

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ respectfully submits reply comments on the Second Further Notice in the above-captioned proceeding.² As the record demonstrates, the Commission should commence with national, annual testing of the Emergency Alert System (EAS), subject to minor adjustments of certain proposals set forth in the Second Further Notice.

I. Introduction and Summary

As the State Associations explain, the “highest and best use of an FCC broadcast license is the protection of the lives and property of all who live, work and travel within the range of a radio or television station’s signal.”³ Broadcasting is ubiquitous, and given the ability of radio and television stations to touch nearly all Americans, broadcasters recognize their distinctive duty in distributing emergency information. Through the use of EAS as well as on-the-spot live news reporting,

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Review of the Emergency Alert System, *Second Further Notice of Proposed Rulemaking*, EB Docket No. 04-296 (*rel.* Jan. 14, 2010) (Second Further Notice).

³ Joint Comments of Named State Broadcasters Association, EB Docket No. 04-296, filed Mar. 15, 2010 (State Associations Comments), at 2.

broadcasters save lives, and a reliable and robust EAS is integral to these efforts. EAS is critical for responding to potential terrorist threats, severe weather conditions, chemical accidents, and a myriad of other situations.⁴ For these reasons, NAB supports the proposal to establish annual national testing of the EAS, and below suggests changes to certain proposals in the Second Further Notice that are intended to encourage interest and participation as well as promote useful test feedback.⁵

II. The Proposals Concerning the Scheduling and Notification of Annual EAS Tests Are Reasonable

The record supports the proposed schedule for national EAS exercises set forth in the Second Further Notice.⁶ Commenters agree that yearly testing of the EAS is necessary to help produce useful, consistent data on the functional reliability of the system.⁷ Annual testing will also enable the measurement of year over year improvements. NAB Comments at 3. Parties also support the proposal to schedule the exercises at various times each year to prevent complacency,⁸ so long as the schedule accommodates the programming schedules of EAS Participants and the multiple time zones across the nation. Cox Comments at 2-3. Testing the EAS any more frequently

⁴ Comments of the New Jersey Broadcasters Association, EB Docket No. 04-296, filed Mar. 12, 2010 (NJBA Comments), at 1-3.

⁵ “EAS Participants” include AM, FM and television broadcast stations, cable systems, wireless cable systems, Direct Broadcast Satellite systems, Satellite Digital Audio Radio Services, and others. 47 C.F.R. § 11.1.

⁶ Further Notice at ¶¶ 26–27.

⁷ Comments of the National Association of Broadcasters, EB Docket No. 04-296, filed Mar. 15, 2010 (NAB Comments), at 3-4; Comments of the National Cable & Telecommunications Association, EB Docket No. 04-296, filed Mar. 15, 2010 (NCTA Comments), at 2; Comments of Sage Alerting Systems, Inc., EB Docket No. 04-296, filed Mar. 15, 2010 (Sage Comments), at 9.

⁸ Comments of the Society of Broadcast Engineers, Inc., EB Docket No. 04-296, filed Mar. 12, 2010 (SBE Comments), at 3-4; Comments of Cox Media Group, Inc., EB Docket No. 04-296, filed Mar. 15, 2010 (Cox Comments), at 2-3.

than once a year would place undue burdens on EAS Participants that must already conduct other regularly scheduled, frequent tests of the EAS.⁹

The proposed rule promises to provide EAS Participants with two months notice prior to the conduct of a national EAS test. Second Further Notice at ¶ 24. The record indicates that this time frame may prove too brief. The State Associations request an extension of this notice to four months, explaining that additional advance notice of the national test will promote readiness, and also will “better insure that the public has been adequately informed of the ‘test’ nature of the national EAS testing, thereby reducing the risk of public panic”¹⁰ Similarly, although NCTA believes 60 days advance would be sufficient for cable operators’ preparation, 90 days notice would allow them time to insert notices of the EAS test in customer bills.¹¹ NAB has no objections to extending the advance notification period to either 90 days or four months. The additional time will allow radio and television stations to better plan and notify their audiences of the coming EAS exercise, and coordinate the national test with their regularly scheduled weekly and monthly EAS tests, as well as periodic events like earthquake and tsunami warning exercises.¹²

The Commission should adopt the proposal to replace the regularly scheduled Required Monthly Test (RMT) with the national EAS test for the month in which it occurs. Second Further Notice at ¶ 28.¹³ The national test will likely be more

⁹ State Associations Comments at 8; NAB Comments at 3 (overly frequent EAS testing could disrupt regularly scheduled programming and burden local stations, especially smaller stations); NCTA Comments at 2-3.

¹⁰ State Associations Comments at 8.

¹¹ NCTA Comments at 3; *accord* Sage Comments at 7.

¹² State Associations Comments at 8.

¹³ SBE Comments at 4; State Associations Comments at 9; Sage Comments at 9.

comprehensive than the required monthly or weekly tests that broadcasters must perform so there is little point in duplicating such efforts in a particular month.¹⁴

III. The Proposed EAS Test Data Should be Circumscribed and Disseminated to Federal Partners and Other Emergency Management Personnel

The Commission proposes that EAS Participants record and report a wide range of information concerning “each alert received from each message source monitored at the time of the national” EAS test, including:

- (1) the day/time when the alert was received;
- (2) the day/time when the alert was retransmitted;
- (3) the Participant’s “best effort” analysis of any failures, if necessary;
- (4) the Participant’s station identification and level of EAS designation;
- (5) the day/time of receipt of the Emergency Action Notification (EAN) message;
- (6) the day/time of primary entry point (PEP) station receipt of the EAN message;
- (7) the day/time of receipt of actual broadcast of the Presidential message;
- (8) the day/time of receipt of the Emergency Action Termination (EAT) message;
- (9) the sources being monitored by the Participant during the test; and
- (10) the make and model of a Participant’s EAS equipment. Second Further Notice at ¶ 29.

The Commission proposes to make this information publicly available. *Id.* at ¶ 30.

Most commenters express no objections to the collection of the first three items listed above, as this information is routinely produced and logged following required

¹⁴ Comments of Verizon, EB Docket No. 04-296, filed Mar. 15, 2010 (Verizon Comments), at 2; NCTA Comments at 3.

weekly and monthly tests of the EAS.¹⁵ As NAB pointed out in its initial comments, however, several obstacles may prevent EAS Participants from submitting all the additional proposed data. For instance, SBE explains that many stations will be able to report only the data that is automatically shown on the EAS unit's printout, which includes when the alert was received, when the alert ended, and the station from which the alert was received. SBE Comments at 4-5. It could also be impossible for EAS Participants to report the date and time of EAN messages received from all sources that a station monitors, because almost all EAS decoders lock out additional sources once it receives an EAN message from an initial source.¹⁶ The proposal to collect data on when Participants received EAT messages also does not account for the situation where an EAT message is never sent, as occurred in the recent EAS test in Alaska. NAB Comments at 6.

Commenters also urge the Commission to look carefully at the types of data necessary to be collected, and refrain from burdening local radio and television stations with obtaining, collating and submitting data not needed to further the ultimate goal of the national EAS test – to exercise the functionality of the system. *E.g.*, State Associations Comments at 11. To minimize the burdens on all EAS Participants, NAB agrees that the Commission should consider limiting the required feedback of Participants to information that is readily accessible, given equipment constraints, or essential to measuring the success of a test. As suggested by commenters, the Commission should also consider providing a flexible, simple mechanism for EAS

¹⁵ *E.g.*, NAB Comments at 4; SBE Comments at 4; State Associations Comments at 11.

¹⁶ NAB Comments at 5; State Associations Comments at 10-11.

Participants to voluntarily submit additional relevant data on any anomalies revealed by the EAS exercise. SBE Comments at 5; Verizon Comments at 2-3.

Most commenters further agree that publication of EAS Participant-specific test results would be unnecessary and possibly counter-productive.¹⁷ NAB recognizes the need for government to collect and analyze certain feedback on the national EAS test, but we are similarly concerned that releasing Participant-specific data widely, beyond federal partners and authorized emergency management officials, could have unintended consequences. NAB Comments at ¶ 30.

Numerous commenters agree with NAB in urging the Commission to consider whether security interests would advise against public distribution of specific data about the national test, including EAS Participant-specific information.¹⁸ Indeed, general publication of sensitive information, such as the identification of the causes for a potential failure to deliver a Presidential alert, could “reveal details in the EAS that could undermine efforts to protect national security.” Verizon Comments at 4.

The EAS is also an extremely complex system, in which it may be difficult to pinpoint the root cause of particular flaws that arise during a national EAS test. NAB Comments at ¶ 30. For this additional reason, NAB agrees with IPAWS about the widespread publication of detailed, especially EAS Participant-specific, information: “Our purpose in conducting national level tests of the EAS is to discover what

¹⁷ *E.g.*, Comments of Integrated Public Alert and Warning Systems, EB Docket No. 04-296, filed Mar. 15, 2010 (IPAWS Comments) at 2; State Associations Comments at 12; Cox Comments at 4; Verizon Comments at 3-4.

¹⁸ NAB Comments at 7; Sage Comments at 10; State Associations Comments at 12; Verizon Comments at 3-4; Comments of the Primary Entry Point Advisory Committee, EB Docket No. 04-296, filed Mar. 15, 2010 (PEPAC Comments), at 4-5; Cox Comments at 4.

portions of the system work, what portions need improvement and to establish a plan to execute such improvements as may be necessary.” IPAWS stresses that “[o]ur purpose” is “not to embarrass or bring pressure upon any regulated entity,” and “[m]aking too much detail information publicly available may have a negative influence on critical elements of the national EAS.” IPAWS Comments at 2.

Accordingly, NAB respectfully submits that public dissemination of all the proposed EAS test feedback would not serve the essential purpose of the national test. We believe that the Commission can accomplish its goals for national EAS testing by disseminating EAS Participant-specific data to “authorized personnel of state, tribal and local government emergency management agencies.” Second Further Notice at ¶ 30.

Several parties additionally urge the Commission to clarify that participation in national EAS tests will not lead to enforcement actions.¹⁹ PEPAC notes that the Commission appropriately waived such enforcement in relation to the recent statewide EAS test in Alaska.²⁰ The State Associations stress the unique nature of the national EAS, and point out that removing concerns about possible repercussions for problems during the test will promote robust and candid participation. State Associations Comments at 14. SBE adds that most local engineering communities will stand ready to assist Participants to resolve any flaws identified during the national test, and refraining from enforcement actions will encourage Participants to publicly request such help. SBE Comments at 4-5. For these reasons, the Commission should adopt a

¹⁹ State Associations Comments at 13-14; PEPAC Comments at 5; Sage Comments at 4; Comments of Digital Alert Systems, EB Docket No. 04-296, filed Mar. 15, 2010 (Digital Alert Comments), at 3.

²⁰ PEPAC Comments at 5 citing Letter from Thomas J. Beers, Chief, Policy Division, Public Safety and Homeland Security Bureau, to Darlene Simono, Executive Director, Alaska Broadcasters Association (Dec. 16, 2009).

policy, in advance of the first national EAS exercise, that will foster participation by all entities, including radio and television stations, without undue concerns over potential penalties for problems or flaws in EAS systems discovered during the test.²¹

IV. The Commission Should Consider Undertaking Several Equipment-Related Steps in Advance of the National EAS Test

In our initial comments, NAB offered several recommendations designed to foster success of the national EAS test. First, we noted that broadcasters use EAS equipment made by a variety of manufacturers that has been installed over a long period of time, and that the Commission's EAS rules have changed during this period.²² As a result, it is likely that some EAS Participants will need to upgrade or replace EAS equipment to ensure it works as intended during a national test. We also noted that that broadcasters already face a federal requirement to upgrade their EAS equipment to accommodate the pending transition to next-generation EAS, possibly as soon as the first quarter of 2011.²³ Consequently, introduction of the national test could require some broadcasters to modify their EAS equipment twice in the near term.

To facilitate and coordinate the national EAS test and the advancement of next-generation EAS, NAB requests that the Commission coordinate with both FEMA and EAS equipment manufacturers to discern the specific EAS equipment certification

²¹ In our initial comments, NAB urged the Commission to undertake a comprehensive review of the EAS Handbooks, to ensure their accuracy and usefulness, prior to the first national EAS test. NAB Comments at 5-6. We note that this suggestion was echoed by both government parties and a prominent equipment manufacturer. IPAWS Comments at 3; Sage Comments at 4.

²² NAB Comments at 7-8 citing Second Further Notice at ¶ 32 note 48; see also Primary Entry Point Administrative Council, Inc., Encoder/Decoder Closed Circuit Test Report, August 8, 2008 (2008 PEPAC Report).

²³ Review of the Emergency Alert System, *Second Report and Order*, EB Docket No. 04-296, 22 FCC Rcd 13275, 13288 (2007).

requirements needed for all equipment to successfully transmit an EAN message nationwide, including the requirements concerning Federal Information Processing Standard (FIPS) codes. Second Further Notice at ¶ 32.

NAB also endorses the State Associations' suggestion that all EAS equipment manufacturers should be required to certify that their equipment can perform all of the necessary steps needed to receive, record and retransmit an EAS message, including the EAN. State Associations Comments at 13. One such manufacturer, Sage, agrees with this approach, urging the Commission to enlist the voluntary involvement of manufacturers in a multi-vendor pre-test of EAS equipment. Sage states that such an informal simulation could be run with minimal lead time, and at lower cost, and could greatly assist the Commission in crafting a final set of procedures that would enhance the success of the national exercise. Sage Comments at 3-4. NAB would applaud such an undertaking, in advance of the national EAS test, because it would also allow broadcasters to identify and correct any potential equipment flaws that could disrupt successful participation in the national exercise.

V. Conclusion

Accordingly, NAB respectfully supports the proposal for a national, annual test of the Emergency Alert System, and offers several suggestions above for ways to improve the utility of such an exercise.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jane E. Mago". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

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April 13, 2010