

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

In the Matter of)	
)	
Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System)	PS Docket No. 15-94
)	
Wireless Emergency Alerts)	PS Docket No. 15-91

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

The National Association of Broadcasters (NAB)¹ submits reply comments on the above-captioned Notice of Proposed Rulemaking regarding the Emergency Alert System (EAS).² As described in our initial comments, America's radio and television broadcasters are ubiquitous and reliable, especially when other communications outlets fail, and indispensable during emergencies. We have served the public as the backbone of EAS for over six decades,³ and as First Informers, providing critical, often life-saving information to local communities before, during and after an emergency.⁴ The record in this proceeding supports local control of EAS testing, the importance and feasibility of selective override, and the overly burdensome nature of the proposals for improving EAS security.

¹ 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.

² *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Wireless Emergency Alerts*, PS Docket Nos. 15-94 and 15-91, Notice of Proposed Rulemaking, 31 FCC Rcd 594 (2016) (Notice).

³ NAB Comments, PS Dockets Nos. 15-94 and 15-91, at 1 (June 8, 2010).

⁴ NAB Comments, EB Docket No. 04-295, at 2-4 (May 28, 2014).

I. The Record Supports Local Control of EAS Testing

NAB supports Commission efforts to facilitate live code testing of EAS,⁵ which can help alert originators improve their proficiency, measure the success of alert dissemination, and educate the public.⁶ However, the Commission should not pursue its inquiry into new rules concerning the frequency of such tests.⁷ The Commission must be cautious regarding overuse of the EAS Attention Signal, which can cause public fatigue.⁸ Also, despite the best efforts of local emergency managers and EAS Participants, there is always a risk that a live code EAS test could mistakenly trigger downstream EAS equipment, causing public confusion.⁹

Only local emergency managers, State Emergency Communications Committees (SECCs), National Weather Service regional offices and EAS Participants are familiar enough with the population, weather patterns, and other local factors affecting the decision to conduct a live code EAS test. Alaska, for example, conducts two live code tests annually, while New Hampshire refrains. The Commission should instead leave such decisions to SECCs.¹⁰ There is no one-size fits-all policy for local EAS procedures.¹¹ EAS Participants are well aware of the risks of over-alerting, and already take steps to minimize the public impact.

⁵ Notice, 31 FCC Rcd at 625-626.

⁶ New York City Emergency Management Department (NYCEM) Comments, PS Docket Nos. 15-94 and 15-91, at 4 (June 8, 2016).

⁷ Notice, 31 FCC Rcd at 626.

⁸ Association of Public-Safety Communications Officials-International, Inc. (APCO) Comments, PS Docket Nos. 15-94 and 15-91, at 2 (June 8, 2016).

⁹ New Hampshire Association of Broadcasters (NHAB) Comments, PS Docket Nos. 15-94 and 15-91, at 7-8 (June 8, 2016).

¹⁰ See, e.g., NHAB Comments at 7; Gary E. Timm Comments, PS Docket Nos. 15-94 and 15-91, at 42 (June 8, 2016); Named State Broadcasters Associations (NASBA) Comments, PS Docket Nos. 15-94 and 15-91, at 16 (June 8, 2016).

¹¹ Timm Comments 42.

Beyond providing local stakeholders with the discretion and tools they need to schedule live code tests,¹² additional Commission involvement is not necessary.

II. The Record Demonstrates that Selective Override is Technically Available and Should be an Option for Television Stations that Participate in EAS

The Commission's rules governing "force tuning" allow cable providers to meet their EAS obligations by unilaterally switching their entire slate of channels to a designated channel that carries the required EAS message.¹³ For over twenty years, broadcasters have described the consumer harm of interrupting a local television station's live, in-depth coverage of an emergency, such as storm tracks and public safety instructions, only to shift viewers to another channel that displays the same EAS message the broadcaster is overlaying or crawling under its live programming. To solve this problem, we have urged the Commission to implement a policy of voluntary "selective override" that would permit television stations that already participate in EAS to opt out of a cable provider's system-wide force tuning.¹⁴ Broadcasters want nothing more than to serve our viewers with timely, detailed and continuous emergency information, including AMBER Alerts.¹⁵

Force-tuning has real world implications. For example, cable TV operators continue to disrupt broadcasters' coverage of blizzards and other severe weather in New Hampshire.

¹² NAB agrees with NASBA that eliminating the need for a specific Commission waiver to conduct live code tests would facilitate the administration of tests by local SECCs. NASBA Comments at 16.

¹³ 47 C.F.R. § 151(g)(4) and (h)(4).

¹⁴ See, e.g., NAB Comments, EB Docket No. 04-296, at ii (Aug. 14, 2014); NAB Comments, EB Docket No. 04-296, at 10-13 (Nov. 4, 2013); NAB Informal Comments, EB Docket No. 04-296, at 11-14 (filed May 17, 2010); Letter from Edward O. Fritts, President, NAB, to Reed Hundt, Chairman, FCC (May 30, 1997); NAB Petition for Partial Reconsideration, FO Docket Nos. 91-301 and 91-171 (Jan. 27, 1994); NAB Comments, FO Docket Nos. 91-301 and 91-171, at 14-16 (Nov. 12, 1993).

¹⁵ The National Center for Missing & Exploited Children (NCMEC), administrator of the AMBER Plan, has found that force-tuning "has confused and distressed many viewers . . . Moreover, overrides frighten people. . . {and} should be eliminated, or alternatively, broadcasters should retain the right to selective override" NCMEC Comments, EB Docket No. 04-296, at 10 (Oct. 29, 2004).

These stations employ professional, AMS-certified meteorologists whose expertise are wasted every time the cable providers disrupt programming.¹⁶ Similar problems continue unabated in Denver and elsewhere.¹⁷

Although current rules allow broadcasters to negotiate with pay TV providers regarding selective override,¹⁸ agreements are exceedingly rare because cable operators claim that equipment constraints make it too difficult to implement. However, the record here shows otherwise; indeed, the rehashed objections of cable providers can be boiled down to one primary concern: money.¹⁹ For example, NCTA states that disallowing force-tuning would “require a massive overhaul of cable operators’ video networks . . . which would result in higher costs being passed along to consumers In addition, the software in many older set-top boxes is no longer being updated, making changes to those platforms time-consuming and costly.”²⁰ ACA states that “the software contained in many set-top boxes deployed in the field does not support selective overrides. Upgrading this software would, in some cases, require the purchase of new headend equipment, at a significant monetary and administrative cost to operators.”²¹ In other words, cable operators have deployed, replaced and upgraded inflexible plant over the twenty years, despite repeated calls for equipment that could accommodate selective override, and now it is too expensive to change.

¹⁶ NHAB Comments, PS Docket Nos. 15-94 and 15-91, at 9-10 (June 8, 2016).

¹⁷ NASBA Comments at 20.

¹⁸ 47 C.F.R. §§ 11.51(g)(4) and (h)(4).

¹⁹ NHAB Comments at 10.

²⁰ National Cable & Telecommunications Association (NCTA) Comments, PS Docket Nos. 15-94 and 15-91, at 12 (June 8, 2016).

²¹ American Cable Association (ACA) Comments, PS Docket Nos. 15-94 and 15-91, at 14 (June 8, 2016).

ACA offers a litany of obstacles to selective override: set-top boxes and headend technology have not advanced enough; the needed software is not present in older set-top boxes; the costs to upgrade equipment would be too costly; cable box lockouts are rare, and so on.²² Despite these protestations, it is irrefutable that pay TV providers can implement selective override if they were so inclined, given that some cable operators have successfully done so. ACA itself concedes that “some cable operators are currently capable of selectively overriding forced tuning signals.”²³

As NHAB states with respect to the force-tuning problems in New Hampshire: “Upon investigation this usually boils down to economics – it is less expensive for a cable franchise to transmit all stations simultaneously than to install selective override equipment on each channel.”²⁴ The New York City Emergency Management Department (NYCEM) agrees that selective override is a worthwhile option, stating:

“Recognizing that during an emergency the general public will be seeking additional information from a variety of sources, including broadcast television, combined with the fact that past force tuning experiences led to widespread disruptions is a compelling reason that alternative methods of EAS delivery be permitted by the Commission.”²⁵

²² *Id.*, at 13-15. As stated in our initial comments, NAB may not object to a more flexible regime for very small cable operators, such as these serving fewer than 5,000 subscribers. Notice, 31 FCC Rcd at 631. We recognize that it could be unduly burdensome for some very small cable operators to implement selective override. For these entities, the Commission could consider a waiver process that allows cable operator to demonstrate financial hardship and seek additional time to comply with any new requirement.

²³ *Id.*, at 13. ACA adds the ludicrous argument that, if broadcasters believe the retransmission consent process is sound, it is inconsistent to request Commission intervention in support of selective override. *Id.*, at 12-13. NAB applauds ACA for its creative injection of cable’s complaints about paying broadcasters fair value for their signals into this proceeding. In response, we note that selective override is a public safety concern. Viewer access to the vital information that broadcasters provide during emergencies should not be considered just another bargaining chip of the pay TV industry. Broadcasters participate in EAS and carry emergency information as a public service, not in exchange for remuneration, and merely want viewers to be able to access this information.

²⁴ NHAB Comments at 10.

²⁵ NYCEM Comments, PS Docket Nos. 15-91 and 15-94, at 7 (June 8, 2016) (emphasis added).

NYCEM members are the boots-on-the-ground during emergencies in America's largest city. The Commission should rely on NYCEM's experience, and certainly accord their views more weight than cable's self-interested claims.

Broadcast stations remain the primary source for emergency information about severe weather and other emergencies, and stations continue to invest in cutting edge technologies to further improve their public service. When a station's service is needed most, however, force-tuning allows cable operators to essentially black-out broadcast news and information. As NASBA notes, it would be ironic if, after all the Commission's efforts to strengthen EAS and its reliance on radio and television stations to deliver critical emergency news and information, the Commission failed to seize this opportunity to ensure that viewers can access broadcasters' programming.²⁶

III. The Record Demonstrates that the Proposals for Improving EAS Security Are Unnecessarily Onerous

The Commission proposes a host of new obligations for EAS Participants intended to improve EAS security,²⁷ including burdensome new annual certification procedures and impractical reporting requirements.²⁸ Although laudable, NAB agrees with the majority of commenters that the Commission's approach is overly prescriptive and unwarranted.²⁹ The impetus for the new proposals is a handful of isolated events over the past nine years. These very few instances in fact demonstrate the overall soundness of the system, given the thousands of EAS alerts and tests that are issued each year.³⁰ In addition, none of the

²⁶ NASBA Comments at 21.

²⁷ Notice, 31 FCC Rcd at 640.

²⁸ *Id.*, at 641-642. See also Public Notice, *Public Safety and Security Bureau Provides Information on Implementation of EAS Test Reporting System*, PS Docket No. 15-94 (Apr. 18, 2016).

²⁹ NCTA Comments at 3-4; ACA Comments at 19-23; Comments of AT&T, PS Docket Nos. 15-94 and 15-91, at 2-5 (June 8, 2016); NASBA Comments at 21-24.

³⁰ AT&T Comments at 2.

anecdotal security problems highlighted by the Commission reflect a pattern of lapses by EAS Participants, but instead simple human error or malicious attacks, any of which could still occur under the proposed obligations.³¹

It has been more than two years since CSRIC IV Working Group 3 submitted its report on EAS security best practices that form the basis of the proposals in the Notice,³² and more than a year since that group produced a report listing a range of ways the Commission should improve awareness of those practices.³³ However, given that Commission outreach regarding EAS security has “been less than robust,”³⁴ it may be premature for the Commission to impose such a comprehensive series of specific security measures.³⁵ Instead, the Commission should consider allowing a reasonable period of time, following more extensive outreach or a government education campaign, to determine whether such a comprehensive security program is actually necessary.

Moreover, the Commission’s regulatory approach departs from the CSRIC’s creation of voluntary best practices for enhancing EAS security by effectively transforming those practices into regulatory mandates. The Notice is also a departure from the Commission’s emphasis on a “new paradigm” for security that is supposed to rely on industry-driven

³¹ Comcast Corporation Comments, PS Docket Nos. 15-94 and 15-91, at 11 (June 8, 2016); NCTA Comments at 4.

³² CSRIC IV, Working Group 3, Emergency Alert System, *EAS Security Subcommittee Initial Report* (2014), available at http://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG-3_Initial-Report_061814.pdf.

³³ CSRIC-IV Working Group 3 Emergency Alert System (EAS), *EAS Security Subcommittee Final Report* (March 2015), available at https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3-EAS_SECURITY_FINAL_011316.pdf.

³⁴ NASBA Comments at 21.

³⁵ ACA Comments at 18-19.

solutions rather than government fiat.³⁶ Chairman Wheeler described it best when he promised that the Commission's implementation of cybersecurity enhancements "will rely on proactive risk management, not reactive compliance with a cybersecurity to-do list."³⁷ Unfortunately, the proposals in the Notice amount to such a to-do list that potentially could subject EAS Participants to enforcement actions for violations.

Nevertheless, if the Commission decides to move ahead with the comprehensive certification program proposed in the Notice, it should reconsider certain aspects of the plan. First, the Commission's finding that the certification requirement could be completed in about fifteen minutes, at "no additional cost" and "with little or no additional effort,"³⁸ grossly underestimates the resources needed to execute the certification. In fact, there would be substantial burdens involved in completing an accurate certification, including engineering time, due diligence, and legal review needed for a corporate officer to submit a formal certification of compliance.³⁹ The various elements of the certification will require running various tests on EAS network and connections, checking firewalls, installing software upgrades, reviewing active user accounts and disabling inactive accounts, double-checking password integrity processes, among other steps. Furthermore, given EAS hardware and software changes, and changes to station staff in charge of EAS, the process would not be just a one-off, but instead a repetitive exercise that could divert precious resources away from proactive management of security risks.⁴⁰ And of course, all of these burdens would hit smaller broadcasters the hardest, since the resources needed to conduct

³⁶ NCTA Comments at 4, citing Remarks from Chairman Thomas Wheeler, American Enterprise Institute (June 12, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-327591A1.pdf.

³⁷ *Id.*

³⁸ Notice, 31 FCC Rcd at 641, 644.

³⁹ Comcast Comments at 13.

⁴⁰ NCTA Comments at 6.

an EAS security check are relatively fixed, regardless of a station's size or location. Many broadcasters will have to contract with an IT expert and pay outside attorneys to fulfill the certification requirement, at a cost of thousands of dollars.

Second, the proposed rules for reporting EAS irregularities are impractical. The Commission seeks to facilitate its awareness of false EAS alerts to help it assess the impact of such situations and distribute information to EAS stakeholders.⁴¹ NAB supports the Commission's aims, but not the proposed process. Requiring that broadcast stations research and complete an initial report about a false EAS alert within thirty minutes is "unrealistically short."⁴² For example, in the Bobby Bones incident cited in the Notice, which involved a false alert transmitted by a syndicated, satellite-delivered program, it took some stations far longer than thirty minutes to determine the nature of the alert. A thirty minute deadline could compel stations to submit incomplete reports.⁴³ Finally, as noted by several commenters, having to research and complete reports on false EAS alerts and other irregularities will do little more than distract EAS Participants from working to resolve the problem immediately at hand.⁴⁴

IV. Conclusion

For the foregoing reasons, NAB requests that the Commission carefully consider the effect of the proposals in the Notice on broadcasters, particularly with respect to facilitating use of the EAS Attention Signal in tests. Regarding force-tuning, the record demonstrates that selective override is technically available and serves the public interest. Finally, NAB

⁴¹ Notice, 31 FCC Rcd at 646-648.

⁴² NHAB Comments at 12.

⁴³ NAB Comments at 21.

⁴⁴ See, e.g., AT&T Comments at 7; ACA Comments at 24-25; NCTA Comments at 9.

urges the Commission to reconsider several flawed aspects of its comprehensive plan to enhance EAS security, to minimize costs and burdens on EAS Participants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan" followed by a period and "Larry Walke". The signature is cursive and somewhat stylized.

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