

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

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

To: Office of the Secretary

**JOINT INFORMAL REPLY COMMENTS OF THE  
NAMED STATE BROADCASTERS ASSOCIATIONS**

[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], [Georgia 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, [MD/DC/DE Broadcasters Association], [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], [Oklahoma Association of Broadcasters], [Ohio Association of Broadcasters], [Oregon Association of Broadcasters], Pennsylvania Association of Broadcasters,

[Rhode Island Broadcasters Association], South Carolina 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, [Wisconsin Broadcasters Association], and [Wyoming Association of Broadcasters] (collectively, the “State Associations”), by their attorneys in this matter, hereby submit their Joint Informal Reply Comments in reply to informal comments filed in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice in the above-captioned proceeding.<sup>1</sup> The purpose of this proceeding is to consider possible revisions to the FCC’s Emergency Alert System (“EAS”) Rules in anticipation of the adoption of technical standards for the Common Alerting Protocol (“CAP”) being developed by the Federal Emergency Management Agency (“FEMA”).

### **Introduction**

On March 25, 2010, the FCC’s Public Safety and Homeland Security Bureau (“PSHSB”) released its *Public Notice* seeking informal comment regarding revisions to the Commission’s Part 11 rules governing the EAS, pending adoption of CAP by FEMA. The record in the proceeding reveals that informal comments were filed by the EAS-CAP Industry Group (“ECIG”), Monroe Electronics, National Association of Broadcasters (“NAB”), National Cable & Telecommunications Association, Rehabilitation Engineering Research Center for Wireless Technologies, Sage Alerting Systems, Inc., SpectraRep LLC, Texas Association of Broadcasters (“TAB”), TFT, Inc. and Gary E. Timm. The Minority Media and Telecommunications Council (“MMTC”) filed an *ex parte* letter in this proceeding on May 26, 2010.

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<sup>1</sup> See 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, EB Docket No. 04-296, *Public Notice*, DA 10-500 (PSHSB rel. Mar. 25, 2010) (“*Public Notice*”).

The State Associations support those filers which espouse the following positions:

- (1) The federal government should develop and fund a comprehensive, nationwide training program for all EAS participants who are expected to craft and initiate EAS messages;
- (2) The Commission should extend the current 180-day deadline by which all EAS participants must be able to accept CAP-based EAS alerts;
- (3) The Commission, in lieu of mandatory regulatory requirements, should continue to rely upon voluntary, private party initiated programs for the use of multilingual EAS messaging;
- (4) The Commission should not expand the “Governor Mandate” with respect to EAS beyond its current scope; and
- (5) The Commission should require all cable providers during EAS activations to pass through the programming of every over-the-air television station that makes its signal available in order to deliver weather-related and other emergency information to its viewers.

### **Discussion**

#### **I. THE FEDERAL GOVERNMENT SHOULD FUND A COMPREHENSIVE, NATIONWIDE TRAINING PROGRAM FOR ALL EAS PARTICIPANTS WHO ARE EXPECTED TO CRAFT AND INITIATE EAS MESSAGES**

The State Associations have extensive, personal experience working with emergency management authorities at the state and local levels throughout the United States. It is our collective observation that, when it comes to using EAS and appreciating the role that EAS has played and can play in protecting the lives and property of citizens, there are significant differences among the states, counties and municipalities in terms of priorities, resources and training, and that those differences can translate to lack of use as well as inefficient and inconsistent use of EAS. As the TAB states: “Tragically, we have found too many instances in Texas and in other parts of the nation where local authorities do not even know what EAS is,

much less how to take advantage of this unique tool to warn citizens of approaching wildfires or other life threatening challenges.” TAB Comments, at 2. While federal authorities such as FEMA and the FCC are thoughtfully considering ways to improving the messaging system for EAS, there is a pressing need to educate officials at all levels of government about the benefits of CAP enhanced EAS and a pressing need to train officials and staff who are in charge of crafting messages and deciding when and how best to use EAS. *See, e.g.*, NAB Comments at 3-4. A well-designed and properly funded national training program will help elevate EAS as a priority in every state, county and municipality, as well as better insure more effective and uniform practices in the use and messaging of EAS. The United States Department of Justice (the “DOJ”) is an excellent example of the federal government using its resources for such a purpose. The DOJ annually sponsors a national training conference for AMBER Alert stakeholders, including state, local and tribal law enforcement, as well as broadcasters. The TAB very constructively offers additional ideas for promoting state and local “buy-in” to the importance of EAS as our nation’s best emergency alert system, *e.g.*, official letters about EAS from the U.S. Department of Homeland Security, FEMA and the FCC to state governors and city mayors, more effort to define and elevate the roles of State Emergency Communications Committees, Local Emergency Communications Committees, and State EAS Coordinators. *See* TAB Comments, at 2-3. Accordingly, the positions of the TAB and NAB on this issue should be adopted.

## **II. THE COMMISSION SHOULD EXTEND THE CURRENT 180-DAY DEADLINE BY WHICH ALL EAS PARTICIPANTS MUST BE ABLE TO ACCEPT CAP-BASED EAS ALERTS**

In their opening comments, the NAB and the TAB have well demonstrated why the 180-day deadline is unrealistic and should be extended to one year from the date when FEMA

publishes in the Federal Register the technical standards for its adoption of CAP as the basis for FEMA-generated alerts. *See* NAB Comments, at 5-6; TAB Comments, at 5. The State Associations support such an extension and suggest consideration be given to using an alternative triggering event, namely the date by which the Commission has approved at least the third CAP-compliant device. This way, any unanticipated delay in the FCC's own equipment certification processes will not require the FCC to revisit the extension. Furthermore, once the FCC has approved at least three CAP-compliant devices, those who will be required to purchase the necessary equipment will have the benefit of dealing in a highly competitive marketplace where many purchasers will be government organizations and where the quality of the product has life and death dimensions.

### **III. THE COMMISSION, IN LIEU OF MANDATORY REGULATORY REQUIREMENTS, SHOULD CONTINUE TO RELY UPON PRIVATE PARTY INITIATED PROGRAMS FOR THE USE OF MULTILINGUAL EAS MESSAGING**

The State Associations have long applauded the Commission's ongoing efforts to ensure that all Americans, including those with hearing and visual disabilities, as well as non-English speakers, have reasonable access to emergency information. *See, e.g.* State Associations Comments, at 2-3 (Dec. 3, 2007); State Associations Reply Comments, at 6-7 (Dec. 17, 2007). The radio and television broadcast industry participates in EAS primarily as a distributor of messages crafted by third-parties, often government and emergency management officials and staff. The State Associations agree with the TAB that in particular state and local governments should be able to "provide translated versions of warnings from a central point much faster and more economically than requiring dozens of individual stations to keep fluent staffers available 24/7." TAB Comments, at 5. For that reason, the State Associations fully support the efforts of federal, state and local governments to develop and implement protocols for multilingual EAS alerts. The State Associations also support the pro-active efforts of the NAB and the Florida Association of

Broadcasters which have been working with Florida authorities as well as with MMTC to speed the development of those protocols and the institution of back-up over-the-air distribution systems where the facilities of foreign language stations become impaired during emergencies.

#### **IV. THE COMMISSION SHOULD NOT EXPAND THE “GOVERNOR MANDATE” WITH RESPECT TO EAS BEYOND ITS CURRENT SCOPE**

Current Part 11 Rules require EAS Participants to transmit EAS alerts that are originated by state governors or their designees. As the State Associations have previously shown, this mandate should not be expanded to other governmental authorities below the level of Governor. *See* State Associations Reply Comments, at 2-6 (Dec. 17, 2007). The State Associations and NAB have also shown that there is simply no justification for the Commission to mandate carriage of EAS messages issued by other authorities. *See, e.g.,* State Associations Reply Comments, at 2-5 (Dec.17, 2007); NAB Comments, at 9-11. As has been noted numerous times in this proceeding, each state is different, each state has different situations and circumstances that may give rise to the issuance of an EAS alert, and each state needs the flexibility to determine how best to utilize EAS at the regional and local level. A Governor’s authority to issue EAS alerts should be delegated cautiously and thoughtfully, after consultation with the relevant officials, broadcasters, cable operators, emergency responders, and other affected parties. If the Commission were to mandate that EAS Participants must carry all EAS alerts issued by all governmental entities at any level, this could conceivably open the door to every county and municipality creating its own independent EAS alert system. Absent coordination of such systems, EAS participants may soon be faced with conflicting demands from multiple local officials with inconsistent or conflicting information during a region-wide emergency. *See, e.g.,* State Associations Reply Comments, at 2-5 (Dec.17, 2007). Furthermore, if EAS Participants are required to carry alerts issued by a panoply of entities, the public will soon begin to tune out the messages, thus rendering the

system ineffective at those times when it is truly needed. The State Associations reiterate these concerns here and strongly urge the Commission not to expand the “Governor mandate” beyond its current scope, should the FCC wish to modify any of the state and local aspects of its Part 11 rules.

## **V. THE COMMISSION SHOULD REQUIRE ALL CABLE PROVIDERS DURING EAS ACTIVATIONS TO PASS THROUGH THE PROGRAMMING OF EVERY OVER-THE-AIR TELEVISION STATION THAT MAKES WEATHER-RELATED AND OTHER EMERGENCY INFORMATION TO ITS VIEWERS**

Beginning many years ago the NAB, the State Associations and others have shown that public safety is compromised when, during an EAS activation, a cable system overrides the time sensitive, location targeted, critical emergency information broadcast by over the-air television broadcast stations to their viewers. *See e.g.*, Comments of NAB, FO Docket Nos. 91-301 and 91-171, at 14-16 (Nov. 12, 1993; State Associations Reply Comments (Dec. 13, 2004); and Comments of Capitol Broadcasting Company (Dec. 13, 2004). Local television stations invest considerable sums of money in technology, equipment and personnel to ensure their viewers receive the most current and precise weather and emergency information – most of which is specific to each community within a local region. The Commission regards full public access to this information as so important that it requires television stations to caption not only the critical details of emergency information that are scripted but also critical details of emergency information that are non-scripted.<sup>2</sup> By refusing to pass through the very emergency information that the Commission requires television stations to caption, cable systems stand the policy

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<sup>2</sup> *See, Public Notice Reminder Regarding Video Programming Distributors’ Obligation to make Emergency Information Accessible to Persons with Hearing or Vision Disabilities*, 24 FCC Rcd 11738 (2009). Indeed, recognizing the importance of captioning emergency information during emergencies, the Commission has vigorously sought to enforce the requirement by, for example, entering into consent decrees with broadcasters requiring compliance plans and significant monetary contributions by broadcasters to the Federal government for failure to do so. *See, e.g., Midwest Television, Inc.*, 22 FCC Rcd 4405 (2007)(\$18,000 contribution); *Waterman Broadcasting Corp.*, 22 FCC Rcd 4363 (2007)(same); *Fort Myers Broadcasting Company*, 22 FCC Rcd 2201 (2007)(\$20,000 contribution); *Fox Television Stations, Inc.*, 21 FCC Rcd 13364 (2006)(\$12,000 contribution).

foundation for captioning on its head – the cable system denies all of a station’s viewers access to the station’s emergency programming even though the station itself must in fact *augment* its emergency programming with captioning for the benefit of an important sub-set of those viewers - the hearing impaired. At bottom, the cable override problem prejudices in particular the very class of viewers that the Congress and the FCC have specifically sought to protect.

As the Commission’s regulations stand now, if there is a local EAS activation, many cable operators are free to cut out all audio and video of the television station’s emergency programming and direct viewers to tune into another cable channel. Once viewers tune to the suggested alternative channel, they are often presented with a blue screen containing a largely generic, and often outdated, video crawl describing the emergency with little or no pretense to providing live, targeted and evolving emergency coverage.

While it is true that the current rules allow cable systems to enter into agreements with local television stations where they agree not to override a station’s signal, in practice the rule is not functioning properly. For example, the TAB and the Washington State Association of Broadcasters have reported that cable operators in their states have flatly refused stations’ requests to not override their signals. The President of the WSAB that his association continues to receive calls and emails from frustrated and sometimes downright angry viewers who are unhappy that their cable systems have overridden the TV station’s signal and referred them to another channel where there is little or no helpful information. In contrast to what those “blue screens” commonly provide, local television stations are providing critical, up to the minute, potentially life-saving information in an effort to serve their communities, and these efforts are being stymied by many cable operators. Satellite television operators are not permitted to be the judge of what type of emergency information the subscribers may receive. *See* 47 C.F.R. §

