

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

In the Matter of:)	
)	
RB3, LLC and Arklaoktex, LLC)	
)	
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 AN EXTENSION OF A LIMITED WAIVER OF THE
CAP COMPLIANCE OBLIGATIONS**

I. INTRODUCTION AND SUMMARY

On behalf of RB3, LLC and Arklaoktex, LLC, d/b/a Reach Broadband (collectively, "Reach Broadband), pursuant to 47 C.F.R. §§ 1.3 and 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). On June 29, 2012, and on December 30, 2012, Reach Broadband requested (and renewed its request for) six-month waivers of the Commission's CAP-compliance rules.

We organize this request as follows:

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

II. Reach Broadband Company and System Background

Reach Broadband owns and operates small, remote cable systems in New Mexico, Oklahoma, and Texas. Earlier this year, Reach Broadband acquired small

cable systems in Iraan, McCamey, Rankin, Van Horn, and West Odessa, Texas,¹ which have increased the company's subscriber count to 5,853 subscribers.

Reach Broadband originally sought waivers for 29 systems on June 29, 2012 for the following reasons:

- Eight of Reach Broadband's systems lacked physical access to broadband Internet service.
- Reach Broadband had ordered CAP-compliant equipment for three systems, but did not anticipate receiving the equipment until August 2012 at the earliest.
- Due to increasing costs, Reach Broadband decided that it must shut down two of its cable systems.
- It was not financially viable for Reach Broadband to install CAP-compliant EAS equipment in the remaining Reach Broadband systems, serving between 23 and 463 subscribers.

On December 30, 2012, Reach Broadband renewed its waiver request for the eight systems that lacked physical access to broadband Internet service and for the sixteen systems where it was not financially viable to install CAP-compliant EAS equipment.

Since renewing its waiver request, Reach Broadband has monitored the marketplace for the availability of broadband Internet service at the eight systems identified in Exhibit A, and has ascertained that broadband Internet service remains unavailable. Further, at this time, it continues to not be financially viable for Reach Broadband to install CAP-compliant EAS equipment for the sixteen financial hardship systems. Reach Broadband is in the process of completing a two-way upgrade of the West Odessa system in order to provide customers with more competitive services, and to bring broadband Internet service to a rural community that previously lacked such service. Reach Broadband is hopeful that launching broadband Internet service will help

¹ All five systems have EAS CAP-compliant equipment installed.

begin to turn around its negative cash flow situation, as previously detailed in its September 7, 2012 letter.²

III. Justification and Authority Supporting The Waivers

A. Requested Waivers and Justification

Reach Broadband requests an additional six-month waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) based on the following two fact scenarios.

No Physical Access to Broadband Internet Service. First, Reach Broadband seeks an additional six-month waiver for the systems identified in Exhibit A because the systems continue to lack the physical access to broadband Internet service necessary for the systems to receive CAP-formatted emergency alert messages.³ Accordingly, Reach Broadband is entitled to a presumption in favor of a waiver.⁴

Financial Hardship. Reach Broadband also renews its request for a financial hardship waiver for the systems identified in Exhibit A. These systems now have 2,354 subscribers, down from 2,472 subscribers as of December 30, 2012 and 2,647 as of June 29, 2012. These systems continue to not be profitable, and it is not financially feasible for Reach Broadband to install CAP-compliant equipment in these systems.⁵ Reach Broadband will continue to operate the systems, with standard EAS equipment installed, provided that the Commission grants this waiver request.⁶

² See Ex Parte Letter from Scott C. Friedman, Counsel to Reach Broadband, to Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, File No. 201204-296-030 (filed Sept. 7, 2012).

³ See *Exhibit A*, Declaration of Tom Semptimphelter, ¶ 2 (“*Semptimphelter Declaration*”).

⁴ *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*”).

⁵ *Semptimphelter Declaration*, ¶ 4.

⁶ *Id.*, ¶ 5.

B. Commission 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.”⁷ 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.⁸ Reach Broadband is entitled to this presumption in favor of a waiver for the systems for which Internet services are physically unavailable at the systems’ headends.⁹

Moreover, the Commission may waive its rules for good cause shown,¹⁰ and 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.¹¹ Here, grant of the waiver will serve the public interest, by allowing Reach Broadband to continue operating its systems, which provide service to remote communities of New Mexico, Oklahoma, and Texas.

⁷ *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.”).

⁸ *Id.*

⁹ See *Semptimphelter Declaration*, ¶ 2.

¹⁰ 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. 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.).

¹¹ 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).

Accordingly, granting Reach Broadband's waiver request is consistent with Commission precedent.

IV. Availability of EAS Information if Waiver Request is Granted

Reach Broadband will operate legacy EAS equipment in the systems, and for those systems without broadband Internet access, Reach Broadband will continue to monitor the marketplace for the availability of broadband Internet service.¹²

IV. Conclusion and Requested Relief

As set forth above, Reach Broadband requests an additional six-month waiver of the CAP-compliance deadline in 47 C.F.R. § 11.56(a) for the systems listed in Exhibit A.

Sincerely,



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June 28, 2013

¹² *Semptimphelter Declaration*, ¶¶ 3, 6.

EXHIBIT A

DECLARATION OF TOM SEMPTIMPHELTER

1. My name is Tom Semptimpfelter and I am President and Chief Executive Officer of RB3, LLC and Arklaoktex, LLC, d/b/a Reach Broadband (collectively, "Reach Broadband").
2. Reach Broadband continues to not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following systems:

System Name	FCC CUIDs	PSID
Coleman	TX0042, TX1641	003442
Eden	TX0304	000038
Erick	OK0024	007452
Goliad	TX0390	006551
Hart	TX0916	001460
Menard	TX0163	000037
Santa Rosa	NM0099	005772
Three Rivers	TX0493	000887

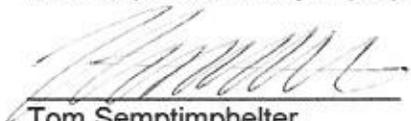
3. Reach Broadband will monitor the marketplace for the availability of broadband Internet service at these systems' headends.
4. It continues to not be financially feasible for Reach Broadband to install CAP-compliant equipment in the following systems:

System Name	FCC CUIDs	PSID
Clifton	TX0873	008515
Comanche	TX0156	006418
Crosbyton	TX0448	008596
DeLeon	TX0001	002421
Devine	TX1309, TX1310, TX1311	010559
Gorman	TX0845	001342
Lockney	TX1315	011507
Mart	TX0872	008514
Mason	TX0306, TX0431	000486
Memphis	TX0023, TX1123	001922
Muleshoe	TX0102, TX0823, TX0832, TX1345	004371
Pleasanton	TX0668, TX1383	004752
Ralls	TX0449	000512
Valley Mills	TX1151	000689
West	TX0871	008513
Whitney	TX1025, TX1024	008601

EXHIBIT A CONT.

DECLARATION OF TOM SEMPTIMPHELTER

5. Unless the Commission grants this "Request for Temporary Waiver of 47 C.F.R. § 11.56" (the "Waiver Request"), Reach Broadband will be forced to consider shutting down some or all of the systems listed above.
6. Reach Broadband will continue to operate its legacy EAS equipment in the systems.
7. I have read the foregoing 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.



Tom Semptimpelter
President and Chief Executive Officer
RB3, LLC

June 28, 2013