

may include, but not be limited to, the following techniques:

- (i) Increasing the desired power of the public safety/CII signal;
- (ii) Decreasing the power of the commercial aviation air-ground system signal;
- (iii) Modifying the commercial aviation air-ground system antenna height;
- (iv) Modifying the commercial aviation air-ground system antenna characteristics;
- (v) Incorporating filters into the commercial aviation air-ground system transmission equipment;
- (vi) Changing commercial aviation air-ground system frequencies; and
- (vii) Supplying interference-resistant receivers to the affected public safety/CII licensee(s). If this technique is used, in all circumstances, commercial aviation air-ground system licensees shall be responsible for all costs thereof.

(2) Whenever short-term interference abatement measures prove inadequate, the affected part 90 non-cellular licensee shall, consistent with but not compromising safety, make all necessary concessions to accepting interference until a longer-term remedy can be implemented.

(3) When a part 90 public safety licensee determines that a continuing presence of interference constitutes a clear and imminent danger to life or property, the licensee causing the interference must discontinue the associated operation immediately, until a remedy can be identified and applied. The determination that a continuing presence exists that constitutes a clear and imminent danger to life or property, must be made by written statement that:

- (i) Is in the form of a declaration, notarized affidavit, or statement under penalty or perjury, from an officer or executive of the affected public safety licensee;
- (ii) Thoroughly describes the basis of the claim of clear and imminent danger;
- (iii) Was formulated on the basis of either personal knowledge or belief after due diligence;
- (iv) Is not proffered by a contractor or other third party; and,
- (v) Has been approved by the Chief of the Wireless Telecommunication Bureau or other designated Commission official. Prior to the authorized official making a determination that a clear and imminent danger exists, the associated written statement must be served by hand-delivery or receipted fax on the applicable offending licensee, with a copy transmitted by the fastest available means to the Washington, DC office of the Commission's Wireless Telecommunications Bureau.

■ 68. Add § 22.880 to read as follows:

§ 22.880 Information exchange.

(a) *Prior notification.* Public safety/CII licensees may notify a commercial aviation air-ground system licensee that they wish to receive prior notification of the activation or modification of a commercial aviation air-ground system ground station site in their area. Thereafter, the commercial aviation air-ground system licensee must provide the following information to the public safety/CII licensee at least 10 business days before a new ground station is activated or an existing ground station is modified:

- (1) Location;
- (2) Effective radiated power;
- (3) Antenna manufacturer, model number, height above ground level and up tilt angle, as installed;
- (4) Channels available for use.

(b) *Purpose of prior notification.* The prior notification of ground station activation or modification is for informational purposes only: public safety/CII licensees are not afforded the right to accept or reject the activation of a proposed ground station or to unilaterally require changes in its operating parameters. The principal purposes of prior notification are to:

- (1) Allow a public safety licensee to advise the commercial aviation air-ground system licensee whether it believes a proposed ground station will generate unacceptable interference;
- (2) Permit commercial aviation air-ground system licensee(s) to make voluntary changes in ground station parameters when a public safety licensee alerts them to possible interference; and
- (3) Rapidly identify the source if interference is encountered when the ground station is activated.

■ 69. Revise § 22.1003 to read as follows:

§ 22.1003 Eligibility.

Any eligible entity (see § 22.7) may apply for central station license(s) and/or offshore subscriber licenses under this subpart.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 70. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 71. Revise § 90.309(a)(1) to read as follows:

§ 90.309 Tables and figures.

- (a) * * *

(1) Using the method specified in § 1.958 of this chapter, determine the distances between the proposed land mobile base station and the protected co-channel television station and between the proposed land mobile base station and the protected adjacent channel television station. If the exact mileage does not appear in table A for protected co-channel television stations (or table B for channel 15 in New York and Cleveland and channel 16 in Detroit) or table E for protected adjacent channel television stations, the next lower mileage separation figure is to be used.

* * * * *

[FR Doc. 05-6948 Filed 4-12-05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04-51; FCC 05-21]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts revisions to the Federal Communication Commission's (Commission's) rules governing the Emergency Alert System (EAS) that will allow wireless cable television systems to provide EAS alerts to their subscribers in a more efficient and less burdensome manner.

Specifically, wireless cable system operators will now be able to install equipment that provides a means to switch all programmed channels to a predesignated channel that carries an EAS alert in lieu of installing an EAS decoder for each and every system channel. Accordingly, upon receipt of an EAS alert, subscribers' equipment will automatically be tuned to the channel carrying the EAS message.

DATES: Effective May 13, 2005.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Enforcement Bureau, Office of Homeland Security, at (202) 418-1199, or via the Internet at shannon.lipp@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, in EB Docket No. 04-51, FCC 05-21, adopted January 28, 2005 and released February 7, 2005. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A527,

Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via Web site at <http://www.bcpiweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

Synopsis of the Report and Order

1. In this *Report and Order*, the Commission adopts revisions to part 11 of the Commission's rules governing the Emergency Alert System (EAS) that will allow wireless cable television systems to provide EAS alerts to their subscribers in a more efficient and less burdensome manner. Specifically, wireless cable system operators will now be able to install equipment that provides a means to switch all programmed channels to a predesignated channel that carries an EAS alert in lieu of installing an EAS decoder for each and every system channel. Accordingly, upon receipt of an EAS alert, subscribers' equipment will automatically be tuned to the channel carrying the EAS message.

2. The Commission released a *Notice of Proposed Rulemaking (NPRM)*, 69 FR 18857, March 12, 2004, seeking comment on revisions to part 11 of the Commission's rules. Comments and replies were due May 10, 2004 and May 24, 2004, respectively. WCA and W.A.T.C.H. TV both submitted comments in support of the proposed modifications. W.A.T.C.H. TV, in its comments recommended a permanent rule change. No comments opposed the suggested rule revision, and no replies were submitted.

3. The Commission's EAS rules are designed to ensure that individual TV viewers, including viewers of wireless cable TV systems, receive all national level 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 and video EAS message on every channel in their systems. 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.

4. The Commission's EAS rules were neither intended to require a particular technical solution nor to impose an unnecessary financial burden on participating cable providers. The

Commission agrees that a good technical alternative exists to minimize that burden without harm to the public. As a result of these modifications, a wireless cable operator would be able to install EAS equipment for one channel only at the headend of each of its systems, and in the event of an EAS alert, automatically force each subscriber's equipment to tune to the channel carrying the EAS alert. This would allow wireless cable providers to deliver EAS alerts to all viewers in a more technologically and economically efficient manner. The Commission believes these revisions would satisfy the Communications Act's intent to provide national alert and warning to the public, while reducing the regulatory burden on wireless cable systems. The Commission also notes that W.A.T.C.H. TV, a wireless cable system, has successfully deployed force tuning in its system, and that no comments were filed opposing this approach. Accordingly, the Commission modifies its EAS rules to allow wireless cable TV systems to supply an EAS alert to their viewers by force tuning their systems. Also, because the revisions the Commission adopts today do not affect wireless cable systems' EAS equipment, the Commission adopts its tentative conclusion that no new authorization standards for such equipment are required.

5. The Commission recently released a *Notice of Proposed Rulemaking (NPRM)*, 69 FR 52843 (August 30, 2004), in which it sought comment on whether EAS as currently constituted is the most effective and efficient public warning system available to the American public. One of the primary objectives of the August 2004 *NPRM* is to determine whether there are any specific steps the Commission may take to enhance the effectiveness of EAS, particularly as regards digital, wireless, and other emerging communications technologies. Accordingly, regardless of the modifications made in the *Report and Order*, wireless cable operators are still subject to any future rulemaking proceedings. The *Report and Order* does not affect the Commission's ability to adjust any of the wireless cable requirements or impose other obligations on wireless cable operators through general rulemaking proceedings.

6. Because the modifications to the Commission's EAS rules will contribute to an economically efficient and technologically current public alert and warning system, in the *Report and Order*, the Commission adopts the proposed revisions to the EAS rules for wireless cable operators.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*. The Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

8. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought comment on the proposals in the *NPRM*, including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

9. In the *Report and Order*, the Commission adopts revisions to part 11 of the Commission's rules governing the Emergency Alert System (EAS). The revisions will reduce burdens on wireless cable television systems and improve the overall performance of the EAS.

Summary of Significant Issues Raised By Public Comments in Response to the IRFA

10. There were no comments filed specifically in response to the IRFA. Nevertheless, the agency has considered the potential impact of the rules proposed in the IRFA on small entities. As a result of these modifications, a wireless cable operator will now be able to install EAS equipment for one channel only at the headend of the system. In the event of an EAS alert, the system will automatically force each subscriber set-top box to tune to the channel carrying the EAS alert. This will allow wireless cable providers to deliver EAS alerts to all viewers in a more technologically and economically efficient manner. While this rule revision provides the greatest economic benefit to systems with over 5,000 subscribers by obviating the need for special signal conversion for all channels, it also provides a benefit to those systems with fewer than 5,000 subscribers.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

11. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization,"

and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The arts, entertainment, and recreations sector had 96,497 small firms.

12. *Broadband Radio Services.* The adopted rules would apply to Broadband Radio Services (BRS) operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of BRS 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. This definition of small entity in the context of BRS auctions has been approved by the SBA. The Commission completed its BRS 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 BRS auction winners, 48 remain small business licensees.

13. BRS 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 Subscription Programming, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes BRS and thus applies to BRS licensees that did not participate in the BRS auction. Information available to us indicates that there are approximately 392 incumbent BRS 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 BRS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein.

14. *Educational Broadband Services.* The adopted rules would also apply to Educational Broadband Services (EBS). The SBA definition of small entities for pay television services also appears to apply to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are

included in the definition of a small business. However, we do not collect annual revenue data for EBS 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 conclude that at least 1,932 EBS are small businesses and may be affected by the adopted rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. There are no reporting or recordkeeping requirements adopted in the *Report and Order*. The revisions adopted in the *Report and Order* 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 impose additional costs or burdens on entities that choose not to participate in state and local area EAS plans. The *Report and Order* adopts rules that permit 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 modifications will lessen cost and operational burdens on digital wireless cable system EAS participants.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.

17. In the *NPRM*, we sought comment on the impact of our proposals on small entities and on any possible alternatives that would minimize the impact on small entities. In adopting the modifications contained in the *Report and Order*, we have attempted to minimize the burdens on all entities.

Report to Congress

18. The Commission will send a copy of the *Report and Order*, including the

FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Act of 1995 Analysis

19. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. 3506(4).

Ordering Clauses

20. 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, this *Report and Order* is adopted.

21. *It is further ordered* that part 11 of the Commission's rules, 47 CFR part 11, is amended as set forth, effective May 13, 2005.

22. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

23. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 11

Television, Wireless cable, Emergency alert system, EAS, Force tune.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Section 11.11 is amended by revising the table entitled “WIRELESS CABLE SYSTEMS (MDS/MMS/ITFS STATIONS)” in paragraph (a) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) * * *

WIRELESS CABLE SYSTEMS (BRS/EBS STATIONS)

[A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels—including the required testing—by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.]

B. EAS equipment requirement	System size and effective dates	
	≥ 5,000 subscribers	< 5,000 subscribers
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder ^{1 2}	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels ³	Y 10/1/02	N
Video interrupt and audio alert message on all channels; ⁴ Audio and Video EAS message on at least one channel.	N	Y 10/1/02

¹ The two-tone signal is used only to provide an audio alert to an audience prior to an EAS emergency message or to the Required Monthly Test (RMT) under § 11.61(a)(1). The two-tone signal must be 8–25 seconds in duration.

² Wireless cable systems serving < 5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

³ All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

⁴ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

* * * * *

■ 3. Section 11.51 is amended by adding paragraphs (g)(5) and (h)(5) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(g) * * *

(5) Wireless cable systems with a requirement to carry the audio and video EAS message on at least one channel and a requirement to provide video interrupt and an audio alert message on all other channels stating which channel is carrying the audio and video EAS message, may comply by using a means on all programmed channels that automatically tunes the subscriber’s set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(h) * * *

(5) Wireless cable systems with a requirement to carry the audio and video EAS message on all downstream channels may comply by using a means on all programmed channels that automatically tunes the subscriber’s set-top box to a pre-designated channel which carries the required audio and video EAS messages.

* * * * *

[FR Doc. 05–7412 Filed 4–12–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 80, 87, 90 and 101

[WT Docket Nos. 98–20 and 96–188; RM–8677 and RM–9107; FCC 98–234 and FCC 99–139]

Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) announces that certain rules adopted in the Universal Licensing System proceeding (WT Docket Nos. 98–20 and 96–188, FCC 98–234) in 1998, to the extent they contained information collection requirements that required approval by the Office of Management and Budget (OMB), became effective on January 21, 1999.

The Bureau also announces that certain rules adopted in the Universal Licensing System proceeding (WT Docket Nos. 98–20, and 96–188, FCC 99–139) in 1999, to the extent they contained information collection requirements that required approval by OMB, became effective on October 1, 1999.

DATES: Sections 22.105, 22.709(b)(2), 22.803(b)(2), 22.875(d)(5), 22.929(b)(2), 80.21, 80.33, 80.53, 80.469, 80.511, 80.513, 80.553, 80.605, 87.215, 87.347, 90.625, 90.683, 90.763, 101.61, and 101.701, published at 63 FR 68904 (Dec. 14, 1998), contained information collection requirements and became effective on January 21, 1999. Sections 22.529(c), 22.709(f), 22.803(c), and 22.929(d), published at 64 FR 53231 (Oct. 1, 1999), contained information collection requirements and became effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Wireless Telecommunications Bureau, at (202) 418–0920, or via the Internet at Richard.Arsenault@fcc.gov. For additional information concerning the information collections contained in this document, contact Judith-B. Herman at (202) 418–0214, or via the Internet at Judith-B.Herman@fcc.gov.

Announcement of Effective Date of Certain Commission Rules

1. On December 14, 1998, the Commission published a notice in the **Federal Register**, 63 FR 68904, of its Report and Order (*Report and Order*) in the Universal Licensing System proceeding (WT Docket Nos. 98–20 and 96–188; RM–8677; FCC 98–234). In that Notice, the Commission stated that it would publish a document in the **Federal Register** announcing the effective date of certain rules adopted in the *Report and Order*—specifically §§ 22.105, 22.709(b)(2), 22.803(b)(2),