



3636 16th Street N.W. Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-7511
www.mmtconline.org

January 21, 2016

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

RE: Review of the Emergency Alert System (EB Docket No. 04-296);
Recommendations of the Independent Panel Reviewing the Impact of Hurricane
Katrina on Communications Networks (EB Docket 06-119)

Dear Ms. Dortch:

On September 20, 2005, the Independent Spanish Broadcasters Association (“ISBA”), the Office of Communication of the United Church of Christ, Inc. and the Multicultural Media, Telecom, and Internet Council (aka Minority Media and Telecommunication Council (collectively. “Petitioners”) filed a Petition for Immediate Interim Relief (“Katrina Petition”). Derived from the experiences of Hurricane Katrina, the Petition noted the lack of any multilingual broadcasts before, during, and after emergencies, placing thousands of human lives at risk.¹

More than ten years later, the Multicultural Media, Telecom, and Internet Council (MMTC) and over 70 partners from national and regional civil rights and professional organizations still believe that thousands of non-English proficient citizens are at risk of not receiving timely, critical, and comprehensible information during both EAS- and non-EAS triggered alerts that include acts of domestic terrorism.² In this letter, we respectfully offer additional background information and analysis to update the 2005 Petition and subsequent filings.

The 2005 Katrina Petition was based on a paradigm that guides the determination of whether a sizable language group is substantially at risk for having no *in-language service* available to them during or after an emergency. In the most extreme cases, there is no in-language station in

¹ See Petition for Immediate Relief, Independent Spanish Broadcasters Association *et al.*, EB Docket No. 04-296 (Sep. 20, 2005) (“Petition for Immediate Relief”), available at <http://mmtconline.org/lp-pdf/EASPetition.pdf> (last visited Jan. 19, 2016).

² See, in addition to earlier filings, Letter to Chairman Wheeler, EB Docket No. 04-296 (Aug. 26, 2015), available at http://www.mmtconline.org/wp-content/uploads/2015/08/MMTC_Partner-Letter_082615_Multilingual_EAS_FINAL.pdf (last visited Jan. 19, 2016).

the market, or only one such station.³ In such instances, it is entirely foreseeable that an emergency such as a hurricane or earthquake could leave the market with no in-language service, unless there is a pre-arranged plan under which English language stations would provide some multilingual information until the emergency or crisis comes under control.⁴ Such an arrangement would have been enormously beneficial during Hurricane Katrina, when the only Spanish language station was knocked off the air for eight days, during which time the electric grid, wireline and wireless communications were also not functional.

The Need for Multilingual Emergency Communications Remains Critical

MMTC continues to believe that certain radio markets should be designated to receive multilingual emergency broadcasting (“MEB”). According to the U.S. Census Bureau, the population for people of color is projected to increase to 56 percent of the total in 2060, compared with 38 percent in 2014.⁵ Similarly, the foreign-born U.S. population is also expected to increase from 13 percent in 2014 to 19 percent in 2060.⁶ This dramatic increase in the multicultural and multilingual population further underscores the need for multilingual alerts to meet diverse communications needs.

To update the data and analysis in the 2005 Petition and subsequent filings, MMTC used BIA/Kelsey’s *Investing in Radio* (3rd edition, 2015), Radio Locator, and station websites to identify in-language stations. MMTC defined the universe of stations capable of serving an entire market in an emergency as licensed commercial and non-commercial FM or full-time AM stations.⁷ If a station provided programming in more than one language, MMTC coded it as

³ While unavoidably somewhat arbitrary, this paradigm recognizes that it is unlikely for both of two or more in-language stations to go dark at the same time.

⁴ This premise is derived from *Deregulation of Radio*, 87 FCC2d 797, 804 ¶¶17-18 (1981) (subsequent history omitted), which held that a broadcast station need not elect to serve a minority group if another station in the market has chosen to serve that group:

For instance, in a community with only two radio stations, one Spanish language and one broadcasting in English, it may be permissible for the Spanish language station to focus its programming on issues of particular relevance to the Spanish speaking segment of the community and to ignore English language programming or issues of particular relevance to the English speaking portions of the community. It is the responsibility of the licensee to determine that the other station is providing the programming for the rest of the community.

⁵ See For U.S. Children, Minorities Will Be the Majority by 2020, Census Says, NPR (March 4, 2015), available at <http://www.npr.org/sections/thetwo-way/2015/03/04/390672196/for-u-s-children-minorities-will-be-the-majority-by-2020-census-says> (last visited Jan. 19, 2016).

⁶ *Id.*

⁷ In our analysis, MMTC excluded HD channels (which are often unavailable to households unable to afford receivers), LPFM stations (due to their limited transmission range) and AM daytimers (which we defined as stations whose night time power is less than 100 watts).

providing service to those languages that are offered during least a quarter of the broadcast week, thus excluding stations offering only brief syndicated in-language programs.⁸

Once the data was identified, MMTC employed a methodological paradigm analogous to the racial and ethnic classifications found in Section 203 of the Voting Rights Act of 1965 as amended in 1975 (VRA).⁹ Under the VRA, those entitled to protection are all persons of voting age, since those are the persons needing to obtain and use electoral process information. For MEB, the comparable classification would be the persons needing to obtain and use disaster-relief information. This classification would logically need to include all persons able to access AM or FM radio technology; *i.e.*, persons ages 5 and above who are not proficient in English. In this way, MMTC does not seek to extend MEB coverage to those who are fluent in English even if English is not their first language. Nor does MMTC undertake to extend MEB coverage to those under five years old, since a pre-K infant generally lacks the ability to access AM and FM radio and take actions based on emergency information that might be provided.¹⁰

For those whose primary language is Spanish, MMTC extrapolated the audience from research by the Pew Research Center that estimates that 32 percent of Hispanics (ages 5 and above) do not speak English proficiently.¹¹

For those whose primary language is neither English nor Spanish, data from the Center for

⁸ Languages broadcast by a station are not static; a station serving a particular language community could change its programming or go dark, thus triggering a market-wide MEB obligation that would not previously have existed. MMTC also assumes that in-language stations that are able to remain on the air after an emergency will meet the challenge of providing emergency information to their in-language listenership.

⁹ See U.S. Department of Justice, *Among Language Minority Voting Rights (2015)*, available at <http://www.justice.gov/crt/about-language-minority-voting-rights#coverage> (last accessed December 13, 2015). Section 203 provides for bilingual voter information to be provided in localities where there are more than 10,000 or over five percent (5 percent) of the total voting age citizens in a single political subdivision (usually a county, but a township or municipality in some states) who are members of a single minority language group, have depressed literacy rates, and do not speak English very well.

¹⁰ While the Voting Rights Act offers protection to persons within a portion of a metropolitan area (such as a county), we have contemplated offering protection to portions of populations in radio markets – the FCC’s common benchmark for radio regulation. Population data for our Spanish language analysis was drawn from the radio markets section of BIA’s *Investing in Radio* (3rd Edition, 2015), then adjusted downward to include only the non-English-proficient 5 and above population. The multipliers used for language proficiency, and for the percentage of the population that is 5 and above in age, were used uniformly nationwide inasmuch as we did not have access to localized data for these attributes.

¹¹ See Pew Research Center, 2013: *English Use on the Rise among Latinos*, available at <http://www.pewhispanic.org/2015/05/12/english-proficiency-on-the-rise-among-latinos/> (last accessed December 7, 2015).

American Progress' 2014 Asian American and Pacific Islanders Report¹² was reviewed that estimated that 28 percent of U.S. speakers of major Asian languages (ages 5 and above) do not speak English proficiently.¹³ This data was organized by CMSAs (Consolidated Metropolitan Statistical Areas), most of which roughly track radio markets, but a few of which include outlying areas not included in radio markets (*e.g.* the Miami-Ft. Lauderdale-West Palm Beach CMSA, and the Philadelphia-Camden-Wilmington CMSA each combine two radio markets).

While more granular databases would enable the Commission to refine our size and population estimates for protected classes, MMTC's data and analysis compel the integration of multilingual communications into the emergency alerting system. In sum, MMTC's preliminary data analysis found:

- Over 4,000,000 people are in need of protection nationwide.
- Thirty seven language groups are in need of protection in at least one market.
- Twenty five language groups comprising nearly 1,000,000 people are in need of protection in the New York City radio market alone.
- At least one language group needs protection in each of the top ten radio markets, in 21 of the top 25 markets, 32 of the top 50 markets, and 80 of the nation's 273 markets.
- There were no unmet needs for Spanish language service in the top ten markets, inasmuch as there are multiple stations broadcasting in Spanish in each of those markets. Only three markets in the top 25 (Detroit, Baltimore and St. Louis) have an unmet need for Spanish language MEB service. However, there are unmet needs for emergency service in Spanish in 48 markets smaller than the top 50. These markets have large Spanish-speaking populations but few Spanish language radio stations.
- No unmet needs were identified in 193 of the nation's 273 radio markets. Those 193 markets are located in 15 states: Alaska, Idaho, Indiana, Maine, Mississippi, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Utah, Vermont, West Virginia or Wyoming. At least one radio market has an unmet need in each of the other 35 states and the District of Columbia.

¹² See Center for American Progress, State of Asian Americans and Pacific Islanders Report, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/09/AAPIRreport-comp.pdf> (last accessed December 9, 2015).

¹³ Data used to adjust universal population estimates to calculate the number of persons who are under five years of age is provided nationally by race in <http://datacenter.kidscount.org/data/tables/8446-child-population-by-race-and-age-group?loc=1&loct=1#detailed/1/any/false/869,36,868,867,133/68,69,67,12,70,66,71,13/17077,17078> (last accessed December 13, 2015). More granular data, organized by language, would be necessary if a more precise analysis were to be undertaken.

Amendments to the 2005 Katrina Petition

Given these critical, multilingual information needs, MMTC offers the following updates to the 2005 Petition:

1. States Must Be Accountable to Design, Implement and Improve upon Multilingual Emergency Alert System (EAS) Warnings. MMTC accepts the FCC's Public Safety and Homeland Security Bureau's paradigm under which state EAS coordinators would take the lead in incorporating multilingual EAS warnings into state plans. The warnings could air on stations whose programming is already in-language for languages other than English. In communities with large, protected multilingual populations but no in-language station, MMTC will volunteer to help recruit "Good Samaritan" radio stations that would air multilingual EAS warnings (*see* ¶3 below). MMTC desires to help the Commission make good on its pledge that "all Americans, regardless of the language they speak, should have access to emergency information."¹⁴
2. Multilingual Emergency Broadcasting Should be Untethered from Pre-Emergency EAS Warnings. The 2005 Petition called for multilingual emergency alerts before, during, and after emergencies. For many emergencies, EAS is not triggered (as was the case for 9/11 and Katrina) or the emergency may arrive with little or no forewarning (nuclear accidents, tsunamis, earthquakes, acts of terrorism, etc.). Such emergencies may knock out the electric grid, wireless service, wireline service, and many broadcast stations. Thus, MMTC encourages the Commission to focus primarily on the dissemination of emergency information during and after emergencies, irrespective of whether EAS has been triggered, and to encourage states to do the same.
3. Broadcasters Could Serve as "Good Samaritans" with FCC Support. The Commission has recognized that radio is the only communications technology with the capacity to reach virtually all Americans in almost any emergency.¹⁵ Further, many broadcast companies have long traditions of public service and compassion. MMTC believes that in most broadcast markets, it should be possible to recruit "Good Samaritan" radio stations to volunteer to provide multilingual information during EAS and non-EAS triggered emergencies for vulnerable multilingual populations. MMTC has already begun to deploy our goodwill in the industry to encourage our colleagues in the noncommercial, African American, religious and

¹⁴ *See Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Notice of Proposed Rulemaking, FCC 15-154 (released November 19, 2015) at 19 ¶33.

¹⁵ *See, e.g., Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, FCC 15-142 (released October 23, 2015) at 3 ¶5 ("AM radio has distinct advantages over other media during times of disaster and emergency, including the wide area coverage of some stations.")

social justice broadcast communities to commit to broadcasting life-saving multilingual information during and after emergencies.¹⁶

In the 2005 Petition and subsequent filings, MMTC has advocated for the deployment of a simple adaptation of the “designated hitter” system used by United States Army platoons when taking a hill in battle: in each radio market, the state EAS plan would designate which station(s) would fill in and provide multilingual information if no other station in that language remained on the air during or in the wake of the emergency.¹⁷ While the Commission has found that the enforcement of mandatory EAS alerts are outside of the scope of their jurisdiction, MMTC implores the agency to encourage voluntary participation or the “Good Samaritan” model.¹⁸

Under this voluntary “Good Samaritan” model, the Commission’s role would then be limited to: (1) requesting impacted states to update their emergency broadcasting plans to reflect these voluntary commitments; (2) mediating with broadcasters in those markets where MMTC is unable to secure a Good Samaritan;¹⁹ and (3) maintaining, and sharing with emergency broadcast coordinators in each state, a database of markets where protected language groups are at risk (such as the preliminary list attached here), and updating the list periodically with broadcast language service information and Census data.

To facilitate broadcasters’ service as “Good Samaritans” and as providers of multilingual information during and after an emergency, the Commission should also take two steps.

¹⁶ In January 2016, MMTC began to interview current and former station broadcast owners and operators to understand the development and delivery of multilingual EAS. In the completed interviews, the feedback has focused on the length of the alert, the specific language and the cost. For the most part, respondents were favorable to a “Good Samaritan” model, particularly in areas where there are no in-language stations.

¹⁷ See Reply Comments of the Minority Media and Telecommunications Council, EB Docket No. 04-296 (June 14, 2010) at 4-6, available at <http://mmtconline.org/lp-pdf/EAS%20Reply%20Comments%20061410.pdf> (last visited Jan. 21, 2016), and all subsequent filings.

¹⁸ In this proceeding we have employed the term “designated hitter” to refer to the station(s) that would agree to carry multilingual information during and after an emergency. Although we did not intend the term to imply that service as a designated hitter would be involuntary, some have misinterpreted the term along those lines. The term “Good Samaritan” better characterizes the frame of mind of these exceptionally public-spirited radio stations.

¹⁹ Hopefully, mediation would be sufficient. Nonetheless, as a last resort, the Commission retains the authority to require broadcasters to serve as “designated hitters” if not one broadcaster steps up to serve a disadvantaged, at-risk community. For nearly 35 years, the Commission has expected broadcasters to provide service to sizable, at-risk communities if no other station is doing so See *Deregulation of Radio*, *supra*, 87 FCC2d at 804 ¶¶17-18 (subsequent history omitted).

- *First*, the Commission could ask the Federal Emergency Management Agency (FEMA) to ensure that broadcast professionals, particularly multilingual professionals communicating to at-risk populations, are treated as first responders and afforded priority in accessing transportation to and from radio stations that are providing emergency information to the public. Further, anticipating that wireless and wireline communication may be lost during an emergency (as happened in Katrina), the Commission should coordinate with FEMA to facilitate the use of satellite phones to facilitate remote broadcasts on “Good Samaritan” radio stations by multilingual broadcast professionals who are unable, in the emergency, to travel to the “Good Samaritan” station’s physical location.²⁰
- *Second*, the Commission could announce its willingness to waive application and other processing fees, and waive or reduce regulatory fees, for broadcast stations that have arranged to provide multilingual service as “Good Samaritans.” In this way, these stations can recover some of the un-budgeted out of pocket costs of multilingual emergency operations. Since there are costs attendant to preparation for emergency broadcasting as well as costs attendant to actual broadcasts in an emergency, the Commission should commit to reducing regulatory fees by 50 percent each year that a station volunteers to serve as a “Good Samaritan,” and waiving regulatory and application fees entirely for a year after such a station actually provides multilingual information during an emergency.²¹

A definitive ruling to ensure multilingual communications during and after emergencies would save many lives. It would serve as a defining, transformative, and lasting statement of compassion by the Commission in the 21st Century. With the clarifications in this letter, the

²⁰ Eight days after Katrina, such communication was established between the news staff of Spanish language KGLA(AM) and New Orleans English language stations’ news staffs when Iridium donated and helicoptered in to KGLA a satellite phone at the direction of Iridium co-owner (and former Commissioner) Tyrone Brown.

²¹ MMTC originally advanced this proposal in 2011, and it was unopposed. *See* MMTC, FCC Jurisdiction to Adopt the Katrina Petition, EB Dockets No. 04-296 and 06-119) (filed December 2, 2011), pp. 9-11. Application and other processing fees are authorized in 47 U.S.C. §158 and implemented in 47 C.F.R. §§1.1101-1119; regulatory fees are authorized in 47 U.S.C. §159 and implemented in 47 C.F.R. §§1151-1181. Under 47 C.F.R. §1.1117(a) (implementing 47 U.S.C. §158(d)(2)), the Commission may “waive or defer” application and other processing fee payments “in any specific instance for good cause shown, where such action would promote the public interest.” Similarly, it may “waive, *reduce* or defer” regulatory fees; *see* 47 U.S.C. §159(d). The Commission’s consideration of waiver, reduction or deferral requests is individualized; it does not grant waivers for entire classes of applicants. *See* 47 C.F.R. §1.1117(b) (application and processing fees); 47 C.F.R. §1.1166 (regulatory fees).

Marlene Dortch, Esq.

January 21, 2016

Page 8.

Commission should now have before it all of the facts it will need to act favorably on the 2005 Katrina Petition and subsequent related filings.

Sincerely,

Kim M. Keenan

Kim M. Keenan

President and Chief Executive Officer

Attachment

cc: Hon. Tom Wheeler
Hon. Mignon Clyburn
Hon. Ajit Pai
Hon. Jessica Rosenworcel
Hon. Michael O'Rielly
Admiral David Simpson, Chief, PSHS Bureau