The City of New York

DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS DoITT

75 Park Place, 6th Floor
New York, NY 10007
212-788-6541
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EX PARTE OR LATE FILED

ALLAN H. DOBRIN
Commissioner

BENJAMIN LIPSCHITZ
Telecommunications Counsel
Direct Dial: 718-403-8503
Fax: 718-403-8504

July 29, 1998

7/30/98

FCC

Harold Furchgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
VIA OVERNIGHT MAIL

Re: In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System; FO Docket 91-301 / FO Docket 91-171; FCC 98-33

Dear Commissioner Furchgott-Roth:

Enclosed please find a copy of the comments of the City of New York Department of Information Technology and Telecommunications, on behalf of the City of New York, in the above matter.

Sincerely,

Benjamin Lipschitz

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July 29, 1998 (11:35am)

The City of New York

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FCC

July 29, 1998

Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
VIA OVERNIGHT MAIL

Re: In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System; FO Docket 91-301 / FO Docket 91-171; FCC 98-33

Dear Ms. Salas:

Enclosed please find an original plus ten (10) copies of the comments of the City of New York Department of Information Technology and Telecommunications, on behalf of the City of New York, in the above matter. Please distribute one copy of the attached comments - according to the attached cover letters - to each Commissioner. Also, please stamp received one copy and return to my attention in the enclosed postage-paid envelope. Thank you.

Sincerely,

Benjamin Lipschitz

c: David Sturdivant, CIB, FCC
International Transcription Service (ITS)

C:\DATA\WPFILES\FCC\EAS\EAS.LTR
July 29, 1998 (12:15pm)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	FO Docket 91-301; FO Docket 91-171
Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System	)	FCC 98-33

To: The Commission

COMMENTS OF THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

Benjamin Lipschitz
Telecommunications Counsel
City of New York
Department of Information Technology
and Telecommunications (DoITT)
11 MetroTech Center, 3rd Floor
Brooklyn, NY 11201
718-403-8500

July 29, 1998

The City of New York

DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS DoITT

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212-788-6677 (fax)

ALLAN H. DOBRIN
Commissioner

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	FO Docket 91-301; FO Docket 91-171
Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System	)	FCC 98-33

To: The Commission

COMMENTS OF THE CITY OF NEW YORK

The City of New York Department of Information, Technology and Telecommunications ("DoITT"), on behalf of the City of New York (the "City"), respectfully files these comments in response to the Federal Communications Commission's (the "Commission") Second Further Notice of Proposed Rulemaking (the "Notice")[1] in the above proceeding, concerning the adoption of rule amendments that would prohibit cable systems from overriding broadcasters' emergency-related programming with State and local Emergency Alert System ("EAS") messages. DoITT is

[1] In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket 91-301, FO Docket 91-171, Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 6353 (1998) ("Notice").

the New York City agency that is charged with, among other things, planning, formulating, coordinating and advancing telecommunications policies, and administering cable television franchises, for the City.[2]

I. INTRODUCTION AND SUMMARY

The City opposes any rule amendments that would prohibit cable systems from overriding broadcasters' emergency-related programming with State and local EAS messages. Allowing such broadcasters' programming to supplant cable systems' EAS messages will diminish the accuracy and effectiveness of a local-level EAS, and will also diminish local preparedness for a successful national-level EAS. In addition, because the provision of broadcasters' emergency-related local programming is discretionary, the City is unable to ensure adequate dissemination on broadcast channels, of emergency information that is necessary to ensure the public safety of its citizens. By allowing cable operators to override broadcasters' programming with emergency information, however, the City is able to ensure the public safety of its citizens through the contractual obligations of franchised cable operators to provide EAS messages.

For the above reasons, the City also opposes selective overriding, as proposed by the National Association of Broadcasters[3], such that the Commission would prohibit a cable system's override of broadcasters who certify that they will provide certain local news programs and weather information, among other requirements, though other locally-based emergency information may not be provided. Any override of a cable system's local emergency programming will impede the ability of local governments to ensure that its local communities are

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[2] New York City Charter § 1072(a), (c) (1998).

[3] Notice at n.9.

served by accurate emergency information. The Commission, therefore, should retain its current EAS rules that encourage a robust local-level EAS, and that provide a foundation for a successful national-level EAS.

II. FRANCHISED CABLE OPERATORS ARE BETTER ABLE TO PROVIDE ACCURATE LOCALLY-BASED EMERGENCY PROGRAMMING THAN BROADCASTERS.

Local franchised cable operators have an existing working relationship with their State or local government, which is acting as the local franchising authority ("LFA"), by way of the cable franchise agreement that contains obligations to address local community needs. Local governments have also developed, or are in the process of developing, a local-level EAS protocol for franchised cable operators, as provided for in the Commission's rules[4]. This existing framework for coordinating the dissemination of local emergency information provides franchised cable operators with ready access to emergency information from local officials that must be disseminated to the public.

The cable operator is also more locally-based than the broadcaster, so that while the broadcaster will provide service to a regional area, the cable operator will provide service to a borough or county. The City, for example, has nine (9) franchises dispersed throughout five (5) boroughs.[5] Cable operators will therefore be better able to disseminate local emergency information that is more accurate and relevant to a local area, as opposed to broadcasters that provide service to a larger area and therefore may be unable, or may be disinclined, to disseminate

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[4] 47 C.F.R. §§ 11.21, 11.41 and 11.55 (1998).

[5] While the nine (9) franchises are effectively controlled by only two (2) entities, it is possible to send unique emergency-related information from each franchise headend to subscribers in each franchise area.

important local emergency information that will adversely affect only a small portion of the broadcasters' listening audience.

In addition, the City's ability to disseminate local emergency information to ensure public safety, is limited by broadcasters who have discretion whether to air any local emergency-related information at all. Under the federally-sanctioned cable franchises, however, the City may require cable operators to disseminate emergency information received from City officials, and from other emergency information sources. By allowing cable operators to override broadcasters' emergency-related programming with State and local EAS messages, the City can ensure that adequate emergency information is aired throughout the franchised cable systems, to ensure the public safety of its citizens.

The Commission, therefore, should find that franchised cable operators are better able to provide accurate local emergency programming, and a contrary finding that would prohibit cable override of broadcasters' emergency-related programming would adversely affect the City's ability to ensure the public safety of its citizens.

III. PROHIBITING CABLE OVERRIDE OF BROADCASTERS' EMERGENCY-RELATED PROGRAMMING WILL DIMINISH THE EFFECTIVENESS OF NATIONAL-LEVEL EAS.

Because franchised cable operators are required to provide service to most, if not all, of the area under the LFA's jurisdiction, the local-level EAS protocol developed by the LFA that coordinates and implements the obligations of such franchised cable operators will provide valuable preparation experience to successfully coordinate and implement a national-level EAS. The Federal Emergency Management Agency (FEMA), working in conjunction with the

Commission,[6] recognized the importance of local-level EAS to build experience and to prepare for national-level EAS operations.[7] Such experience will be further developed by broadcasters, and other video service providers who agree to adhere to the local-level EAS protocol developed by the LFA.

Alternatively, if broadcasters are allowed to air emergency-related programming when, where and how they choose, the Commission will have lost an opportunity to expand the local preparedness of the national-level EAS. While the FCC, under § 11.41(a),[8] will coordinate broadcast stations and cable systems, and other participating entities, to participate in the national-level EAS, no such coordination process exists for local-level EAS. The LFA's protocol for local-level EAS, however, developed for the LFA's franchised operators pursuant to their franchise agreements for local cable systems, will provide an appropriate vehicle for preparing EAS at the local and national level.

IV. CONCLUSION

The Commission should not adopt any rule amendments that would prohibit cable systems from overriding broadcasters' emergency-related programming with State and local EAS messages. Instead, the Commission should retain its existing EAS rules that encourage a robust

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[6] The Civil Preparedness Guide is developed by the Federal Emergency Management Agency (FEMA), in cooperation with the Commission, to help prepare State and local EAS planning. Civil Preparedness Guide, Federal Emergency Management Agency, CPG 1-40, June 1996 ("CPG") at 1-1.

[7] [D]ay-to-day use [of the EAS] by State and local officials and the [National Weather Service] should be encouraged to provide realistic training and experience for broadcasters, cable operators, an other responsible for national level EAS operations. CPG at 5-2.

[8] 47 C.F.R. § 11.41(a) (1998).

local-level EAS, and provide a foundation for a successful national-level EAS.

Respectfully submitted,

City of New York
Department of Information Technology
and Telecommunications (DoITT)

by _____

Benjamin Lipschitz
Telecommunications Counsel
DoITT
11 MetroTech Center, 3rd Floor
Brooklyn, NY 11201
718-403-8500

July 29, 1998

CERTIFICATE OF SERVICE

I, Benjamin Lipschitz, certify that a copy of the attached comments of the City of New York Department of Information Technology, on behalf of the City of New York, dated July 29, 1998, was served on this 29th day of July, 1998, by Federal Express next-day delivery to each of the following persons:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Hon. William H. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20054

Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20054

Hon. Harold Furchgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20054

Hon. Micahel K. Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20054

Hon. Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20054

David Sturdivant
Compliance and Information Bureau
Federal Communications Commission
1919 M Street, N.W., Room 734
Washington, D.C. 20054

Dated at Brooklyn, New York, this 29th day of July, 1998.

Benjamin Lipschitz

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Dated at Brooklyn, New York, this 29th day of July, 1998.

Benjamin Lipschitz

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I, Benjamin Lipschitz, certify that a copy of the attached comments of the City of New York Department of Information Technology, on behalf of the City of New York, dated July 29, 1998, was served on this 29th day of July, 1998, by first-class mail to the following person:

International Transcription Service, Inc. (ITS)
2100 M Street, N.W., Suite 140
Washington, D.C. 20037

Dated at Brooklyn, New York, this 29th day of July, 1998.

Benjamin Lipschitz