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June 27, 2013

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

**Re: New Ulm Telecom, Inc. ("New Ulm"); Request for Temporary Waiver of 47 C.F.R. § 11.56; EB Docket No. 04-296**

Dear Mr. Turetsky:

On behalf of New Ulm, pursuant to 47 C.F.R. § 11.52(d)(4), we submit this request for an additional six-month waiver of the Common Alerting Protocol ("CAP")-compliance deadline in 47 C.F.R. § 11.56(a) for New Ulm's small cable system serving Jeffers, Minnesota (the "System").

The System continues to lack physical access to broadband Internet service. Accordingly, New Ulm is entitled to a presumption in favor of a waiver.[1] New Ulm will continue to monitor the marketplace for the availability of broadband Internet service at the System, and will come into full compliance when it becomes available.[2]

We also attach the declaration of Barbara Bornhoft, New Ulm's Vice President and Chief Operating Officer, as Exhibit A.

## I. New Ulm Company and System Background

### A. The Company

New Ulm is organized as a Minnesota corporation with its principal office in New Ulm, Minnesota. New Ulm's business dates back to 1905, when it incorporated as the New Ulm Rural Telephone Company. In addition to owning and operating the cable system that serves New Ulm, Redwood Falls, Springfield, and Sanborn, Minnesota, New Ulm also owns and operates four cable systems serving the following communities: (i) Hutchinson and Litchfield, Minnesota, (ii) Glencoe, Cologne, Mayer, and New Germany, Minnesota, (iii) Jeffers, Minnesota, and (iv) Aurelia, Iowa. Altogether, New Ulm and its affiliated entities currently serve about 11,000 basic cable subscribers.

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[1] *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*").

[2] *See* Declaration of Barbara Bornhoft, attached as *Exhibit A* ("*Bornhoft Declaration*").

While preparing for the EAS CAP-compliance deadline, New Ulm determined that the System does not have access to the broadband Internet connectivity necessary for its headend to receive CAP-formatted emergency alert messages, and filed a request for waiver on June 29, 2012.[3]

Since filing its waiver request on June 29, 2012, New Ulm has monitored the marketplace for the availability of broadband Internet service at the System. New Ulm has ascertained that DSL service to its headend in Jeffers remains unavailable, and there are no other alternative forms of wireline broadband access available.[4]

New Ulm's other systems are CAP-compliant.[5]

### B. The System

| Name of System | PSID | CUID | Number of Subscribers |
|---|---|---|---|
| Jeffers, MN | 013975 | MN0631 | 26 |

## II. Justification and 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."[6] 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.[7] New Ulm is entitled to this presumption in favor of a waiver because broadband Internet service is physically unavailable at the System headend.[8]

Moreover, the Commission may waive its rules for good cause shown,[9] and exercise its waiver authority where grant of the waiver does not undermine the policy served by the rule, and

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[3] In its June 29, 2012 waiver request, New Ulm requested a 12-month waiver (six months, plus an additional six months because New Ulm did not expect circumstances to change due to the System's remoteness.

[4] *Bornhoft Declaration*, ¶ 6.

[5] *Id.*, ¶ 5.

[6] *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.").

[7] *Id.*

[8] *See Bornhoft Declaration*, ¶ 2.

[9] 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. I027 (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.).

where particular facts make strict compliance inconsistent with the public interest.[10] Here, grant of the waiver will serve the public interest. Requiring New Ulm to purchase and install CAP-compliant equipment that it cannot use 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.[11] The Commission has also granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.[12] Granting New Ulm'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.

## III. Availability of EAS Information if Waiver Request is Granted

New Ulm will continue to operate its legacy EAS equipment in the System, and will continue to monitor the marketplace for the availability of broadband Internet service at the System.[13]

## IV. Conclusion and Requested Relief

As set forth above, the System lacks physical access to broadband Internet service. Accordingly, New Ulm requests an additional six-month waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a). For these reasons, New Ulm requests that the Commission waive its CAP-compliance deadline as described above.

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[10] *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. I027 (1972).

[11] *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").

[12] *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).

[13] *Bornhoft Declaration*, ¶ 4.

Sincerely,

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June 27, 2013

## EXHIBIT A

## DECLARATION OF BARBARA BORNHOFT

1. My name is Barbara Bornhoft and I am Vice President and Chief Operating Officer for New Ulm Telecom, Inc. ("New Ulm").

2. New Ulm does not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following system:

| Name of System | PSID | CUID | Number of Subscribers |
|---|---|---|---|
| Jeffers, MN | 013975 | MN0631 | 26 |

3. New Ulm will continue to operate its legacy EAS equipment in the System.

4. New Ulm will continue to monitor the marketplace for the availability of broadband Internet service at the System headend and will come into full compliance when it becomes available.

5. New Ulm's other cable systems not subject to this waiver request are CAP-compliant.

6. New Ulm has ascertained that DSL service to its headend in Jeffers remains unavailable, and there are no other alternative forms of wireline broadband access available

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.

Barbara Bornhoft
Vice President and Chief Operating Officer
New Ulm Telecom, Inc.

June 27, 2013.