

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Review of the Emergency Alert System) EB Docket No. 04-296
)
To: The Commission)

**PETITION FOR EXPEDITED EXTENSION OF
THE 180-DAY “CAP” COMPLIANCE DEADLINE**

I. Introduction.

The forty-six Named State Broadcasters Associations (“State Associations”),¹ National Association of Broadcasters (“NAB”),² National Cable and Telecommunications Association (“NCTA”),³ Society of Broadcast Engineers (“SBE”),⁴ American Cable Association (“ACA”),⁵

¹ The participating State Associations are listed on Attachment A, hereto. Each of the State Associations is committed to advance and protect the best interests of the free, local, over-the-air broadcast industry within their respective borders as well as at the federal level.

² NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

³ NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation’s cable television households and more than 200 cable program networks. The cable industry is the nation’s largest provider of broadband service after investing over \$160 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 22 million customers.

⁴ SBE is the national association of broadcast engineers and technical communications professionals, with more than 5,500 members nationwide.

⁵ ACA represents nearly 900 independent cable companies that serve more than 7.6 million video subscribers, primarily in smaller markets and rural areas. ACA member systems are located in 49 states and 4 U.S. territories. The companies range from family-run cable businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA’s members serve fewer than 2,000 subscribers. All ACA members face the challenges of building, operating, and upgrading broadband networks in lower density markets.

Association for Maximum Service Television (“MSTV”),⁶ National Public Radio (“NPR”),⁷ Association of Public Television Stations (“APTS”),⁸ and the Public Broadcasting Service (“PBS”)⁹ (collectively, the “Petitioners”), hereby respectfully request the Federal Communications Commission (“FCC” or “Commission”) to act expeditiously to extend the March 29, 2011 deadline by which the thousands of companies nationwide (collectively, “EAS Participants”)¹⁰ must be able to receive Common Alerting Protocol (“CAP”) v1.2 Standard formatted Emergency Alert System (“EAS”) alerts. The current March 29, 2011 deadline was established under the Commission’s EAS regulations by virtue of the fact that on September 30, 2010, the Department of Homeland Security’s Federal Emergency Management Agency (“FEMA”) published the technical standards and requirements for CAP-formatted EAS alerts to be used for the Integrated Public Alert Warning System (“IPAWS”).¹¹ By the deadline, which is less than six months from now, all EAS Participants must have acquired, installed and tested the necessary CAP-compliant equipment. The Petitioners request that the Commission extend the

⁶ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

⁷ NPR is a nonprofit membership corporation that produces and distributes noncommercial educational programming through more than 860 NCE FM radio stations.

⁸ APTS is a nonprofit organization whose membership comprises the licensees of nearly all of the nation’s CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American public.

⁹ PBS, with its 358 member stations, offers all Americans - from every walk of life - the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches more than 118 million people through television and nearly 21 million people online, inviting them to experience the worlds of science, history, nature and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

¹⁰ The FCC defines “EAS Participants” as entities that are required to comply with its EAS regulations, *e.g.*, analog and digital radio and television stations, wired and wireless cable television systems, DBS, SDARS, digital cable, and wireline video systems. 47 C.F.R. § 11.2(c).

¹¹ *See* 47 C.F.R. § 11.56.

deadline for at least an additional six months to September 30, 2011¹² or consider other appropriate relief, including, but not limited to, a longer extension as well as holding the deadline in abeyance until the FCC has completed its own CAP-related equipment certification process and has resolved its anticipated rulemaking proceeding concerning modifications to Part 11 of the Commission's rules necessary to reflect the implementation of CAP.

II. Discussion.

A. Petitioners' Request is Consistent with CSRIC's Recommendations for Additional Time to Ensure Proper Equipment Certification.

The Petitioners applaud FEMA and the Commission, as well as CSRIC, who have each worked tirelessly to solicit the views of affected parties and to coordinate their plans and actions towards the successful adoption of CAP. The undertaking is important, and all parties agree that the full realization of that important work should not be unduly delayed. However, the Commission's own record in its EAS proceedings well illustrates the difficulties posed by potentially requiring as many as 25,000 to 30,000 EAS Participants to acquire from a limited number of suppliers new, sophisticated equipment that is subject to governmental certification.¹³ Furthermore, a substantial amount of regulatory uncertainty remains that prevents EAS Participants from making the necessary, informed decisions regarding what equipment to acquire and install. Fortunately, resolution of that uncertainty is within the control of FEMA and the Commission.

The nearly unanimous view of many EAS Participants and other interested parties in this proceeding is that the 180-day deadline is far too short to complete the transition to CAP. In its

¹² The Petitioners request for an additional six months is consistent with the recommendation to the Commission made by the Communications Security, Reliability and Interoperability Council ("CSRIC") that the 180-day deadline be extended to no less than 360-days. *See* CSRIC, Working Group 5A, September 2010 Final Report, at 3, 17-18.

¹³ *See, e.g.*, SpectraRep LLC Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 4; TFT Inc. Comments at 8; Texas Association of Broadcasters Comments, EB Docket No. 04-296, DA 10-500 (May 18, 2010), at 5.

EAS Public Notice released earlier this year,¹⁴ the Commission’s Public Safety and Homeland Security Bureau sought and received comment on, among other things, the specific issue of whether EAS Participants should be required to be able to accept CAP-based alerts within 180-days after FEMA publishes the technical standards and requirements for CAP.¹⁵ The overwhelming majority of commenters showed that 180-days is insufficient to accomplish all the tasks needed for successful deployment of new CAP-compliant equipment. The record in the proceeding revealed a number of significant obstacles associated with the 180-day deadline. These issues are particularly urgent given that the 180-day “clock” has started to run.

As parties demonstrated in their comments, all new EAS equipment, including both software and hardware, must be subjected to multiple phases of testing. Manufacturers have needed to perform tests on the end products of their design, including conformance testing at a certified lab to obtain FEMA, and/or possibly Commission, certification prior to making the equipment available for evaluation and acquisition by EAS Participants. The Petitioners recognize that FEMA has been engaged in its own testing and certification process. However, the IPAWS list of CAP tested and certified EAS equipment has yet to be released, and it is not expected to be issued until later this year notwithstanding the commencement of the 180-day “clock.”

B. Additional Time is Warranted Should the Commission Proceed with Its Own Certification Process, As Recommended by CSRIC.

It remains unclear whether the FCC will undergo its own equipment certification process as recommended by CSRIC. In its recently released Final Report, CSRIC recommends that the

¹⁴ See Public Notice, *Public Safety and Homeland Security Bureau Seeks Informal Comment Regarding Revisions to the Federal Communications Commission’s Part 11 Rules Governing the Emergency Alert System Pending Adoption of the Common Alerting Protocol by the Federal Emergency Management Agency*, DA 10-500, EB Docket No. 04-296 (March 25, 2010) (“EAS Public Notice”).

¹⁵ *Id.* at 2.

FCC certify CAP EAS devices on its own, separate from FEMA, because “IPAWS NIMS conformance testing only provides verification of a project-specific CAP data capability that is necessary for the IPAWS project, but not sufficient for the overall CAP-EAS endeavor. The proper CAP-to-EAS translation function is not included in the IPAWS NIMS conformance tests.”¹⁶ If the FCC heeds the advice of CSRIC (with which Petitioners agree) and decides to conduct its own certifications, even equipment approved by FEMA may need to be modified as a result of the FCC’s own testing.

Given such circumstances, additional time will be needed for those vendors to thoroughly test their equipment, perform conformance testing at a certified lab, and administratively process any needed modifications. Indeed, it is estimated that many vendors will require three to six months of actual testing of the new CAP-capable equipment before it can be relied upon and “current lead times on electronic components are substantially longer than usual and are often as long as 6 months.”¹⁷ Thus, it would be premature at best, and potentially wasteful at worst, for the thousands of EAS Participants to acquire equipment before they know that the equipment has successfully passed not only FEMA review, but FCC review as well. In short, until the FEMA and potential FCC equipment certification processes are complete, equipment manufacturers and EAS Participants will not have the reasonable certainty they need for the manufacture, purchase, and suitability of CAP-compliant equipment for their individual purposes.

The uncertainty created by the question of whether the Commission will conduct its own certification process is exacerbated by the separate question of whether revisions to Part 11 of the Commission’s Rules will impact any aspect of the CAP operations of EAS Participants. The Commission has noted that the transformation of EAS, brought about by CAP, will necessitate

¹⁶ CSRIC September 2010 Final Report, at 16-17.

¹⁷ See, e.g., Trilithic Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 2.

revisions to Part 11 of the Commission's Rules and that it intends to issue a Notice of Proposed Rulemaking in order to complete the necessary revisions.¹⁸ As part of that proceeding, the FCC will request and receive both specific recommendations regarding rule changes as well as general comment regarding the Part 11 regulatory structure for CAP-based EAS.¹⁹ Any such possible rule changes could have a significant impact on what will be required for EAS Participants to install and operate the new CAP-compliant equipment, or at least may necessitate modifications to such equipment once installed.

Given that the outcome of the rulemaking proceeding will undoubtedly have an impact on what CAP-compliant equipment will be deemed acceptable, it makes little sense that equipment be purchased before interested parties know the outcome of that rulemaking. The Petitioners therefore submit that it is premature for the 180-day clock to have started, given the regulatory uncertainty that will continue to exist until the FCC completes final revisions to its rules governing CAP-based EAS.

C. Petitioners Respectfully Request Additional Time Based on Other Significant Practical Considerations.

The challenges of the 180-day deadline are not limited to testing, manufacturing, and delivery concerns, but also include concerns based upon budgeting and financial realities. As a number of parties pointed out in their comments in this proceeding, the Commission should take into consideration the fact that many vendors and EAS Participants must budget their expenses well in advance of expenditure and the 180-day deadline puts EAS Participants in the difficult position of having to budget for equipment that is not yet determined compliant by the Federal Government. In addition, many noncommercial EAS Participants are public institutions or receive public funding and will simply not be able to obtain the necessary funding approval

¹⁸ See, e.g., EAS Public Notice at 2.

¹⁹ *Id.*

quickly enough to comply with the 180-day deadline.²⁰ Many of these and other EAS participants are small entities, some located in rural areas, and the amounts needed for new EAS equipment are challenging to add to tight budgets, especially given the short 180-day deadline.

The Petitioners understand why the Commission initially adopted its 180-day deadline.²¹ Deadlines often provide a necessary spur to encourage desired conduct. However, the types of uncertainty noted in this Petition, which have developed *subsequent* to the FCC's adoption of the 180-day deadline, strongly suggest that it is premature for the 180-day "clock" to have started. EAS Participants still lack basic, needed information as to whether the FCC will institute its own CAP-compliance certification process, how long such a process will take, and how long it will take the Commission to complete its CAP-related rulemaking. For those reasons, the Commission may even wish to consider holding the 180-day rule in abeyance until those uncertainties are resolved. Admittedly, notwithstanding the FCC's own best efforts, the development and implementation of CAP has proven to be a much more complicated and protracted task than perhaps first imagined.²² However, given the importance of getting it right the first time, flexibility should be the watchword in this context.

²⁰ See, e.g., National Association of Broadcasters Reply Comments, EB Docket No. 04-296, DA 10-500 (June 14, 2010), at 5; SpectraRep Comments, EB Docket No. 04-296, DA 10-500 (May 17, 2010), at 5. In the case of the Corporation for Public Broadcasting, for example, grant application filing windows for equipment purchases occur irregularly. Extending the current 180-day deadline would allow more time for coordination of possible grant funding and for stations to seek and obtain any funding that may be made available in order to purchase new CAP-compliant EAS equipment.

²¹ See *Review of the Emergency Alert System*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13289 (2007), at ¶ 26; 47 C.F.R. § 11.56.

²² The Commission should also take into account that while EAS participants are required to meet the 180-day deadline, there are no rules requiring state or local Emergency Management Agencies or public safety departments to be able to actually deliver such alerts by that deadline. So while EAS Participants will need to be able to receive national CAP messages delivered by FEMA, they will also need to make sure that their new equipment can simultaneously receive older "legacy" messages that may continue to be issued locally. Extending the 180-day deadline would provide EAS Participants with more time to

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ATTACHMENT A

The Named State Broadcasters Association participating in the instant filing are:

Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and the Wyoming Association of Broadcasters.