



December 31, 2013

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

**Re: Telecommunications Management, LLC “New Wave”); Request for Temporary Waiver
of 47 C.F.R. § 11.56; EB Docket No. 04-296**

Dear Mr. Simpson:

On behalf of New Wave, pursuant to 47 C.F.R. § 11.52(d)(4), we submit this request for a further six-month waiver of the Common Alerting Protocol (“CAP”)-compliance deadline in 47 C.F.R. § 11.56(a). On June 29, 2012, December 31, 2012, and June 28, 2013, New Wave requested (and renewed its request for) six-month waivers of the Commission’s CAP-compliance rules.

The small cable systems listed below (the “Systems”) continue to lack physical access to broadband Internet service.¹ Accordingly, New Wave is entitled to a presumption in favor of a waiver. We also describe New Wave’s plans to bring the majority of the Systems into compliance in 2014 through interconnection, equipment purchases for systems acquired, and possible system shutdowns.

I. New Wave Company and System Background

A. The Company

New Wave Communications is the business name for Telecommunications Management, LLC.² New Wave operates 54 cable systems in eight states, with its principal office in Sikeston, Missouri. Most of these systems serve small, rural communities. Altogether, New Wave serves 118,711 basic subscribers, with 113,284 of those subscribers receiving service from CAP-compliant systems.

While preparing for the EAS CAP-compliance deadline, New Wave determined that 18 small cable systems did not have access to the broadband Internet connectivity necessary to receive CAP-formatted emergency alert messages, and filed a request for waiver on June 29, 2012. New Wave later renewed its request on December 31, 2012 and June 28, 2013 for the cable systems that still lacked physical access to broadband Internet service.³ Additionally, New Wave’s June 28, 2013

¹ See Declaration of Phil Spencer, attached as Exhibit A (“*Spencer Declaration*”).

² New Wave dissolved the Avenue Broadband, Inc. entity in October 2013. All systems previously held by Avenue Broadband, Inc. are now held by New Wave.

³ In between its June 29, 2012 waiver request and the June 28, 2013 extension request, New Wave upgraded its Monrovia, IN system, and sold its Chesterfield, SC, Pageland, SC, and Fowler, IN systems,

waiver extension request included 16 systems purchased June 1, 2013 from Etan Industries, Inc that lacked physical access to broadband Internet service.

Since filing its waiver request on June 29, 2012, New Wave has interconnected systems lacking broadband Internet service with regional, EAS CAP-compliant headends, and shut down five small systems in Indiana and Illinois.⁴ At this time, New Wave has interconnected its Monrovia, Covington, and Veedersburg systems with its EAS CAP-compliant Vincennes, Indiana headend. Thus, this request is limited to the Systems noted below.

New Wave's other systems are CAP-compliant.⁵

B. The Systems

New Wave requests a six-month waiver for the following systems:

Name of System	PSID	CUIDs	Subscribers
Cairo, IL	010975	IL0941	336
Convoy, OH	010842	OH1310	57
Flora, IN	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	1,088
Morgantown, IN	012414	IN0857	59
Morgan County, IN	011644	IN0574, IN1074, IN1075, IN 1076	154
Payne, OH	010846	OH1311	138
Wadesville, IN	010258	IN0527, IN0528, 9N0529	28

New Wave also requests a six-month waiver for these former CMA systems, now held by New Wave subsidiary Ultra Communications Group, Inc. ("Ultra Communications"):

Name of System	PSID	CUIDs	Subscribers
Arcola, MS	015584	MS0357, MS0358	32
Anguilla, MS	015583	MS0355, MS0356	88
Hempstead, TX	006696	TX0791	102
Blackwell, TX	014876	TX1639, TX1640	24
Roscoe, TX	007796	TX0214	71
Tuscola, TX	008958	TX1211, TX1212	40
Calhoun, LA	008567	LA0321	90
Farmerville, LA	011862	LA0197	506
Wisner, LA	008752	LA0259, LA0260	116
Grape Creek, TX	011863	TX1269, TX1270	57
Lake Providence, LA	011861	LA0215	942

⁴ These systems served Avilla, IN, Evansville, IL, Monroeville, IN, Montpelier, IN, and Tamms, IL.

⁵ *Spencer Declaration*, ¶ 5.

Columbia, LA	008751	LA0228	268
Logansport, LA	012494	LA0482	180
Hollandale, MS	000237	MS0100	386
Merkel, TX	007786	TX0235	227
Bronte, TX	004909	TX0639, TX 0638	208

C. Compliance Plans

New Wave plans to bring into compliance the majority of the Systems in 2014 by interconnecting systems which lack broadband access to CAP-compliant headends, equipment purchases for the Ultra Communications systems acquired from Etan Industries, Inc. in 2013, and possible system shutdowns. Currently, New Wave is diligently working to complete the interconnection of the Flora system by the end of March 2014. New Wave will also shut down the Convoy, Payne, and Wadesville systems during the first half of 2014, leaving only the Cairo, Morgantown, and Morgan County systems without physical access to broadband Internet service.

For these remaining systems – Cairo, Morgantown, and Morgan County – New Wave will continue to operate its legacy EAS equipment and continue to monitor the marketplace for the availability of broadband Internet service.⁶ New Wave is aware that some large cable operators have now developed and deployed a satellite broadband solution for their smaller cable systems. New Wave will analyze whether such a satellite broadband solution is a tenable and adaptable solution for these systems given their operating costs, low subscriber numbers, and rural nature.⁷

In addition, New Wave has budgeted \$18 million in 2014 to create EAS CAP-compliant headends for the 16 Ultra Communications systems through interconnection and equipment upgrades. New Wave anticipates completing this project in the second half of 2014, and plans to incrementally consolidate the Ultra Communications systems as each CAP-compliant headend comes online.

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.”⁸ 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.⁹

⁶ *Spencer Declaration*, ¶¶ 3-4.

⁷ *Id.*, ¶ 4.

⁸ *In the Matter of Review of the Emergency Alert System, Fifth Report and Order*, 27 FCC Rcd 642, ¶ 152 (2012) (“*EAS Fifth Report and Order*”) (“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.”).

⁹ *Id.*

New Wave is entitled to this presumption in favor of a waiver because broadband Internet service is physically unavailable at the Systems headend.¹⁰

Moreover, the Commission may waive its rules for good cause shown,¹¹ 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.¹² Here, grant of the waiver will serve the public interest. Requiring New Wave to purchase and install CAP-compliant equipment in systems that New Wave plans to interconnect to CAP-compliant headends or in systems that New Wave plans to shutdown 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.¹³ The Commission has previously granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.¹⁴ Granting New Wave'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. Conclusion and Requested Relief

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

¹⁰ See *Spencer Declaration*, ¶ 2.

¹¹ 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.).

¹² 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).

¹³ *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").

¹⁴ *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).

Sincerely,



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December 31, 2013

EXHIBIT A

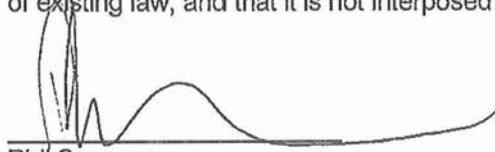
DECLARATION OF PHIL SPENCER

1. My name is Phil Spencer and I am Chief Executive Officer for Telecommunications Management, LLC ("New Wave").
2. New Wave does not have access to the broadband Internet connectivity necessary for it to receive CAP-formatted emergency alert messages for the following systems:

Name of System	PSID	CUIDs	Subscribers
Cairo, IL	010975	IL0941	336
Convoy, OH	010842	OH1310	57
Flora, IN	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	1,088
Morgantown, IN	012414	IN0857	59
Morgan County, IN	011644	IN0574, IN1074, IN1075, IN 1076	154
Payne, OH	010846	OH1311	138
Wadesville, IN	010258	IN0527, IN0528, 9N0529	28
Arcola, MS	015584	MS0357, MS0358	32
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Hempstead, TX	006696	TX0791	102
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Calhoun, LA	008567	LA0321	90
Farmerville, LA	011862	LA0197	506
Wisner, LA	008752	LA0259, LA0260	116
Grape Creek, TX	011863	TX1269, TX1270	57
Lake Providence, LA	011861	LA0215	942
Columbia, LA	008751	LA0228	268
Logansport, LA	012494	LA0482	180
Hollandale, MS	000237	MS0100	386
Merkel, TX	007786	TX0235	227
Bronte, TX	004909	TX0639, TX 0638	208

3. New Wave will continue to operate its legacy EAS equipment in the Systems.
4. New Wave will continue to monitor the marketplace for the availability of broadband Internet service at the Cairo, Morgantown, and Morgan County headends and will come into full compliance when it becomes available. New Wave will also analyze whether a satellite broadband solution is a tenable solution for these systems. We will continue to interconnect systems with CAP-compliant headends in 2014.
5. New Wave's other cable systems not subject to this waiver request are CAP-compliant.
6. 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.

7. 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.

A handwritten signature in black ink, appearing to read 'Phil Spencer', written over a horizontal line.

Phil Spencer
Chief Executive Officer
Telecommunications Management, LLC

December 31, 2013.