, VIGO, VIGO (N)	021382	IN0012, IN0175, IN0559, IN1022, IN0431, IN1133, IN0368, IN0174, IN0558, IN1024
Westville, IL	BELGIUM, CATLIN, CENTRAL PARK, DANVILLE, EDGAR, GEORGETOWN, HEGELER, HOME GARDENS, HOOPESTON, MILFORD, PARIS, ROSSVILLE, TILTON, VERMILION, WELLINGTON, WESTVILLE	002860	IL0064, IL0065, IL0066, IL0092, IL0067, IL1720, IL0068, IL0069, IL0093, IL0145, IL0034, IL0196, IL0013, IL0194, IL0070, IL1721, IL1722, IL0195, IL0071, IL0072
Coatesville, IL	AMO, CLAYTON, STILESVILLE, COATESVILLE, HENDRICKS (SOUTHERN)	010263	IN0572, IN0573, IN0571, IN0560, IN0575

5. New Wave Communications plans to collapse its Steele, MO system into its fully CAP-compliant Dexter, MO system by March 31, 2013.
6. New Wave Communications cable systems not subject to this waiver request will be CAP-compliant by June 30, 2012.
7. I have read the foregoing "Request for Temporary Waiver of 47 C.F.R. § 11.56" (the "Waiver Request") and I am familiar with its contents.
8. 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.

  
 Jim Gleason  
 President and Chief Executive Officer  
 Telecommunications Management, LLC

June 29, 2012.