

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of: )  
)  
Review of the Emergency Alert System; )  
)  
Independent Spanish Broadcasters ) EB Docket No. 04-296  
Association, the Office of Communication )  
Of the United Church of Christ, Inc., and the )  
Minority Media and Telecommunications )  
Council, Petition for Immediate Relief )

To: David S. Turetsky, Chief  
Public Safety and Homeland Security Bureau

**PETITION FOR TEMPORARY WAIVER**

Pursuant to 47 C.F.R. § 1.3 and 47 C.F.R. § 11.52(d)(4), this petition is submitted on behalf of Cequel Communications, LLC d/b/a Suddenlink Communications (“Suddenlink” or the “Company”) to request temporary waivers for 12 of its very smallest and most remote cable systems (the “Remote Systems”) from compliance with the Emergency Alert System (“EAS”) requirements in Section 11.56 of the Commission’s rules. Section 11.56 requires EAS Participants to be able to receive alerts formatted with the Common Alerting Protocol (“CAP”).<sup>1</sup>

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<sup>1</sup> The deadline for CAP compliance was adopted in the Commission’s *EAS Fourth Report and Order*. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, EB Docket No. 04-296, *Fourth Report and Order*, 26 FCC Rcd 13710 (2011) (“*EAS Fourth Report and Order*”). In its *EAS Fifth Report and Order*, the FCC revised its Part 11 Rules to specify the manner in which EAS Participants must be able to receive alert messages formatted in the CAP. See *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, EB Docket No. 04-296, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) (“*EAS Fifth Report and Order*”).

Suddenlink respectfully seeks six month waivers for these twelve sites because they lack the broadband Internet access necessary to reliably receive CAP-formatted alerts, and recent field research conducted by Suddenlink's engineering staff indicates that there is still no viable means to bring these very remote systems into immediate compliance.

### **I. Suddenlink's Most Remote Systems Do Not Have Broadband Internet Access**

On June 19, 2012, Suddenlink requested temporary 90-day waivers for 58 of its cable headends in order to finalize installation and testing of new CAP equipment.<sup>2</sup> Suddenlink also requested temporary 6-month waivers for the 12 Remote Systems in order for its technical staff to continue testing satellite and DSL solutions for obtaining broadband Internet connectivity at these remote locations. Although Suddenlink is pleased to inform the Commission that each of the 58 systems for which it requested 90-day waivers is now compliant with Section 11.56 and is able to send and receive CAP-formatted messages, a broadband solution for the 12 Remote Systems is are still not available.<sup>3</sup>

Over the last several months, Suddenlink has worked to identify a practicable means to bring broadband Internet to its 12 most remote cable headends. Following its evaluation of several broadband technologies, including satellite, wireless and wireline, Suddenlink's engineering staff initially determined that it would be feasible to adopt a mixed broadband solution by using satellite connectivity at 7 of the remote headends and DSL at the remaining 5 locations. Since that time, however, Suddenlink's engineers have determined that the 5 headends originally slated for a DSL solution are too far from the closest DSLAMs to have an effective

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<sup>2</sup> Petition for Temporary Waiver, EB Docket No. 04-296 (filed June 19, 2013); Minor Amendment to Petition of Cequel Communications, LLC for Temporary Waiver, EB Docket No. 04-296 (filed June 28, 2012) (jointly "Initial Petition").

<sup>3</sup> Less than 0.5% of Suddenlink's subscribers are served by these headends.

broadband connection. The distances between each of these headends and the closest DSLAM would reduce data speeds to a point that EAS-CAP messages would be ineffective.

The adoption of a satellite solution at any of the 12 Remote Systems has been similarly problematic. Suddenlink's engineering staff has been informed by representatives from Trilithic, the manufacturer of Suddenlink's EAS-CAP equipment, that the software that is required to run CAP in conjunction with satellite broadband is still in the testing phase.<sup>4</sup> Moreover, Suddenlink's engineers have reported from the field that satellite technology employed for other uses at its remote locations has proven unreliable. Indeed, some headends report substantial "downtime" for satellite communications due to signal latency, rain attenuation and other complications.

In view of the reports from Trilithic that its satellite CAP software is still in the testing phase, coupled with concerns about the reliability of other satellite services at the Remote Systems, Suddenlink submits that an additional six month waiver is warranted in order to conduct a more thorough analysis of the suitability of satellite technology as a means of obtaining broadband connectivity at the Remote Systems. Suddenlink estimates that its first year expenses for obtaining broadband at these locations will total more than \$70,000.<sup>5</sup> This is a significant investment for systems that altogether serve less than 6,000 subscribers. Although Suddenlink is committed to bringing these last 12 Remote Systems into full compliance with the Commission's CAP requirements, it believes that a 6 month waiver is warranted in order to

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<sup>4</sup> Suddenlink's engineering staff last spoke with representatives from Trilithic during the week of December 10, 2012. Trilithic's representatives reported that the necessary software was still undergoing beta testing in its laboratory.

<sup>5</sup> Start-up costs for the first year for 12 cable headends are expected to include approximately \$9,000 in hardware, installation and activation costs, \$14,000 in service fees and \$49,000 for new EASyCAP units.

ensure that its investment is directed toward technology that will provide a viable solution and that has demonstrated operational readiness.

## **II. There is Good Cause to Grant a Temporary Waiver**

Pursuant to Section 1.3, the Commission may waive its rules for good cause shown.<sup>6</sup> The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule.<sup>7</sup> Suddenlink respectfully submits that there is good cause to grant the temporary relief requested here.

In its *EAS Fifth Report and Order*, the Commission identified broadband Internet as the “primary method for distributing CAP messages.”<sup>8</sup> The FCC further recognized that “the physical availability of broadband Internet access would be a physical predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts.”<sup>9</sup> Recognizing that some cable systems would be unable to comply with the requirements in Section 11.56 due to lack of broadband Internet access, the FCC concluded that “the physical unavailability of broadband Internet service offers a presumption in favor of a waiver.”<sup>10</sup>

Suddenlink submits that there is good cause to grant waivers to its 12 most remote cable headends listed in Appendix A because they currently lack the broadband Internet access necessary to comply with Part 11 of the Commission’s rules. As discussed above, Suddenlink is

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<sup>6</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>7</sup> 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).

<sup>8</sup> *EAS Fifth Report and Order* at ¶152.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

working to ascertain the best means to obtain broadband Internet and bring the Remote Systems into compliance with the Commission's CAP requirements, but its intended DSL solution proved unworkable, and a satellite solution has not yet been adequately field tested by the vendor of Suddenlink's EAS-CAP equipment. Nevertheless, the subscribers at these Remote Systems already have access to timely and effective emergency warnings through the legacy EAS equipment that is installed and fully operational at each of these remote locations.

### **III. Conclusion**

Suddenlink submits that it has shown good cause to grant waivers to 12 of its cable systems. More than 99% of Suddenlink's subscribers are already capable of receiving CAP-formatted EAS messages. The Company continues to evaluate how best to bring its last 12 Remote Systems into compliance with the requirement to receive CAP-formatted messages, but broadband Internet access is currently not available at these locations. These locations do, however, all have access to emergency warnings through legacy EAS equipment.

Respectfully submitted,

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December 26, 2012

**CERTIFICATION**

I, Michael Zarrilli, hereby certify that statements made in the foregoing Petition for Temporary Waiver are made in good faith and are true and correct to the best of my knowledge, information and belief.



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Michael Zarrilli  
Vice President  
Government Relations  
& Senior Counsel  
Suddenlink Communications

December 26, 2012

## **Appendix A**

### **Suddenlink Systems Seeking 6 Month Waivers from CAP Compliance (Until June 30, 2013)**

Booneville, AR  
Ozark, AR  
Paris, AR  
Shaver Lake, CA  
Teaken Butte, ID  
Adairville, KY  
Lamar, MO  
Bloomington, OH  
Knoxville, OH  
Lindsay, OK  
Gatesville, TX  
Hearne, TX