

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

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

**Comments of the  
National Association of Broadcasters**

**I. INTRODUCTION AND SUMMARY**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby files comments on the above-captioned Further Notice of Proposed Rulemaking,<sup>2</sup> in which the Commission seeks comment on whether to adopt additional reporting requirements regarding false Emergency Alert System (EAS) warnings. As discussed below, NAB submits that the recently adopted requirement that EAS Participants<sup>3</sup> notify the Commission by email within 24 hours of discovering the transmission of a false EAS alert is a reasonable approach and sufficient for the Commission's awareness about such rare occurrences.<sup>4</sup> At a minimum, the Commission should defer until the new reporting requirement becomes effective and stakeholders can

---

<sup>1</sup> 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.

<sup>2</sup> *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, Report and Order and Further Notice of Proposed Rulemaking, PS Docket Nos. 15-94 and 15-91 (*rel.* July 13, 2018) (2018 Order or Further Notice); *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, Notice of Proposed Rulemaking, PS Docket Nos. 15-94 and 15-91, 31 FCC Rcd 594, 646-647 (2016) (2016 Notice).

<sup>3</sup> EAS Participants are entities required under the Commission's rules to comply with EAS rules, e.g., radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems. 47 C.F.R. § 11.2(d).

<sup>4</sup> 2018 Order at ¶¶17-18.

fairly review its performance before considering the adoption of additional, more burdensome reporting obligations.

## **II. ADDITIONAL FALSE EAS ALERT REPORTING REQUIREMENTS ARE UNNECESSARY**

### **A. Additional Reporting Obligations are Premature Given the Recency of the Newly Adopted Requirements**

In the 2016 Notice, the Commission sought comment on requiring EAS Participants, for the first time, to report the transmission of a false EAS message.<sup>5</sup> The Commission asked for guidance on the information that should be included in such a report, the proper filing mechanism, and if EAS Participants should be required to submit a report within a specific time frame following an event.<sup>6</sup>

In July 2018, the Commission resolved these questions after consideration of a thorough record, as well as the results of its investigation into the false ballistic missile EAS alert initiated by the Hawaii Emergency Management Agency (HI-EMA) on January 13, 2018.<sup>7</sup> The Commission acknowledged concerns that false alert reporting could be onerous for some EAS Participants, but on balance, concluded that “some level of minimally burdensome reporting from EAS Participants is essential to provide the Commission, FEMA and other stakeholders with the information necessary to identify and mitigate problems with the EAS.”<sup>8</sup> Thus, the Commission amended its rules to require that EAS Participants send an email to the FCC Ops Center within 24 hours of discovering that a false alert was

---

<sup>5</sup> 2016 Notice, 31 FCC Rcd at 647.

<sup>6</sup> *Id.*

<sup>7</sup> Public Safety and Homeland Security Bureau, FCC, [Report and Recommendations, Hawaii Emergency Management Agency January 13, 2018 False Alert](#), (April 2018) (Hawaii Report).

<sup>8</sup> 2018 Order at ¶ 18.

transmitted to the public, including any known details about the event.<sup>9</sup> In doing so, the Commission addressed comments from public safety organizations that requiring EAS Participants to notify authorities about false alerts would be especially useful to local emergency managers and Public Safety Answering Points (PSAPs) that process 9-1-1 and other calls from the public.<sup>10</sup>

Nevertheless, despite the adoption of this new reporting mandate only three months ago, the Commission seeks comment in the very same document on imposing additional obligations.<sup>11</sup> The Commission asks whether it should retain the 24-hour email process or identify another dedicated mechanism for EAS Participants to report false alerts, such as the Alert Reporting System (ARS), the Public Safety Support Center portal or some other platform.<sup>12</sup> The Commission also seeks input on whether to mandate specific parameters for such reports, and if false alert reports should be required within five minutes of discovery of a mistaken EAS transmission, instead of 24 hours.<sup>13</sup>

Although NAB shares the Commission's goal of reducing the negative impact of false EAS alerts on public confidence in the system, we respectfully find no reason for additional reporting obligations at this time. The new email notification requirement was set forth only three months ago after a careful review of a comprehensive record, and to our knowledge,

---

<sup>9</sup> *Id.* Of note, the Commission also clarified that EAS Participants must only take action if they have actual knowledge that a false alert was disseminated. *Id.*

<sup>10</sup> *Id.* citing Comments of APCO, PS Docket Nos. 15-94 and 15-91 (June 8, 2016), at 5-6; Comments of the New York City Emergency Management Department (NYCEM), PS Dockets Nos. 15-94 and 15-91 (June 8, 2016), at 10.

<sup>11</sup> Further Notice at ¶¶ 40-41.

<sup>12</sup> *Id.* at ¶¶ 40-41; *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, FCC 18-39 (April 10, 2018); FCC, Public Safety Support Center, <https://www.fcc.gov/general/public-safety-support-center>.

<sup>13</sup> Further Notice at ¶ 41.

no events or new information have interceded to reduce faith in its effectiveness. Indeed, the new email requirement has not even taken effect yet,<sup>14</sup> so it is impossible to gauge its performance or whether a different process may be needed. At a minimum, the Commission should allow the new process to be implemented and used for a period of time to allow stakeholders to adapt and review its effectiveness.

Regarding timing, we note that false EAS alerts are extremely rare.<sup>15</sup> There have been only a handful of relevant situations in recent years, including instances where the EAS tones were mistakenly aired during programming but elicited little public reaction. The 2016 Notice confirmed this, estimating that only two false EAS alert reports per year would be required, industry-wide.<sup>16</sup> Given this infrequency, NAB submits that the newly adopted email requirement should be allowed to govern for at least several years so that an accurate picture of its effectiveness under various scenarios can be developed and reviewed before additional requirements are considered.

**B. The Additional Reporting Obligations Described in the Further Notice are Superfluous Because the Newly Adopted Reporting Requirement is Sufficient**

If the Commission decides against postponing action as requested above, NAB submits that no additional false EAS alert reporting requirements are necessary because the newly adopted directive to notify the FCC Ops Center by email within 24 hours of discovering a false alert should be entirely adequate for the Commission's purposes. This approach will address the Commission's expressed goals for false alert reporting, without imposing undue

---

<sup>14</sup> The amendments to 47 C.F.R. § 11.45(b) requiring email notice of false EAS alerts contain information collection modifications that must be approved by the Office of Management and Budget (OMB), at which time the Commission will publish a document announcing the effective date. 83 Fed. Reg. 39610 (Aug. 10, 2018).

<sup>15</sup> Comments of the National Cable & Telecommunications Association (NCTA), PS Docket Nos. 15-94 and 15-91 (June 8, 2018) (NCTA Comments), at 8;

<sup>16</sup> 2016 Notice, 31 FCC Rcd at 647.

burdens on EAS Participants. Specifically, it will enable the Commission to collect the information needed to identify any trends and patterns in false EAS alerts that may require action to reduce false alerts.<sup>17</sup> In turn, the Commission can take steps to foster public confidence in the EAS system, helping to ensure that the public reacts appropriately to future alerts.<sup>18</sup>

The Commission also seeks to minimize public confusion when a false alert occurs. Fortunately, broadcasters already maintain constant contact with state emergency managers and other local stakeholders who are typically promptly aware when a false alert is transmitted. For example, during the Hawaii incident, the governor's office was informed of the false alert within two minutes, and public-facing HI-EMA staff only a few minutes later.<sup>19</sup> In the event of a false EAS alert, the critical local outlets for reducing public confusion are already immediately engaged.

Requiring an EAS Participant that has just transmitted a mistaken EAS alert to immediately locate and open some dedicated portal to notify the Commission of the false alert could also undermine the public interest. During the crucial minutes following the transmission, the EAS Participant should direct all its attention on fixing the problem.<sup>20</sup> Not only is the five-minute window mentioned in the Further Notice<sup>21</sup> unreasonable, but it also could undermine public safety by disrupting a broadcaster's efforts to restore normal operations and update the public. In the heat of the moment following a false alert,

---

<sup>17</sup> *Id.* at ¶ 34.

<sup>18</sup> *Id.*

<sup>19</sup> Hawaii Report at 12-13.

<sup>20</sup> Comments of the American Cable Association, MB Docket Nos. 15-94 and 15-91 (June 8, 2016), at 24.

<sup>21</sup> Further Notice at ¶ 41.

broadcast staff should be not forced to choose between correcting the mistake and completing a government form.<sup>22</sup>

A five-minute window for notifying the Commission of a false alert is also untenable because, in most cases, it would not be enough time for an EAS Participant to figure out the nature of the problem. As a result, broadcasters could be compelled to submit information to the Commission that is incomplete or inaccurate, which is a risky proposition given the Commission's enforcement authority and the potential for severe penalties for lack of candor or misrepresentation.<sup>23</sup> In the same vein, the Further Notice contains no information on the consequences for failing to submit a report within five minutes. NAB seeks more clarity in this area.

The Commission should also provide some guidance on the confidential treatment of false EAS alert reports, whether submitted by email under the existing rule or some other process. NAB believes that both the act of filing a false alert report, as well as the substance of such a report, should be treated as presumptively confidential.<sup>24</sup> This would prevent unnecessary publicity for broadcasters that are required to file a report based on incomplete information, or who were completely faultless because their EAS equipment functioned properly as passive conduits of a mistakenly issued alert. For example, none of the broadcasters who properly relayed the false missile alert in Hawaii were culpable.<sup>25</sup> Also, as NCTA states, proprietary details about the operation, security and vulnerability of EAS equipment are sensitive and should be protected from actors seeking to harm the nation's

---

<sup>22</sup> Comments of the National Association of Broadcasters, MB Docket Nos. 15-94 and 15-91 (June 8, 2018) (NAB Comments), at 21.

<sup>23</sup> *Id.* at 22.

<sup>24</sup> *Id.*

<sup>25</sup> Hawaii Report at 18.

critical communications infrastructure.<sup>26</sup> The Commission should minimize these risks by not widely disseminating information about false EAS alerts to third parties outside the Commission.

On balance, NAB sees no reason for further consideration of the additional false EAS alert reporting obligations described in the Further Notice, especially given the infrequency of false alerts. We do not believe that imposing a five-minute deadline for notifying the Commission of a false alert would improve in any way a broadcaster's ability to correct such problems.<sup>27</sup> As for reducing public confusion, broadcasters are already well-positioned to update the local emergency management and the public. On the other hand, we are certain that requiring EAS Participants to notify the Commission within five minutes of a false alert will disrupt efforts to fix the instant problem and force EAS Participants to submit hastily compiled and possibly inaccurate information to the Commission.

### **III. Conclusion**

For the foregoing reasons, NAB respectfully requests that the Commission refrain from considering any false EAS alerting requirements in addition to those newly adopted in the 2018 Order. At a minimum, the Commission should defer further action until the new

---

<sup>26</sup> Reply Comments of NCTA, MB Docket Nos. 15-94 and 15-91 (July 8, 2016), at 8.

<sup>27</sup> *Id.*

reporting requirement is implemented and reviewable for at least several years, before considering new obligations.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BROADCASTERS**  
1771 N Street, NW  
Washington, DC 20036  
(202) 429-5430



---

Rick Kaplan  
Larry Walke

Kelly Williams  
NAB Technology

September 10, 2018