

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

In the Matter of:)	
)	
Lakeview Cable, Inc.)	
)	
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 Lakeview Cable, Inc. ("Lakeview"), pursuant to Sections 1.3 and 11.52(d)(4) of the Commission's rules,¹ we submit this request for a waiver of the Common Alerting Protocol compliance deadline in 47 C.F.R. § 11.56(a). Lakeview requests temporary waivers for four small cable systems serving Cache/Indiahoma, Geronimo, Mountain Park, and Snyder, Oklahoma.

Lakeview seeks this waiver for two reasons. First, due to an unexpected delay in the delivery of equipment necessary for EAS CAP compliance, Lakeview will not receive CAP-compliant equipment for its Cache/Indiahoma headend until after the June 30, 2012 CAP-compliance deadline. Lakeview requests a four-month waiver for this system. Second, Lakeview plans to consolidate its Geronimo, Mountain Park, and Snyder systems into the Cache/Indiahoma headend within the next 12 months. Lakeview requests a 12-month waiver for the Geronimo, Mountain Park, and Snyder systems.

¹ 47 C.F.R. § 1.3 (providing for the waiver of the Commission's rules "for good cause shown"), § 11.52(d)(4) (indicating that where an EAS message source cannot be received a waiver of the CAP compliance rules may be obtained by written request to the Chief, Public Safety and Homeland Security Bureau).

We organize this Petition as follows:

- Background information on Lakeview
- Justification for the Requested Waiver
- Conclusion

We also attach the declaration of Mike Rowell, Lakeview's General Manager, as Exhibit A.

II. BACKGROUND

A. The company

Lakeview is a very small cable operator that provides video, high speed Internet, voice and data services to fewer than 1,000 residential and commercial customers over five cable networks in rural Oklahoma. Lakeview exercised diligence in making the arrangements necessary to ensure that all of its systems will be CAP compliant prior to the June 30, 2012 compliance deadline. Unfortunately, Lakeview had been informed by its equipment vendor that it cannot deliver the equipment necessary to makes its systems CAP compliant until August, at the earliest. Lakeview has been told by its equipment vendor that this is because the large number of other EAS participants ordering equipment for delivery at roughly the same time in order to meet the Commission's deadline has caused a temporary shortage of CAP equipment.

Moreover, Lakeview is currently working on interconnecting its Geronimo, Mountain Park, and Snyder systems into the Cache/Indiahoma headend. To accomplish these system interconnections in an orderly and efficient manner, with the least possible disruption to its customers and communities, Lakeview anticipates the interconnection to take 12 months to complete. Once this system interconnection is complete, Lakeview will be shutting down all but the Cache/Indiahoma headends.

B. The Systems

Name of System	PSID	CUIDs	Number of Subscribers
Cache/Indiahoma	007472	OK0412, OK0413, OK638	723
Geronimo	020704	OK0321	101
Mountain Park	013700	OK0472	45
Snyder	000422	OK0113	113

II. JUSTIFICATION FOR REQUESTED WAIVER

The Commission may waive its rules for good cause shown.² Moreover, 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.³ Good cause exists for granting Lakeview's request because granting the waiver will not undermine the policy served by the CAP compliance rules, while strict enforcement of the compliance deadline would result in unnecessary and unjustified economic waste.

A. Good cause exists for granting Lakeview's request

The Commission may waive its rules for good cause shown and where grant of the waiver does not undermine the policy served by the rule.⁴ The Commission has previously found good cause exists where a delivery of equipment required for EAS compliance is delayed.⁵ Accordingly, granting Lakeview's waiver request is consistent with Commission precedent.

² 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*, 418 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.).

³ See *WAIT Radio*, 418 F.2d at 1159.

⁴ *Id.*

⁵ *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

Lakeview takes its EAS responsibilities seriously and has taken the steps necessary to ensure that it will be in full compliance with the EAS CAP requirement for its systems. With regard to the Cache/Indianoma system, Lakeview has made a good-faith effort to comply with the Commission's CAP mandate, and would be in compliance if it were able to obtain the required equipment before the compliance deadline.

Lakeview has learned that the equipment it needs for CAP compliance will not be delivered before the June 30, 2012 deadline. Lakeview anticipates that CAP compliance for these systems will be delayed by no more six to eight weeks (allowing for time to install and test the equipment once it arrives).

B. Granting the waiver will not undermine the Commission's policy objectives

The Commission adopted the CAP-formatted alert requirement in its *EAS Fifth Report and Order* as a means of modernizing the Part 11 EAS rules.⁶ According to the Commission, the new CAP rules will make public alerts disseminated through the EAS more effective and informative.⁷ Granting Lakeview's temporary waiver will not undermine these public policy objectives. Lakeview's systems will continue to receive and transmit EAS messages as before. These systems will also continue to carry broadcast channels that should be CAP compliant. As a result, any impact on the local residents from the temporary waiver will be minimal and short-lived.

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).

⁶ *In the Matter of Review of the Emergency Alert System, Fifth Report and Order*, 27 FCC Rcd 642, ¶¶ 2-3 (rel. Jan. 10, 2012) ("*EAS Fifth Report and Order*").

⁷ *Id.*, ¶ 5.

In addition, because the systems are very small and remote, a short delay in bringing them into CAP compliance will have no impact on EAS outside their service footprint. Consequentially, granting the requested waiver will not undermine the Commission's larger goals of modernizing the EAS or making it function in a more effective or informative manner. The likelihood of any systemic impact is further reduced by the fact that the requested waiver is for a limited amount of time. Once Lakeview receives the required equipment, and finishes its planned interconnection, the Cache/Indiahoma, Geronimo, Mountain Park, and Snyder systems will be fully CAP compliant.

For these reasons, Lakeview requests a four-month waiver for the systems currently served by the Cache/Indiahoma headend.

C. Failure to grant a waiver to Lakeview will result in economic waste

Strict compliance with the new CAP compliance standards for systems that Lakeview intends to interconnect within a 12-month period will require Lakeview to incur upgrade expenses that will be unrecoverable with the systems being interconnected.⁸ 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.⁹ Granting Lakeview's waiver request is consistent with the Commission's efforts to avoid unnecessary and unjustified costs associated with CAP compliance.

⁸ *Id.*

⁹ *Id.*, ¶ 72 (allowing the use of intermediary devices because "imposition of the costs associated with the purchase of replacement EAS equipment is unnecessary and unjustified").

D. Commission precedent supports a waiver

In 2003, the Media Bureau granted an EAS waiver under almost identical facts. At that time, Mediacom Communications Corporation requested a waiver of the EAS requirements while it “embarked on a capital expenditure to upgrade, interconnect and consolidate its cable systems.”¹⁰ Like Lakeview, Mediacom argued that strict compliance would require it to incur costs that would be quickly lost due to planned system upgrades.¹¹ Here, Lakeview would suffer economic waste if is it required to upgrade its systems that are slated for interconnection and consolidation by the 3rd quarter of 2013. The Commission should avoid this unnecessary economic loss and grant Lakeview’s limited waiver request. For this reason, Lakeview requests a 12-month waiver of the CAP-compliance requirement to permit it to complete its system integration in an efficient manner.

* * * *

¹⁰ *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 (2003) (granting a 12-month waiver of the October 1, 2002 EAS implementation deadline because requiring strict compliance would result in economic waste).

¹¹ *Id.*

IV. CONCLUSION

As set forth above, Lakeview has demonstrated good cause for the Commission to waive its CAP-compliance requirements for the systems awaiting delayed EAS equipment and scheduled to be interconnected within 12 months. Granting these waivers does not undermine the purpose or policy behind the CAP compliance requirements, will not harm consumers, and will avoid unnecessary and unjustified costs consistent with the *EAS Fifth Report* and Order and Commission precedent.

Respectfully submitted,



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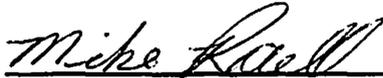
Attorneys for Lakeview Cable, Inc.

June 29, 2012

EXHIBIT A

DECLARATION OF MIKE ROWELL

1. My name is Mike Rowell and I am General Manager for Lakeview Cable, Inc. ("Lakeview").
2. I have read the foregoing "Petition for a Limited Waiver of the CAP Compliance Obligations" (the "Waiver Request") and I am familiar with its contents.
3. 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.



Mike Rowell
General Manager
Lakeview Cable, Inc.

June 29, 2012