

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

In the Matter of)
)
Review of the Emergency Alert System) DA 10-500
) EB Docket No. 04-296
)

To: The Public Safety and Homeland Security Bureau

**INFORMAL COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)¹ respectfully submits informal comments in response to the Public Safety and Homeland Security Bureau's (PSHSB) request for comments on potential changes to the Commission's Part 11 rules governing the Emergency Alert System (EAS).² Specifically, the Commission seeks comment on how it may best facilitate the introduction of the common alerting protocol (CAP) by the Federal Emergency Management Agency (FEMA). NAB herein proposes several broad principles that should guide the Bureau's revision of the Part 11 rules, plus a number of specific policy changes intended to improve the EAS rules.

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 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).

I. Introduction and Executive Summary

Of the myriad ways local broadcasters serve the public interest, none is more important than protecting and preserving the safety of viewers and listeners. Television and radio broadcasters' ability to reach virtually all Americans gives local stations a unique role in the distribution of emergency information. Together with live, on-the-spot news coverage providing in-depth emergency information, a dependable, functional EAS is an integral part of broadcasters' efforts to safeguard the lives and property of their audiences. As the backbone of the nation's primary alerting system, EAS enables the President to communicate with the public during emergencies, and is also an important public alert and warning tool of state and local governments. These alerts can include weather alerts, many of which are issued by the National Weather Service (NWS), AMBER alerts, and other disaster information such as evacuation notices.³ Recent events, such as the oil spill off the coast of Louisiana, the floods in North Dakota and Tennessee, and the snowstorms in the Northeast, all highlight the need for a reliable, robust EAS.

NAB thus supports the Commission's launch of this inquiry on possible changes to its EAS rules to accommodate the deployment of next-generation EAS and modernize the public warning system.

³ Approximately 90 percent of all EAS messages are weather alerts from the NWS, such as weather forecasts, warnings, and watches. U.S. Government Accountability Office, *Emergency Preparedness, Improved Planning and Coordination Necessary for Modernization and Integration of Public Alert and Warning System*, Report to the Subcommittee on Economic Development, Public Buildings, and Emergency Management, Committee on Transportation and Infrastructure, U.S. House of Representatives, GAO-09-834, September 2009 (GAO EAS/IPAWS Report), at 6.

Below, NAB offers suggestions regarding the expansion of EAS training for state and local emergency managers, and the extension of the existing 180-day rule for EAS Participants to accept a CAP-based alert. We also make specific rule proposals concerning multilingual EAS content, issuance of EAS alerts by state officials other than a governor, and cable overrides.

II. EAS Training Should Be Federally Funded

The Commission should significantly improve and expand training in the use of EAS for state and local emergency managers who are responsible for designing and issuing EAS alerts. As noted by Art Botterell, an expert in the field of emergency communications, “the usability of the EAS depends to a great extent on the understanding and attitudes of its users.”⁴ Public alerting is a critical function of emergency managers, yet there are no generally accepted standard operating procedures that officials can reference when deciding how and when to activate the EAS, or how to draft EAS messages. The Government Accountability Office (GAO) recently confirmed this concern in preparing its 2009 report on EAS: “[A] state official told us that users and message originators need additional training to know how to properly craft and initiate a message, especially since emergency managers vary in their level of expertise.” GAO EAS/IPAWS Report at 10.

During the often stressful periods leading up to and during an emergency, state and local emergency officials are often placed in the difficult position of deciding without clear guidance whether or not to trigger the EAS. This sometimes leads to unwarranted EAS alerts, or potentially more troubling, delayed EAS alerts. Moreover, there are still

⁴ Comments of Art Botterell, DA 10-500, EB Docket No. 04-296 (Apr. 18, 2010), at 9-10.

many state and local emergency managers that either misunderstand or lack a full understanding of the EAS. These officials need access to comprehensive, ongoing training on the benefits of EAS and how to use the system. Whether this training is created or coordinated by FEMA and/or the Commission, the Commission must take an active role in creating incentives for federal, state and local officials to participate. For example, many state and local governments have broadcast licenses for their public or private networks. Perhaps the Commission could incorporate a declaration on the applications or renewal forms for these types of broadcast licenses where officials could verify their participation in EAS training.⁵

Accordingly, NAB would encourage the Commission to launch a comprehensive, nationwide effort to provide EAS training for state and local emergency managers, and as part of this process, develop a manual of standard operating procedures for designing and releasing EAS alerts that officials can easily and quickly reference during emergency situations. This will help standardize the level of knowledge among local emergency managers, inform their decisions whether to issue an EAS alert, and how craft to such alerts. In turn, EAS Participants will enjoy more predictive certainty as to when EAS will be invoked, thereby preserving incentives for broadcasters to continue their voluntary participation in the system.⁶ As public alerting is an integral part of broadcasters' public service, broadcasters are willing to partner and participate in this nationwide effort for EAS training.

⁵ This would be consistent with GAO's recommendation that FEMA develop a plan to verify that EAS participants have the training and technical skills to issue EAS alerts. GAO EAS/IPAWS Report at 10.

⁶ 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.

III. The 180-Day Rule Should Be Modified to Allow EAS Manufacturers and EAS Participants Sufficient Time to Implement CAP

The Commission's rules currently require EAS Participants to configure their networks to accept CAP-based alerts within 180 days after FEMA's announcement of the technical standards for the use of CAP as the basis for FEMA-generated alerts.⁷

NAB respectfully submits that 180 days may not be sufficient time for manufacturers of EAS equipment and EAS Participants to design, test, build, distribute and install new CAP-compliant equipment. While it is likely that manufacturers have already started to design the equipment, they still will need to submit that equipment to the Commission for testing and certification. 47 C.F.R. § 11.34. In order for broadcasters to purchase, install and test this new EAS equipment within 180 days after FEMA's announcement, the products would need to have completed the Commission's Equipment Certification process, at a minimum. It is unclear how the Commission would be able to establish test criteria, and then evaluate and certify every manufacturer's EAS equipment, prior to FEMA's adoption of a technical standard. Even if manufacturers could get their equipment certified, deployment could be challenging because of the relative few numbers of companies that manufacture EAS equipment, especially when compared to the tens of thousands of EAS Participants that may require new equipment. It will obviously take the vendors some period of time to ramp up manufacturing to meet these demands.

⁷ EAS Public Notice at 2 citing Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, EB Docket No. 04-296, *Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13289 (2007) (EAS 2nd R&O/EAS FNPRM).

EAS Participants also face obstacles that may necessitate extending the 180-day deadline. At this time, the cost of purchasing or upgrading a radio or television station's equipment to comply with this rule is unknown, and may not even be established until well after the 180-day period for compliance commences. Indeed, because the current economic climate has been particularly challenging for free, over-the-air broadcasters, particularly smaller stations and those located in smaller markets, some broadcasters will find the cost of the new equipment difficult to absorb. Moreover, many EAS Participants, including radio and television stations, schools and other public institutions, develop their financial budgets on an annual basis. Requiring these entities to find the funds for new equipment upgrades mid-year could be unrealistic. NAB therefore submits that the Commission should consider providing increased flexibility for EAS Participants with budgeting or other resource constraints in meeting the 180-day requirement, or amending the rule to allow 12 months for EAS Participants to deploy CAP-compliant equipment.

IV. NAB Suggests Several Specific EAS Policy Changes

Multilingual EAS. The Bureau seeks comment on whether any changes to the Part 11 rules are needed to ensure access to CAP-based EAS by people with disabilities and persons who do not speak English. EAS Public Notice at 3. Expanding access to EAS is a laudable goal, and to the extent possible, broadcasters strongly endorse universal emergency information access for all Americans. However, we respectfully ask the Commission to refrain from adopting mandatory requirements on the format or content of EAS messages.

In 2007, the Commission commenced a consultative process among representatives of broadcasters and various public interest organizations, specifically Univision, the Minority Media and Telecommunications Council (MMTC), United Church of Christ (UCC), the Independent Spanish Broadcasters Association (ISBA), the Florida Association of Broadcasters (FAB), and NAB. The process referenced a successful voluntary program in Florida to expand EAS alerts to Spanish and other non-English speakers. At that time, the group convened meetings at which over 45 people have participated, including local broadcasters throughout Florida, the head of Florida Emergency Management at the time, and representatives from the Commission, the National Oceanic and Atmospheric Administration, FEMA and the Department of Homeland Security (by phone), MMTC and NAB.⁸

The discussions revealed a community of Florida broadcasters dedicated to public warning, and informed a plan for consensus on how Florida markets can best respond to emergencies. Of note, the discussions highlighted Florida's existing program for multilingual EAS resources and distribution of multilingual EAS messages. Broadcasters have agreed to continue working on market-specific plans for Florida, with the ultimate goal of designing a template (or templates) to help local broadcasters improve emergency communications with their respective state and local emergency management personnel. At this time, however, none of the federal agencies have developed the capacity, plans or budgets to implement originating multilingual alerts.

⁸ Letter from Jane E. Mago, Senior Vice President and General Counsel, NAB, and Matthew Leibowitz, General Counsel, Florida Association of Broadcasters, to Ms. Marlene Dortch, Secretary, FCC, EB Docket No. 04-296 (Aug. 14, 2008) (Florida EAS Meeting Ex Parte Letter).

NAB believes that, until such time as the federal government implements originating multilingual alerts, voluntary programs created by state and local officials, broadcasters and other interested parties are the preferred and practical approach.⁹ Broadcasters are committed to following up on this process. However, it is apparent that commitment of funds, personnel and equipment by federal agencies is needed to ensure that the messages created by local, state and federal emergency managers can be originated in multiple languages.

The wide distribution of multilingual EAS alerts depends on the formatting of content of EAS messages at their source. Any alternative that would require numerous individual EAS Participants to reconfigure or translate EAS messages at the mid-point of the EAS message delivery process would be impractical. Our understanding is that the CAP protocol can allow delivery of emergency messages by federal and state authorities in multiple formats, including those designed to meet the needs of persons with disabilities and non-English speakers.¹⁰ Such an approach should help assuage concerns of EAS Participants that they may violate a requirement to provide functionally equivalent EAS alerts. It would also provide certainty for both emergency managers and EAS Participants that EAS messages will comply with some uniform standard of content.

⁹ Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., Review of the Emergency Alert System, EB Docket No. 04-296 (filed Dec. 3, 2007), at 5-6.

¹⁰ EAS Second Report & Order/Further Notice, 22 FCC Rcd at 13295.

FEMA is “responsible for implementation of the national level activation of EAS, test, and exercises.”¹¹ It therefore seems most appropriate for FEMA, together with the White House, to determine how best to issue Presidential alerts on a multilingual basis. FEMA also possesses primary authority over state and local emergency funding, and is thus best situated to ensure that state and local government entities are successfully implementing state and local emergency plans that may require multilingual EAS messaging.

Under the Stafford Act, the President has the authority to “establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures” 42 U.S.C. § 68 (effective Oct. 30, 2000). Accordingly, FEMA is already authorized to work with state and local governments on creating emergency plans, including methods for distributing emergency warnings to non-English speakers. Clearly, state and local emergency governments must have adequate funding and strong federal guidance to ensure that all jurisdictions are able to meet the public warning needs and first responders’ needs of their communities, for both English and non-English speakers. NAB thus encourages the Commission to work with FEMA, and state and local governments to further investigate this matter.

Governor-Issued EAS Alerts. In 2007, the Commission adopted a requirement that EAS Participants must receive CAP-formatted EAS alerts activated by state governors or their designees. EAS Second Report and Order, 22 FCC Rcd at 13300. The Commission noted that most EAS use is related to weather and state and local

¹¹ Review of the Emergency Alert System, Notice of Proposed Rulemaking, EB Docket No. 04-296, 19 FCC Rcd 15775 (2004).

alerts, and expressed a belief that states would be more likely to allocate the needed resources to upgrade to next generation EAS if they had an expanded stake in EAS during state and local emergencies. *Id.* However, the Commission acknowledged that “requiring EAS Participants to receive emergency alerts from state political subdivisions, such as counties and cities, could be unduly complex” *Id.* The Commission sought comment on allowing other local government entities to initiate EAS alerts, including local, county, tribal or other state bodies. EAS FNPRM, 22 FCC Rcd at 13307.

NAB takes this opportunity to reiterate our concerns with the delegation of mandatory EAS activation below the gubernatorial level.¹² We remain concerned that multiple sources of alerts may lead to audience confusion or desensitization to emergency alerts that could hinder the key purpose of EAS. We also encourage the Commission to limit the officials who may qualify as a governor’s designee. This will help ensure that only authorized personnel may initiate the EAS, reduce the points of contacts and improve coordination among state officials and EAS Participants, and better standardize cooperation among border states on EAS alerts.

For example, not every local NOAA Weather Radio (NWR) network alert should initiate mandatory distribution of an EAS alert, especially outside the localized area in which the situation is occurring. During a tornado warning or similar alert, NWR alerts are virtually continuous and therefore may hinder the ability of broadcasters to provide live coverage of emergencies. The Commission also should be cautious about

¹² Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., EB Docket No. 04-296 (Dec. 3, 2007) (NAB/MSTV 2007 EAS Comments), at 5-7.

permitting local, tribal and lower municipal officials, who may lack the expertise to accurately issue or transmit EAS alerts, to initiate such warnings. The involvement of such officials should preferably be coordinated through a governor's office. NAB/MSTV 2007 EAS Comments at 7.

For these reasons, the Commission should restrict the authority to issue EAS alerts only to governors or their designees, and should also take steps to ensure that a state's EAS plan has been approved by both the FCC and FEMA before gubernatorial EAS warnings may be issued.

Cable Overrides. Beginning in 1993, NAB has repeatedly asked the Commission to modify its EAS regulations so that local viewers can maintain access to the critical, timely, and updated information that local television stations air during emergency conditions.¹³ When an emergency alert is initiated, data is sent to all the set top boxes (STBs) and cable ready digital television receivers (DTVs) in the cable system. That data causes the receivers to take some action to override the programming on all channels and display the emergency message – typically a forced

¹³ See Comments of NAB, FO Docket Nos. 91-301 and 91-171, filed November 12, 1993 at 14-16; NAB Petition for Partial Reconsideration, FO Docket Nos. 91-301 and 91-171, filed January 27, 1994; Comments of NAB, FO Docket Nos. 91-301 and 91-171, filed February 22, 1995; NAB Reply to Oppositions, FO Docket Nos. 91-301 and 91-171, filed March 6, 1995 at 4-9, Comments of NAB on Second Notice of Proposed Rulemaking, FO Docket Nos. 91-301 and 91-171, filed April 20, 1998, Reply Comments of NAB on Second Notice of Proposed Rulemaking, FO Docket Nos. 91-301 and 91-171, filed May 5, 1998. See also Letter from Edward O. Fritts, President, NAB, to Beverly Baker, Chief, FCC Compliance and Information Bureau, May 30, 1997; Letter from Edward O. Fritts, President, NAB, to Reed Hundt, Chairman, FCC, May 30, 1997; Letter from Edward O. Fritts, President, NAB, to Hon. James Lee Witt, Director, FEMA, May 31, 2000; Letter from Edward O. Fritts, President, NAB, to Hon. Greg Rohde, Assistant Secretary for Communications & Information, NTIA, July 18, 2000; Letter from Edward O. Fritts, President, NAB, to Chairman Michael Powell, FCC, Aug. 11, 2004; 2004 NAB Comments at 19-22, and Reply Comments of NAB, EB Docket No. 04-296 Filed Feb. 23, 2006 at 7-9.

switch to a different channel that displays a crawl over a full blue screen. This automatically generated “blue screen with text” offered by most cable operators can prevent a viewer from seeing the in-depth and detailed emergency information provided by local broadcasters, including shelter-in-place details, live reporting, street-by-street information, and the detailed information that had led to the successful recovery of over 500 abducted children through the AMBER program.¹⁴

Specifically, NAB has asked the Commission to amend its rules to require local cable operators to implement “selective override” so that certain channels can be selectively omitted during a cable system’s EAS interruption. The cost of such a system for a digital cable facility is practically zero. The equipment needed to implement selective override is already in place.

Current rules allow broadcasters to negotiate with local cable operators to implement selective override. To date, however, the Commission has not mandated “selective override” of broadcast stations,¹⁵ which has created concerns for digital cable viewers. Although many broadcasters were generally able to negotiate selective override agreements on local cable operators’ analog tier, they have often been unable to ensure that cable operators do not override on the *digital tier*. Cable operators continue to tell broadcasters requesting selective override under Part 11 rules that, because of limitations in digital cable equipment, selective override is not possible, or is cost-prohibitive.

¹⁴ <http://www.missingkids.com/missingkids/> (last visited May 6, 2010).

¹⁵ In the Matter of Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding The Emergency Broadcast System, *Third Report and Order*, FO Docket Nos. 91-171 and 91-301 (1998).

NAB notes, however, that the capability to selectively omit certain channels, *i.e.* the local broadcast channels, is now required in most if not all digital cable STBs and head end equipment. Indeed, a long-standing (first adopted in 2002) and still current cable industry standard specifies the inclusion of “selective override” functionality in cable equipment.¹⁶ Presumably, all cable STBs and head end equipment now include this capability; thus, whatever technology limitations may have been perceived in the past no longer exist. The implementation of selective override is a near zero-cost item for many cable systems. Cable personnel only need to be properly trained in how to program their equipment. Nonetheless, without a mandate, some cable operators have been reluctant to agree not to override, and some digital cable viewers continue to be deprived of the detailed emergency information that could save lives and property. The time is ripe for action, as the Commission considers changes to Part 11, to ensure that all viewers benefit from live, broadcaster-provided emergency programming.

Moreover, the Commission should revise its rules to harmonize overrides amongst multichannel video programming distributors (MVPDs). When the Commission revised its Part 11 Rules in 2006 to require DBS participation in the EAS, the Commission made explicit that DBS providers are required to pass through all EAS messages carried on local television broadcast stations. See 47 C.F.R. § 11.55(a)(1).

¹⁶ See American National Standards Institute, (*ANSI J-STD-042-2007; Emergency Alert Messaging for Cable* (2007) at § 5 and § 7.4 (specifying the protocol for conveying to an STB a list of services (channels), called *exception services*, for which an emergency alert event shall not apply). See *also Id.*, note in § 8.3 (which specifically acknowledges that terrestrial broadcast channels provide emergency alert functions and that those channels can be identified so that the cable alerts do not apply when STBs tuned to those channels).


The Commission should similarly ensure that all EAS and live emergency information is passed through on cable platform.

As the Commission contemplates the nature of an advanced public warning system, surely it cannot intend that the public receive less information (the blue screen with text) rather than more (broadcasters' detailed coverage). With digital television, the public can benefit from up-to-the-minute information supplied by the over 1,400 multicast channels and other services provided by local broadcasters. NAB thus urges the Commission to revise its EAS rules to require cable systems to implement "selective override" of broadcast stations for both digital and analog cable.

V. Conclusion

Accordingly, NAB respectfully asks that the Commission complete this inquiry in a manner consistent with the suggestions and proposals described above.

Respectfully submitted,



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May 17, 2010