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

In the Matter of	)	
	)	
Amendment of Part 11 of the Commission's Rules	)	EB Docket No. 04-51
Regarding the Emergency Alert System	)	RM 10619
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 4, 2004 **Released: March 12, 2004**

Comment Date: 30 days after Federal Register publication of this Notice
Reply Comment Date: 45 days after Federal Register publication of this Notice

By the Commission:

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* (NPRM), we propose to adopt revisions to the Part 11 rules governing the Emergency Alert System (EAS)[1] that will allow wireless cable television systems to provide EAS alerts to their subscribers in a more efficient and less burdensome manner. This proposal, set forth in a petition for rulemaking filed by the Wireless Cable Association International, Inc. (WCA),[2] requests changes to our rules to allow wireless cable system operators to "force tune" subscriber equipment to a system channel dedicated to EAS alerts and messages in lieu of providing an EAS decoder for each and every system channel.[3]

II. BACKGROUND

2. In 1997, the Commission adopted rules requiring cable system operators to carry EAS messages on all program channels of a cable system. By that same action and at the request of WCA, the Commission included wireless cable systems in this requirement.[4] The EAS

[1] 47 C.F.R. §§ 11.1, et *seq*.

[2] WCA Petition for Rulemaking, RM-10619 (filed October 31, 2002).

[3] After the Media Security and Reliability Council and the Partnership for Public Warning make recommendations in the next few months, we intend to issue a comprehensive Notice of Inquiry (NOI) on public warning issues.

[4] *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("*Second Report and Order*"). For purposes of the EAS rules, a "wireless cable system" is a collection of Multipoint Distribution

affords national, state and local authorities the capability to provide emergency communications and information to the general public via broadcast stations, cable systems and wireless cable systems. Participation in national EAS alerts is mandatory for broadcast stations, cable systems and wireless cable systems.[5] These entities participate in state and local area EAS plans on a voluntary basis. Cable systems with 10,000 or more subscribers were required to install EAS equipment by December 31, 1998. Cable systems with fewer than 10,000 subscribers and wireless cable systems were required to install EAS equipment by October 1, 2002. The Enforcement Bureau, in response to waiver requests, temporarily waived this deadline for qualifying wireless cable systems pending the outcome of this proceeding.[6]

3. WCA filed its petition for rulemaking on October 31, 2002. The Commission staff issued a public notice announcing the filing of WCA's petition on December 18, 2002.[7] Comments were filed by the WCA and separately by REC Networks ("REC"). The WCA comments provide clarification of its original proposal. The REC comments endorse the WCA proposal without making any new requests or suggesting modification of the WCA proposal. WCA requests that digital wireless cable systems, upon receipt of an EAS alert or message, be allowed to use "force tune" technology to switch subscribers from any programmed channel to a specific system channel that will carry EAS messages. WCA represents that modification of the rules to allow use of this technology will provide EAS notices to subscribers while relieving system operators of substantial financial burdens.

III. DISCUSSION

4. Our EAS rules are designed to ensure that individual TV viewers, including viewers of wireless cable TV systems, receive all EAS alerts, no matter what channel the viewer may be watching. As these rules are currently written, wireless cable providers serving more than 5,000 subscribers are required to install special equipment sufficient to display the audio

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Service, Multichannel Multipoint Distribution Service or Instructional Television Fixed Service channels used to provide video programming services to subscribers. The channels may be licensed to or leased by wireless cable system operators. *See* 47 C.F.R. § 11.11(c)(1).

[5] Although all broadcast stations, cable systems and wireless cable systems are required to install EAS equipment, they have the option of requesting FCC authorization to be Non-participating National ("NN") sources. In the event of a national EAS alert, NN sources are required to transmit a sign-off announcement and then go off the air. *See* 47 C.F.R. §§ 11.19, 11.41 and 11.54. In addition, Class D noncommercial FM, low power FM and low power TV stations are required to install EAS decoders, but are not required to install or operate EAS encoders. *See* 47 C.F.R. § 11.11(b).

[6] *See Request of W.A.T.C.H. TV and Benton Ridge Telephone Co. for a Waiver of Section 11.11(a) of the Commission's Rules,* EB-02-TS-510*,* Order, DA-02-2398, 17 FCC Rcd, 18329 (Enforcement Bur. 2003); s*ee also Request of Craig Wireless Honolulu Inc for a Waiver of Section 11.11(a) of the Commission's Rules*, EB-03-TS-101, Order, 18 FCC Rcd 20099, DA 03-3060 (Enforcement Bur. 2003), *Request of Youngsville Television Corporation for a Waiver of Section 11.11(a) of the Commission's Rules*, EB-02-TS-266, Order, 18 FCC Rcd 20096, DA-30-3059 (Enforcement Bur. 2003).

[7] Public Notice No. 2589 (December 18, 2002).

and video EAS message on every channel in their systems.[8] Systems serving fewer than 5,000 subscribers are required to display the audio and video EAS message only on one channel, but must provide a video interrupt and an audio alert on every channel.[9] Under the WCA proposal, a wireless cable operator would install EAS equipment for one channel only at the headend of the system. In the event of an EAS alert, the system would automatically force each subscriber set-top box to tune to the channel carrying the EAS alert. WCA argues that "force tuning" would allow wireless cable providers to deliver EAS alerts to all viewers in a more technologically and economically efficient manner. As proposed, the rule revision would provide the greatest economic benefit to systems with over 5,000 subscribers by obviating the need for special signal conversion for all channels, but also would provide a benefit to those systems with fewer than 5,000 subscribers.

5. According to WCA, the financial impact of our current rules is unnecessarily burdensome. EAS equipment provides outputs designed to be inserted into analog signals. For digital wireless cable systems the digital channels are received via a multiplexed digital feed. To insert EAS information into each channel requires specialized equipment to separate the digital feeds into individual program streams, convert each program stream to analog format, insert the EAS video/audio into each program stream, re-encode the program stream to digital format, and recombine all of the streams into multiplexed feeds for further transmission to subscribers. For a 128 channel digital system, WCA represents that a reasonable cost estimate for this process is $1,848,250.00. Under the proposed software based "force tune" solution, the video/audio output of the EAS equipment will be connected to an encoder for a channel selected to carry EAS messages. Upon EAS activation, the EAS equipment will send a trigger signal to the system headend which then forwards the trigger to the subscriber's set-top box as part of the control data included in every multiplexed program stream transmitted by the system. The software in the set-top box will recognize the trigger and "force tune" the set-top box to the selected EAS message channel. WCA represents that a reasonable cost estimate for this alternative is $46,000.00 or about 2% of the cost of channel by channel implementation.

6. We propose to revise our rules to allow all wireless cable television systems to comply with our EAS requirements by installing only one set of EAS equipment at the headend of their systems. Under our proposed rule revisions, these wireless cable television providers will be able to "force tune" all channels in their systems to the channel carrying an EAS alert. We seek comment on this proposal. Our proposal responds to the WCA petition for small wireless cable systems, which currently are required to display audio and video EAS messages on one channel, and video interrupt and audio alert on all other channels. We seek comment on how our proposal would affect these systems. We also propose to expand WCA's proposal to allow "force tuning" for systems with more than 5,000 subscribers, which currently are required to place EAS messages on all program channels. We solicit comment on whether we should adopt "force tuning" for all wireless cable systems, or whether "force tuning" should be limited

[8] 47 U.S.C. § 11.11(a).

[9] *Id.*

to systems of a certain size and, if so, what size would be appropriate. We seek comment on the pros and cons of "force tuning," as proposed by WCA and this NPRM, and whether there is another approach which is a better alternative, technically and/or financially, than the one proposed, or whether compliance with the current requirements is most appropriate. We are requesting information from system operators, industry associations, equipment suppliers and all other interested parties.

7. We also note that the Commission requires certification of EAS equipment in accordance with the procedures set forth in Subpart J of Part 2 of the Commission's Rules.[10] It appears that the WCA proposal is software driven, that it requires the use of approved EAS equipment at the headend, and that no changes to approved equipment are required. For these reasons we do not propose new authorization standards for equipment used to implement the proposed "force tune" procedure. Rather, we propose to require that the operators of systems using this "force tune" technology develop procedures to ensure that the process works and that subscriber equipment, such as set-top boxes, does, in fact, tune to the EAS alert/message channel when instructed to do so by the headend equipment. We seek comment on our proposal not to require new equipment authorization. We also request recommendations as to procedures to be followed by operators to ensure that required EAS notices are delivered to subscribers. Finally, we invite comment on what effects the proposals and issues addressed in this NPRM may have on consumer equipment.

IV. CONCLUSION

8. In this NPRM, we propose to adopt the revisions to the EAS rules requested in the petition for rulemaking filed by WCA. We seek comment on all of the issues and proposals addressed in this NPRM and encourage full participation from cable operators, wireless cable operators, equipment manufacturers, state and local emergency management personnel, and other interested parties.

V. PROCEDURAL MATTERS

9. Comments and Reply Comments. Pursuant to sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before 30 days after publication of this Notice in the Federal Register, and reply comments on or before 45 days after publication of this Notice in the Federal Register.[11] All comments should refer to EB Docket No. 04-51. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies.[12] For additional information on this proceeding, please contact the FCC Office of Homeland Security at (202) 418-1199.

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[10] 47 C.F.R. § 11.34; *see also* 47 C.F.R. Part 2, Subpart J.

[11] 47 C.F.R. §§ 1.415 and 1.419.

[12] *See Electronic Filing of* Documents *in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326 (1998).

10. Comments filed through ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is EB Docket No. 04-51. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfshelp@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and instructions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at http://www.fcc.gov/e-file/email.html. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

11. For hand deliveries, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.[13] We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage that parties track the organization set forth in this *Further Notice* in order to facilitate our internal review process.

13. *Ex Parte* Rules. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[14] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects

[13] *See* 47 C.F.R. § 1.48.

[14] 47 C.F.R. §§ 1.200, *et seq*.

discussed. More than a one or two sentence description of the views and arguments presented is generally required.[15] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

14. Initial Regulatory Flexibility Analysis. With respect to this NPRM, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix A. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the NPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM specified in paragraph 9 above. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[16]

15. Initial Paperwork Reduction Act of 1995 Analysis. This NPRM does not propose a new or modified information collection.

VI. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i), 4(j), and 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 154(o), 303(r), 544(g) and 606, NOTICE IS HEREBY GIVEN of the proposals described in this *Notice of Proposed Rulemaking*.

17. IT IS FURTHER ORDERED that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[15] *See* 47 C.F.R. § 1.1206(b)(2).

[16] *See* 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act ("RFA"),[17] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this *IRFA*. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above in paragraph 9. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[18] In addition, this NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[19]

A. Need for, and Objectives of, the Proposed Rules

2. In this NPRM, the Commission solicits comment on a petition for rulemaking filed by the Wireless Cable Association International, Inc. requesting revisions to the Part 11 rules governing the Emergency Alert System ("EAS").[20] The requested revisions are intended to reduce burdens on EAS participants and improve the overall performance of the EAS.

B. Legal Basis

3. Authority for the actions proposed in this NPRM may be found in sections 1, 4(i) 4(j), and 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 154(o), 303(r), 544(g) and 606.

C. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[21] The RFA generally defines the term "small entity" as having the same meaning as the terms "small

[17] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Fairness Enforcement Act of 1996.

[18] *See* 5 U.S.C. § 603(a).

[19] *See id*.

[20] 47 C.F.R. §§ 11.1, *et seq*.

[21] 5 U.S.C. §§ 603(b)(3), 604(a)(3).

business," "small organization," and "small governmental jurisdiction."[22] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[23] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[24] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[25] The arts, entertainment, and recreations sector had 96,497 small firms.[26]

5. *Multipoint Distribution Systems.* The proposed rules would apply to Multipoint Distribution Systems operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[27] This definition of small entity in the context of MDS auctions has been approved by the SBA.[28] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

6. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, Cable and Other

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[22] Id. § 601(6).

[23] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3). While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio stations, for purposes of this Notice, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations subject to the proposed rules in this Notice and to consider further the issue of the number of small entities that are radio broadcasters or other small media entities in the future. *See Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), *citing* 5 U.S.C. § 601(3).

[24] Small Business Act, 15 U.S.C. § 632 (1996).

[25] 5 U.S.C. § 601(4).

[26] *Id.*

[27] 47 C.F.R. § 21.961(b)(1).

[28] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the* Communications *Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

Subscription Programming, which includes all such companies generating $12.5 million or less in annual receipts.[29] This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, we find that there are approximately 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules proposed herein.

7. *Instructional Television Fixed Service.* The proposed rules would also apply to Instructional Television Fixed Service facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS.[30] There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.[31] However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 ITFS are small businesses and may be affected by the proposed rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. There are no reporting or recordkeeping requirements proposed in this NPRM. The proposals set forth in the NPRM are, for the most part, intended to enhance the performance of the EAS while reducing the burden on digital wireless cable systems. We emphasize that participation in state and local EAS activities remains voluntary and that we do not wish to impose additional costs or burdens on entities that choose not to participate in state and local area EAS plans. The NPRM seeks comment on proposed implementation of new equipment capabilities and new policies with regard to method of delivery of EAS messages to viewers for all EAS alerts, national, state and local. These proposals would lessen cost and operational burdens on digital wireless cable system EAS participants.

[29] 13 C.F.R. § 121.201, NAICS Code 515210.

[30] Id.

[31] 5 U.S.C. § 601(3).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

10. In setting forth the proposals contained in this NPRM, we have attempted to minimize the burdens on all entities. We seek comment on the impact of our proposals on small entities and on any possible alternatives that would minimize the impact on small entities.

F. Federal Rules that Duplicate, Overlap, or Conflict with the Proposed Rules

11. None.