

**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 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 30, 2012, and June 28, 2013, Reach Broadband requested (and renewed its request for) six-month waivers of the Commission's CAP-compliance rules.

**II. Background**

Reach Broadband owns and operates small, remote cable systems in New Mexico, Oklahoma, and Texas. Altogether, Reach Broadband serves 5,366 basic subscribers, with 2,736 of those subscribers receiving service from CAP-compliant systems.

Reach Broadband originally sought waivers for 29 systems on June 29, 2012. On December 30, 2012 and June 28, 2013, Reach Broadband renewed its waiver request for eight systems that lacked physical access to broadband Internet service and

for 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.<sup>1</sup> Reach Broadband is aware that some large cable operators have now developed and deployed a satellite broadband solution for their smaller cable systems, and will analyze whether such a satellite broadband solution is a tenable and adaptable solution for these eight systems given their operating costs, low subscriber numbers, and rural locations.

Further, 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 hopeful that expanding its broadband Internet service will help begin to turn around its negative cash flow situation.<sup>2</sup> In August 2013, Reach Broadband launched high speed Internet service in its West Odessa, Texas system and now serves approximately 370 Internet customers in that community. Due to this success, in 2014, Reach Broadband plans to offer broadband Internet service in Crosbyton, Goliad, McCarney, Rankin, and Van Horn, Texas, and has budgeted to buy EAS CAP-compliant equipment for one additional system.

### **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.

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<sup>1</sup> Reach Broadband plans to shut down the Hart, TX system on January 31, 2014.

<sup>2</sup> 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).

**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.<sup>3</sup> Accordingly, Reach Broadband is entitled to a presumption in favor of a waiver.<sup>4</sup>

**Financial Hardship.** Reach Broadband also renews its request for a financial hardship waiver for the systems identified in Exhibit A, none of which serves more than 371 subscribers. In total, these systems now have 1,960 subscribers, down from 2,354 subscribers of June 28, 2013, 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.<sup>5</sup> Reach Broadband will continue to operate the systems, with standard EAS equipment installed, provided that the Commission grants this waiver request.<sup>6</sup>

## **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.”<sup>7</sup> 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

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

<sup>4</sup> *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*”).

<sup>5</sup> *Semptimphelter Declaration*, ¶ 4.

<sup>6</sup> *Id.*, ¶ 5.

<sup>7</sup> *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.”).

CAP-formatted alerts transmitted over the Internet.<sup>8</sup> 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.<sup>9</sup>

Moreover, the Commission may waive its rules for good cause shown,<sup>10</sup> 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.<sup>11</sup> 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.

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

### **C. 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.<sup>12</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> See *Semptimphelter Declaration*, ¶ 2.

<sup>10</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."); 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.).

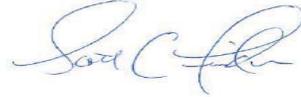
<sup>11</sup> See *WAIT Radio v. FCC*, 4 18 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

<sup>12</sup> *Semptimphelter Declaration*, ¶¶ 3, 6.

**IV. Conclusion**

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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December 31, 2013

## 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
<b>Coleman</b>	TX0042, TX1641	003442
<b>Eden</b>	TX0304	000038
<b>Erick</b>	OK0024	007452
<b>Goliad</b>	TX0390	006551
<b>Hart</b>	TX0916	001460
<b>Menard</b>	TX0163	000037
<b>Santa Rosa</b>	NM0099	005772
<b>Three Rivers</b>	TX0493	000887

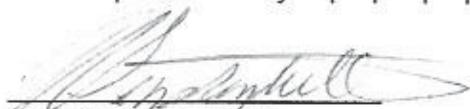
3. Reach Broadband will monitor the marketplace for the availability of broadband Internet service at these systems' headends, and analyze whether a satellite broadband solution is a tenable solution.
4. It continues to not be financially feasible for Reach Broadband to install CAP-compliant equipment in the following systems:

System Name	FCC CUIDs	PSID
<b>Clifton</b>	TX0873	008515
<b>Comanche</b>	TX0156	006418
<b>Crosbyton</b>	TX0448	008596
<b>DeLeon</b>	TX0001	002421
<b>Devine</b>	TX1309, TX1310, TX1311	010559
<b>Gorman</b>	TX0845	001342
<b>Lockney</b>	TX1315	011507
<b>Mart</b>	TX0872	008514
<b>Mason</b>	TX0306, TX0431	000486
<b>Memphis</b>	TX0023, TX1123	001922
<b>Muleshoe</b>	TX0102, TX0823, TX0832, TX1345	004371
<b>Pleasanton</b>	TX0668, TX1383	004752
<b>Ralls</b>	TX0449	000512
<b>Valley Mills</b>	TX1151	000689
<b>West</b>	TX0871	008513
<b>Whitney</b>	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 Semptimpfelter  
President and Chief Executive Officer  
RB3, LLC

December 31, 2013