

ORIGINAL



WASHINGTON, DC

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August 7, 2012

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY AND ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

On behalf of Western Kentucky University (“WKU”), there are transmitted herewith an original and two copies of a Petition for Waiver with respect to the installation of non-Common Alerting Protocol (“CAP”) equipment at the three full-service noncommercial educational FM repeater stations licensed to WKU, enabling the broadcast of localized emergency information at the respective repeater stations. These stations rebroadcast the programming of Station WKYU-FM, Bowling Green, Kentucky, which is the “hub” facility of the WKU network. Station WKYU-FM has installed CAP-compliant equipment in accordance with applicable Commission Rules.

A copy of this Petition for Waiver is being filed electronically through the Commission ECFS system.

If any additional information is desired in connection with this filing, please contact the undersigned counsel.

Very truly yours,

A handwritten signature in black ink that reads 'Brian M. Madden'. The signature is fluid and cursive, extending across the width of the page.

Brian M. Madden

BMM/dm

Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
Western Kentucky University) EB Docket No. 04-296
)
Petition for Waiver of Section 11.33)
of the Commission's Rules)

FILED/ACCEPTED

To: Chief, Public Safety and Homeland Security Bureau

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Federal Communications Commission
Office of the Secretary

PETITION FOR WAIVER

Western Kentucky University ("WKU" or the "University"), through its counsel, hereby requests a waiver of Section 11.33 of the Commission's Rules – to the extent such waiver is deemed necessary – to permit deployment, in a supplementary capacity at WKU's three non-commercial educational FM satellite stations, of Emergency Alert System ("EAS") equipment that is not capable of receiving Common Alerting Protocol ("CAP") messaging. Grant of this Petition will permit WKU to supplement the rule-compliant EAS service currently provided by its network of a main hub station and the satellite stations with time sensitive, localized emergency messages tailored to the needs of local listeners within the broad geographic area served by the satellite stations. Grant of the Petition will advance and fulfill the Commission's general EAS rules and policies.

BACKGROUND

1. WKU's Network of Public Radio Broadcast Stations

WKU is the licensee of the following non-commercial educational FM broadcast stations¹:

¹ WKU is also the licensee of translator station W277AA, Facility ID No. 71859, Somerset, Kentucky. WKU's waiver request does not pertain to station W277AA.

WKYU-FM, Facility ID No. 71856, Bowling Green, Kentucky
WDCL-FM, Facility ID No. 71857, Somerset, Kentucky
WKPB(FM), Facility ID No. 71864, Henderson, Kentucky
WKUE(FM), Facility ID No. 71860, Elizabethtown, Kentucky

Original programming, as well as NPR and other network and syndicated programming, is originated from the “parent” or “hub” station, WKYU-FM, located on the campus of the University in Bowling Green, Kentucky, and is rebroadcast by three full-power FM satellite stations: WDCL-FM, WKPB(FM), and WKUE(FM) (the “repeater” stations).² Together, these stations form a “network” that serves a large geographic area across much of Kentucky and portions of Tennessee and Indiana.³ See Attachment A, which depicts the 60 dBu and 70 dBu service contours of each of the four stations.

2. WKU’s Current Compliance with the EAS Rules

WKU operates its four stations in accordance with the Commission’s EAS rules. WKYU-FM, the hub station, is equipped with rule-compliant EAS equipment, including fully operational CAP-messaging equipment. The repeater stations retransmit the EAS alerts received by WKYU-FM, placing them in compliance with the rules by virtue of 47 C.F.R. 11.11(b) (“stations that operate as satellites or repeaters of a hub station . . . may satisfy the [EAS] requirements . . . through the use of a single set of EAS equipment at the hub station”).

² “A ‘satellite’ [or ‘repeater’] station meets all of the Commission’s technical rules; however, it originates no programming and instead rebroadcasts the parent station’s programming.” *NCE MX Group 389*, DA 12-1117 (MB 2012).

³ The service area of the network extends well over 200 miles east-to-west across widely varying topography, and encompasses a population of approximately 1.3 million people.

3. The Commission's Common Alerting Protocol Requirements

On June 30, 2012, the Commission's Common Alerting Protocol rules took effect.⁴

These rules require EAS participants (including radio broadcast stations) to be capable of receiving CAP-formatted EAS messages and converting and transmitting to the public the emergency information contained in the messages.⁵ As was the case prior to implementation of the CAP messaging rules, repeater or satellite stations are permitted to comply with the new rules by virtue of their retransmission of alerts received and distributed through their hub stations.⁶

It appears from the wording of the Orders implementing the CAP messaging rules, and from the new rules themselves, that the Commission intended that *any* EAS equipment installed at *any* facility after the CAP rules took effect on June 30, 2012 *must* be fully CAP-compliant.⁷ As explained below, WKU proposes to install non-CAP compliant EAS equipment at its three repeater stations, *but only for the purpose of allowing the repeater stations to originate supplementary, localized emergency messages when and as necessary*. The repeater stations will continue to maintain their existing CAP messaging compliance through the interconnection to

⁴ See *In the Matter of Review of the Emergency Alert System*, Fourth Report and Order, 26 FCC Rcd 13710, 13710-11 (2011).

⁵ See *id.*; see also *In the Matter of Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642, 644-45 (2012) ("*Fifth R&O*").

⁶ See 47 C.F.R. 11.11(b); see also *Fifth R&O* at 696 ("[N]oncommercial educational broadcast satellite stations operating pursuant to a 'main studio waiver' need not deploy CAP-capable EAS equipment, provided that the EAS equipment deployed at the parent (hub) station site meets all CAP-related and other requirements."); *id.* at 734 ("Translators and satellite stations currently are exempted by section 11(b) from having to install EAS equipment because such equipment is not necessary for them to carry a Presidential alert, which they receive from their hub station.").

⁷ "[T]he Commission require[s] that EAS Participants deploy equipment capable of receiving CAP messages." *Fifth R&O* at 651; "We are revising the minimum requirements for decoders...to include the capability to decode CAP-formatted messages and convert them into SAME protocol compliant messages." *Id.* at 676.

hub station WKYU-FM. WKU seeks, therefore, to the extent necessary, a limited waiver of the requirement that *all* EAS equipment at the repeater stations within its network be CAP-compliant after June 30, 2012.

DISCUSSION AND REQUEST FOR RELIEF

As explained in the foregoing material, WKU's stations now fully comply with the CAP messaging requirements, and will continue to remain compliant with those rules should the Commission grant this Petition. WKU is proposing to add *additional, supplementary* EAS capability at the repeater stations to enable those stations to transmit *localized* EAS messages *in addition* to the messages they receive *via* their rebroadcast of hub station WKYU-FM. The supplementary equipment that WKU proposes to install at each repeater station is older EAS equipment which is not CAP-capable. This equipment is, however, fully capable of decoding and passing along vital, *localized* emergency messages.

Stated differently, WKU proposes to go beyond what is required of satellite/repeater facilities under the Commission's EAS rules – namely, that they retransmit the identical EAS messages received at the hub station – by arranging to provide additional, localized emergency messaging to the thousands of listeners served by the three repeater facilities. The repeater stations serve communities across a vast and diverse geographic area. Grant of the waiver request will allow WKU to provide enhanced, localized EAS service to these diverse communities. Weather emergencies, in particular, are often highly localized phenomena, and safety concerns demand specific, immediate action by listeners within concentrated areas. The provision of supplementary, localized emergency messages by each of the repeater stations – which can be configured to use the older EAS equipment now available to WKU to monitor local stations so as to interrupt the program signal originated by the hub station in Bowling Green as

necessary with time- and site-specific weather information most pertinent to the local area served by the repeater – represents a sound basis for waiver of the requirement that *all* EAS equipment be CAP-compliant after June 30, 2012.

Grant of the requested waiver will not undermine the policy served by the rules requiring CAP-capable EAS message reception.⁸ WKU does *not* seek a waiver of the general policy that EAS participants maintain CAP messaging readiness. The University's stations, including its repeater stations, are now, and will remain, in compliance with the CAP standards as provided in the Commission's rules. The relief requested by WKU, however, would grant authority to WKU to install *additional*, non-CAP compliant EAS equipment at each of its repeater stations for the sole purpose of enhancing the emergency information provided to those stations' listeners by the introduction of localized EAS announcements when necessary or appropriate.

CONCLUSION

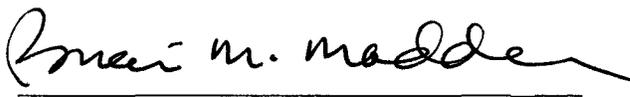
In approving this Petition, the Commission will enable WKU to supplement its rule-compliant EAS public radio operations with localized emergency messaging for thousands of the stations' listeners in local communities spread across three states. WKU submits that there are no countervailing considerations which militate against the requested waiver to authorize the use of EAS equipment at the separate repeater sites, despite the equipment's nonconformance with the CAP requirement. For the foregoing reasons, WKU respectfully requests that it be authorized under the circumstances described above to employ older, non-CAP compliant EAS equipment at its repeater facilities, in addition to the CAP-compliant equipment at hub station WKYU-FM in

⁸ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

Bowling Green, so as to better serve the public interest and advance public safety within the areas served by its radio stations.

Respectfully submitted,

WESTERN KENTUCKY UNIVERSITY

By: 

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August 7, 2012

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