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June 30, 2014

David G. Simpson  
Chief, Public Safety and Homeland Security Bureau  
Federal Communications Commission  
445 12<sup>th</sup> 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, June 28, 2013, and December 31, 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.<sup>1</sup> Accordingly, New Wave is entitled to a presumption in favor of a waiver. We also provide an update on New Wave’s plans to bring the majority of the Systems in compliance in 2014 through interconnection, equipment purchases, and system shutdowns.

## **I. New Wave Company and System Background**

### **A. The Company**

New Wave Communications is the business name for Telecommunications Management, LLC. New Wave operates 51 cable systems in eight states, with its principal office in Sikeston, Missouri. Most of these systems serve small, rural communities. Altogether, New Wave serves 123,718 basic subscribers, with 119,458 of those subscribers receiving service from CAP-compliant systems.

While preparing for the EAS CAP-compliance deadline, New Wave determined that 19 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, June 28, 2013, and December 31, 2013 for the cable systems that still lacked physical access to broadband Internet service. Additionally, New Wave’s June 28, 2013 waiver extension request included 16 systems purchased June 1, 2013 that lacked physical access to broadband Internet service.

Since filing its waiver request on June 29, 2012, New Wave has upgraded its Monrovia, Indiana system with EAS CAP-compliant equipment. New Wave has also interconnected systems

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

lacking broadband Internet service with regional, EAS CAP-compliant headends, and shut down nine small systems in Illinois, Indiana, and Ohio.<sup>2</sup> Thus, this request is limited to the Systems noted below.

New Wave's other systems are CAP-compliant.<sup>3</sup>

## B. The Systems

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

Name of System	PSID	CUIDs	Subscribers
Cairo, IL	010975	IL0941	251
Flora, IN	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	998
Morgantown, IN	012414	IN0857	56
Morgan County, IN	011644	IN0574, IN1074, IN1075, IN 1076	135
Arcola, MS	015584	MS0357, MS0358	30
Anguilla, MS	015583	MS0355, MS0356	60
Hempstead, TX	006696	TX0791	90
Blackwell, TX	014876	TX1639, TX1640	23
Roscoe, TX	007796	TX0214	60
Tuscola, TX	008958	TX1211, TX1212	35
Calhoun, LA	008567	LA0321	77
Farmerville, LA	011862	LA0197	502
Wisner, LA	008752	LA0259, LA0260	108
Grape Creek, TX	011863	TX1269, TX1270	44
Lake Providence, LA	011861	LA0215	885
Columbia, LA	008751	LA0228	247
Logansport, LA	012494	LA0482	126
Hollandale, MS	000237	MS0100	344
Merkel, TX	007786	TX0235	189
Bronte, TX	004909	TX0639, TX 0638	183

In addition, New Wave requests a six-month waiver for its Winnsboro, LA system, which it purchased on February 1, 2014 from CableSouth Media III, LLC:

Name of System	PSID	CUIDs	Subscribers
Winnsboro, LA	009211	LA0069, LA0557	545

<sup>2</sup> These systems served Avilla, IN, Convoy, OH, Evansville, IL, Monroeville, IN, Montpelier, IN, Payne, OH, Tamms, IL, and Wadesville, IN. New Wave shut down the Convoy, Payne, and Wadesville systems in 2014.

<sup>3</sup> *Spencer Declaration*, ¶ 5.

## C. Compliance Plans

As described in its December 31, 2013 waiver request, New Wave is working on bringing its Systems into compliance by interconnecting systems which lack broadband access to CAP-compliant headends, by purchasing equipment, and through system shutdowns. Currently, New Wave continues to diligently work on completing the interconnection of the Flora system, now scheduled for September 2014. New Wave has also shut down the Convoy, Payne, and Wadesville systems in 2014.

New Wave will continue to operate its legacy EAS equipment and continue to monitor the marketplace for the availability of broadband Internet service.<sup>4</sup> 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.<sup>5</sup>

Finally, New Wave has budgeted \$18 million in 2014 to create EAS CAP-compliant headends through interconnection and equipment upgrades. New Wave plans to incrementally consolidate the 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.”<sup>6</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 CAP-formatted alerts transmitted over the Internet.<sup>7</sup> New Wave is entitled to this presumption in favor of a waiver because broadband Internet service is physically unavailable at the Systems headend.<sup>8</sup>

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

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<sup>4</sup> *Spencer Declaration*, ¶¶ 3-4.

<sup>5</sup> *Id.*, ¶ 4.

<sup>6</sup> *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.”).

<sup>7</sup> *Id.*

<sup>8</sup> *See Spencer Declaration*, ¶ 2.

<sup>9</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.).

where particular facts make strict compliance inconsistent with the public interest.<sup>10</sup> 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.<sup>11</sup> The Commission has previously granted waivers of EAS rules in other circumstances where strict compliance with EAS rules would lead to similar economic waste.<sup>12</sup> 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.

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<sup>10</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>11</sup> *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").

<sup>12</sup> *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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Attorneys for Telecommunications  
Management, LLC

June 30, 2014

**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:

<b>Name of System</b>	<b>PSID</b>	<b>CUIDs</b>	<b>Subscribers</b>
Cairo, IL	010975	IL0941	251
Flora, IN	021709	IN1107, IN0587, IN0922, IN0173, IN1039, IN0019, IN0294, IN1110, IN1033	998
Morgantown, IN	012414	IN0857	56
Morgan County, IN	011644	IN0574, IN1074, IN1075, IN 1076	135
Arcola, MS	015584	MS0357, MS0358	30
Anguilla, MS	015583	MS0355, MS0356	60
Hempstead, TX	006696	TX0791	90
Blackwell, TX	014876	TX1639, TX1640	23
Roscoe, TX	007796	TX0214	60
Tuscola, TX	008958	TX1211, TX1212	35
Calhoun, LA	008567	LA0321	77
Farmerville, LA	011862	LA0197	502
Wisner, LA	008752	LA0259, LA0260	108
Grape Creek, TX	011863	TX1269, TX1270	44
Lake Providence, LA	011861	LA0215	885
Columbia, LA	008751	LA0228	247
Logansport, LA	012494	LA0482	126
Winnsboro, LA	009211	LA0069, LA0557	594
Hollandale, MS	000237	MS0100	344
Merkel, TX	007786	TX0235	189
Bronte, TX	004909	TX0639, TX 0638	183

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 headends listed above and will come into full compliance when it becomes available. New Wave plans to continue headend consolidation with CAP compliant headends. New Wave will also analyze whether a satellite broadband solution is a tenable solution for these systems.
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.



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Phil Spencer  
Chief Executive Officer  
Telecommunications Management, LLC

June 30, 2014