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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 11 of the Commission's Rules	)	EB Docket No. 01-66
Regarding the Emergency Alert System	)	RM-9156
	)	RM-9215
	)	

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NOTICE OF PROPOSED RULEMAKING

Adopted: March 13, 2001 **Released: March 20, 2001**

Comment Date: 75 days after publication in the Federal Register
Reply Comment Date: 105 days after publication in the Federal Register

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* ("*NPRM*"), we solicit comment on requested revisions to the Part 11 rules governing the Emergency Alert System ("EAS")[1] set forth in petitions for rulemaking filed by the National Oceanic and Atmospheric Administration ("NOAA") National Weather Service ("NWS")[2] and the Society of Broadcast Engineers ("SBE").[3] In addition, we propose to revise Part 11 of the Rules to eliminate references to the now-defunct Emergency Action Notification ("EAN") network and its participants. We also propose to amend Part 11 to delete the requirement that international High Frequency ("HF") broadcast stations purchase and install EAS equipment.

II. BACKGROUND

2. In 1994, the Commission adopted rules establishing the EAS as a replacement for the Emergency Broadcast System ("EBS") and requiring cable systems as well as broadcast stations to participate in EAS.[4] The Commission extended the EAS requirements to wireless cable systems in 1997.[5] The EAS affords national, state and local authorities the capability to provide emergency

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[1] 47 C.F.R. §§ 11.1, *et seq.*

[2] NWS Petition for Rulemaking, RM-9215 (filed December 30, 1997) ("NWS Petition").

[3] SBE Petition for Rulemaking, RM-9156 (filed August 14, 1997) ("SBE Petition").

[4] *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("*First Report and Order*"), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

[5] *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("*Second Report and Order*"). For purposes of the EAS rules, a "wireless cable system" is a collection of Multipoint Distribution Service, Multichannel Multipoint Distribution Service or Instructional Television Fixed Service channels used to provide video programming services to subscribers. The channels may be licensed to or leased by wireless cable system operators. *See* 47 C.F.R. § 11.11(c)(1).

communications and information to the general public via broadcast stations, cable systems and wireless cable systems. Participation in national EAS alerts is mandatory for broadcast stations, cable systems and wireless cable systems.[6] These entities participate in state and local area EAS plans on a voluntary basis. Broadcast stations were required to install the new EAS equipment by January 1, 1997. Cable systems with 10,000 or more subscribers were required to install new EAS equipment by December 31, 1998. Cable systems with fewer than 10,000 subscribers and wireless cable systems are required to install EAS equipment by October 1, 2002.[7]

3. The EAS equipment used by broadcast stations and cable systems sends and receives messages using a precise format called the EAS protocol. Each EAS message has four parts: digital header codes, a two-tone attention signal, an audio and/or video message, and an End of Message code. The header codes define who originated the emergency message (originator code), the nature of the emergency (event code), the location of the emergency (location code), and the valid time period of the message. The two-tone attention signal, which must be transmitted for a minimum of eight seconds, provides an audio alert to audiences that emergency information is about to be sent.

4. NWS filed its petition for rulemaking on December 30, 1997.[8] The Commission staff issued a public notice announcing the filing of NWS's petition on January 14, 1998.[9] Comments were filed by SBE. NWS plays a significant role in the implementation of the EAS as the originator of emergency weather information. The EAS protocol described above is identical to the NOAA Weather Radio ("NWR") Specific Area Message Encoding ("SAME") technique, which NWS uses to transmit messages over NWR transmitters around the country. NWR-SAME messages are transmitted on over 500 NWR transmitters throughout the country, and NWS has plans to add over 200 more transmitters. Many broadcast stations and cable systems directly monitor NWR transmissions and relay the NWS messages to their audiences over the EAS. In order to ensure that there is equipment operability between the EAS and NWR-SAME systems, the Part 11 rules specifically provide that EAS codes must be compatible with the codes used by NWR-SAME.[10] In its petition for rulemaking, NWS requests numerous additions and modifications to the EAS header codes. NWS also seeks revisions to the EAS equipment requirements which it believes are necessary to promote smoother operations and compatibility between EAS and NWR-SAME systems.

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[6] Although all broadcast stations, cable systems and wireless cable systems are required to install EAS equipment, they have the option of requesting FCC authorization to be Non-participating National ("NN") sources. In the event of a national EAS alert, NN sources are required to transmit a sign-off announcement and then go off the air. *See* 47 C.F.R. §§ 11.19, 11.41 and 11.54. In addition, Class D noncommercial FM, low power FM and low power TV stations are required to install EAS decoders, but are not required to install or operate EAS encoders. *See* 47 C.F.R. § 11.11(b).

[7] Hereafter, for convenience, we include wireless cable systems when we refer to cable systems.

[8] NWS's petition was a follow-up to a letter to the Commission dated June 19, 1997. Letter to Reed Hundt, Chairman, Federal Communications Commission, from Elbert W. Friday, Jr., Assistant Administrator for Weather Services, National Weather Service (June 19, 1997) ("NWS Letter"). The petition revised and summarized the proposals set forth in the NWS Letter. NWS has also submitted to the Commission other proposed modifications to the EAS rules in follow-up letters and at the February 25, 2000, meeting of the EAS National Advisory Committee. We will consider these other proposed modifications along with NWS's petition in this *NPRM*.

[9] Public Notice No. 2248 (January 14, 1998).

[10] *See* 47 C.F.R. § 11.31.

5. SBE filed its petition for rulemaking on August 14, 1997. The Commission staff issued a public notice announcing the filing of SBE's petition on August 22, 1997.[11] Comments were filed by the National Association of Broadcasters ("NAB"), Fox Television Stations, Inc. ("Fox"), Multi-Technical Services, Inc. ("MTS"), and the West Virginia Broadcasters Association. Reply comments were filed by SBE. In the petition, SBE requests additions and modifications to the EAS header codes. Additionally, SBE seeks various revisions to the operational and technical requirements for EAS. Among other things, SBE seeks to modify EAS testing requirements, make the two-tone attention signal optional, reduce the modulation level for EAS codes, establish a protocol for text transmissions, and allow the carriage of the audio portion of a President's EAS message from a non-EAS source.

III. DISCUSSION

6. The proposals set forth for comment in this *NPRM* are, for the most part, intended to enhance the performance of the EAS during state and local emergencies. While we recognize that EAS plays an important role at the state and local levels, we emphasize that participation in state and local EAS activities remains voluntary. We do not wish to impose additional costs or burdens on broadcast stations and cable systems that choose not to participate in state and local area EAS plans. Further, we wish to fully understand the costs and benefits that might result from our possible endorsement of the changes NWS has proposed to state and local emergency warnings. As a result, we are requesting specific cost information below and will evaluate that information carefully.

EAS Codes

7. *Event Codes.* Event codes are three-letter codes used in the transmission of EAS messages that identify the nature of the event or emergency that is causing the EAS activation. A list of authorized event codes is set forth in Section 11.31(e) of the Rules.[12] This list includes codes for national EAS events and tests, which broadcasters and cable systems are required to receive and transmit, and codes for state and local EAS events, which broadcasters and cable systems voluntarily participating in state and local area EAS plans may transmit on an optional basis.[13]

8. NWS requests a number of modifications to the list of authorized event codes. First, NWS requests that the Commission adopt a naming convention for state and local event codes.[14] Under the naming convention suggested by NWS, the third letter of all hazardous state and local event codes would be limited to one of four letters: "W" for warnings, "A" for watches, "E" for emergencies, and "S" for statements.[15] Events that pose a significant threat to public safety and/or property, have a high probability of occurrence in a particular location, and have a relatively short onset time would be titled "warnings." Events would be titled "watches" where they pose a significant threat to public safety and/or property, but either the onset time or probability of occurrence or location is uncertain. The title "emergency" would be reserved for future applications that do not meet the definition of warning or

[11] Public Notice No. 2219 (August 22, 1997).

[12] 47 C.F.R. § 11.31(e).

[13] Although EAS participants transmit codes for state and local EAS events on an optional basis, EAS equipment is required to be capable of recognizing *all* EAS codes. 47 C.F.R. §§ 11.32 and 11.33.

[14] NWS Petition at 1-3.

[15] NWS Petition at 3.

watch but are of such a nature that the information is important and may require public response. Follow-up messages would be titled as "statements." NWS states that the naming convention would make possible a wider range of consumer products without lessening the current capabilities of the EAS or NWR-SAME. SBE endorses the suggested naming convention, noting that it will make it much easier to design consumer grade equipment which allows consumers to select the events for which they wish to be alerted.[16]

9. We seek comment on whether the suggested naming convention should be adopted. We note that adoption of the naming convention would require revision of the existing event codes for Tornado Warning (TOR), Severe Thunderstorm Warning (SVR) and Evacuation Immediate (EVI) to TOW, SVW and IEW, respectively. Adding the revised codes and deleting the existing codes for these three events would require any broadcast station or cable system that wishes to participate in state and local EAS alerts to modify or upgrade its EAS equipment to handle the revised codes. In addition, we seek comment on ways to ease the transition in the event that we adopt the naming convention. Specifically, we seek comment on whether we should add the revised codes suggested by NWS for Tornado, Severe Thunderstorm and Evacuation Warnings, while also retaining the existing codes for these events for some specified length of time to allow continued functionality of existing EAS equipment through its expected lifespan. Based on discussions between Commission staff and NWS, we believe that NWS has the capability to transmit both the existing codes and the revised codes for these three events. We seek comment on what issues arise for EAS participants if NWS transmits both the existing codes and the revised codes for these three events.

10. We are mindful that the Commission has only recently adopted final rules requiring that broadcast stations and cable systems install EAS equipment.[17] Thus, we are particularly interested in ascertaining any costs that broadcast stations and cable systems participating voluntarily in state and local EAS alerts may incur if the naming convention is adopted.[18] In addition, to assist us in determining the best course to take, we request specific comment on the following questions: Is it possible to modify all existing EAS equipment to receive the revised codes through software upgrades or will hardware upgrades be required? What will it cost to upgrade existing EAS equipment to receive the revised codes? Will some broadcast stations and cable systems simply choose not to participate voluntarily in state and local EAS alerts rather than make the modifications? If so, how many and how does this balance with the benefits of the new codes? How can we ensure that revisions to state and local event codes do not cause an emergency warning to be missed? What happens to an EAS decoder that has not been upgraded if it receives a revised code transmitted by NWS? What issues arise if we authorize the continued use of EAS equipment that can only receive the existing codes for an indefinite period of time? What is the expected lifespan of existing EAS equipment? If we authorize the manufacture and sale of EAS equipment with the existing codes for a specified period of time, how long should we give manufacturers and distributors to reduce or upgrade existing stock? Additionally, if we authorize the continued use of EAS equipment that can only receive the existing codes for a specified period of time, how long should we give broadcast stations and cable systems participating voluntarily in state and local EAS alerts to replace or upgrade EAS equipment? Finally, if we adopt the revised and new EAS codes, will there be

[16] SBE Comments at 1-2.

[17] *First Report and Order*, 10 FCC Rcd 1786; *Second Report and Order*, 12 FCC Rcd 15503.

[18] Estimated costs for broadcast stations to install EAS equipment ranged from $600 to $2,500. The cost to cable systems is higher due to the multichannel nature of cable systems. Estimated costs for cable systems to install EAS equipment ranged from $10,000 to $15,000. *First Report and Order*, 10 FCC Rcd at 1828-32.

any adverse effects or additional costs on broadcast stations and cable systems that transmit digital signals?

11. NWS also requests that we add new event codes for emergency conditions not included in the current list, modify the titles of two existing codes to include weather events that are likely to occur in tandem, and add new event codes for certain administrative messages and non-EAS applications.[19] The Commission has also received other recommendations for new event codes. A complete listing of the existing and recommended event codes is attached as Appendix A. We seek comment on whether we should amend the rules to add the recommended event codes. In addition, we seek comment on whether there are other event codes that should be added to the list. We also request comment on what equipment modifications would be needed to implement the recommended changes and on the costs of such modifications. Further, we seek comment on what effect the addition of these new event codes would have on existing EAS equipment that is not capable of receiving these codes.

12. SBE suggests that the Commission include a cancellation code for each event code in the current list and for each event code that will be added to the list.[20] In SBE's view, cancellation codes are needed for situations where a warning can be cancelled prior to its issued expiration time. SBE notes that in some cases the warning code has been reissued to announce cancellation of the event, but the EAS generated crawl made it appear that the warning was being reissued. NAB supports SBE's suggestion to add cancellation codes, asserting that this change would consider the needs of broadcasters as well as the need of the listening and viewing public to be informed during an emergency situation.[21] We are not convinced that the cancellation codes suggested by SBE are necessary, but seek further comment on this suggestion. We question whether cancellation codes are necessary given that EAS messages already contain a code that specifies the valid time period of the message. In particular, we seek comment on how frequently situations arise where a warning can be cancelled prior to its issued expiration time. In addition, we seek comment on what equipment modifications would be needed to implement cancellation codes and on the costs of such modifications.

13. *Location Codes*. Location codes are six-digit numerical codes used in the transmission of EAS messages that indicate what geographic areas may be affected by an emergency. These codes have three separate parts. The "SS" portion of the location code is a two-digit number that identifies the state or territory in which the emergency is located. The "CCC" portion of the location code is a three-digit number that identifies the county or city affected by the emergency. The "P" portion of the location code is optional and allows the message originator to divide a county into nine sections to further pinpoint the affected portion of the county. The "SS" and "CCC" numbers are unique Federal Information Processing Standard ("FIPS") numbers assigned by the National Institute of Standards and Technology. The "SS" numbers are listed in Section 11.31(f) of the Rules.[22] The "CCC" numbers are contained in the State EAS Mapbook.

14. NWS requests that we add new location codes to cover marine areas, which are not presently included in the location codes specified in Section 11.31(f) of the Rules.[23] The marine areas

[19] NWS Petition at 5-6; NWS Letter at 9-13.

[20] SBE Petition at 17.

[21] NAB Comments at 4.

[22] 47 C.F.R. § 11.31(f).

[23] NWS Petition at 7.

are immediate offshore areas likely to be affected by extreme weather conditions and are identified by two-digit numbers that would comprise the "SS" portion of the location code.[24] A listing of the marine location codes requested by NWS is attached as Appendix B. We seek comment on whether we should include these location codes in Section 11.31. We also seek comment on what equipment modifications would be needed to implement this request and on the costs of such modifications. Further, we seek comment on what effect the addition of these new marine location codes would have on existing EAS equipment that is not capable of receiving these codes.

15. NWS and SBE both request the addition of an entire country location code. SBE states that an entire country location code is needed so that multiple alerts are not necessary to activate the entire country when a national level emergency situation arises.[25] NWS recommends that the 000000 location code be used for a message affecting all or a large portion of the country. We seek comment on whether we should ask the Federal Emergency Management Agency ("FEMA") to use the 000000 location code when a national level EAS message is originated by the federal government. We also request comment on whether this would have any effect on existing EAS equipment.

16. In addition, NWS points out that since consumer products only respond to receipt of the county location code programmed into the unit, which is usually the consumer's location, the consumer products would not respond to the 000000 location code. To remedy this problem, NWS suggests that when the EAS equipment at broadcast stations and cable systems receive a national level EAS message, the equipment could, in addition to retransmitting the event code and the accompanying 000000 location code, also trigger transmission of all of the county location codes stored within the equipment. This "triggering" proposal would allow consumer products that activate only upon the location code for the county in which the product is located to be activated for national EAS messages accompanied by the 000000 location code. We are concerned that adoption of the "triggering" proposal would require costly modification of existing equipment at broadcast stations and cable systems. However, we seek comment on whether we should permit this as an optional feature of EAS equipment. Further, we are not aware of any significant number of consumer devices which rely upon EAS transmissions of broadcast stations and cable systems. We seek comment on the existence of consumer devices which monitor broadcast stations and cable systems rather than NWS weather transmitters.

17. NWS also requests that we permit the use of any combination of the standard alphabet and numbers in the "CCC" portion of the location code.[26] NWS states that organizations responsible for the warning communications associated with special facilities – such as nuclear power plants, chemical, biological and nuclear weapons storage facilities, and plants that produce and store hazardous materials – are now using or evaluating the use of NWR as their primary radio communications system. Allowing the geographic code blocks to include both numbers and letters plus the * symbol, NWS says, would enable these organizations to create up to 1.4 million possible location code and message combinations. Text messages could be stored in each receiver that, depending on the code received, provide almost site specific information such as shelter in place information, evacuation routes, and safe areas. In its comments on the NWS Petition, SBE expresses concern that if this regionally customized location coding is not explicitly included in the Part 11 rules, equipment manufacturers will not allow such

[24] NWS indicates that the special "SS" codes for marine areas would be used in conjunction with special "CCC" codes. The special "CCC" codes have not yet been designated.

[25] SBE Petition at 8.

[26] NWS Petition at 1, 3-4.

flexibility in their equipment for fear of FCC equipment certification problems.[27] In this regard, SBE states that it has repeatedly been told by some manufacturers that unless coding is exactly specified in the FCC rules, the modified or supplemental coding will not be put into the manufacturer's equipment. Thus, SBE asserts that it cannot support NWS's request for customized location coding without an assurance that every bit of code customizing is expressly included in Part 11. SBE adds that the flexibility sought by NWS with the customized location coding could be better accomplished by adoption of SBE's suggestion for a protocol for text transmission, which we discuss below. We seek comment on NWS's request and on the concerns raised by SBE with respect to this request.

18. *Originator Codes.* Originator codes are three-letter codes used in the transmission of EAS messages that identify who originally initiated the activation of the EAS. A list of authorized originator codes is set forth in Section 11.31(d) of the Rules.[28]

19. NWS asks that we revise its originator code from WXR to NWS. While we agree with NWS that this revision would make its originator code more easily recognizable to EAS participants, we believe that it raises the same concerns discussed above with respect to the revision of existing event codes to implement NWS's suggested naming convention. Adding the NWS code and deleting the WXR code could have a substantial adverse impact on the use of the EAS for state and local emergency purposes because NWS is the originator of emergency weather information. Any broadcast station or cable system that wishes to participate in state and local EAS alerts would need to modify or upgrade its EAS equipment to handle the revised code. We seek comment on whether we should revise NWS's originator code from WXR to NWS. Further, to ease the transition in the event that we revise NWS's originator code, we seek comment on whether we should add the NWS code, while also retaining the existing WXR code for some specified length of time to allow continued functionality of existing EAS equipment through its expected lifespan.

20. *Equipment authorization.* EAS equipment is required to be certified by the Commission in accordance with the procedures set forth in Subpart J of Part 2 of the Commission's Rules.[29] Accordingly, we seek comment on what effect the proposed and requested revisions to the EAS codes discussed above may have on Commission certification of existing EAS equipment. In addition, we invite comment from equipment manufacturers on how we can make the equipment authorization process more flexible to accommodate changes in EAS codes.

21. We also seek comment on whether, as an alternative to revising the lists of State and local EAS event and location codes, we should amend the Rules to provide that any modifications to existing authorized EAS equipment that are necessary to implement revisions in EAS codes are Class I permissive changes that do not require a new application for and grant of equipment certification.[30] Under this alternative, entities subject to the Commission's EAS requirements could satisfy their obligations with equipment designed to function with either the existing codes or an expanded range of codes. Additional State and local event and location codes could be developed directly by State and local officials, broadcasters and cable operators, equipment manufacturers and other interested parties. The use of these codes and the equipment needed to access them would be implemented on a permissive basis

[27] SBE Comments at 2-3.

[28] 47 C.F.R. § 11.31(d).

[29] 47 C.F.R. § 11.34; *see also* 47 C.F.R. Part 2, Subpart J.

[30] *See* 47 C.F.R. § 2.1043.

as determined by the specific needs and interests of the local area participants. This approach would eliminate the need to conduct rulemakings to revise the State and local event codes and location codes, and would afford equipment manufacturers greater flexibility in the design and modification of EAS equipment. We request comment on alternative means of addressing the need for changed EAS codes.

EAS Testing

22. Current Part 11 rules require broadcast stations and cable systems to retransmit the Required Monthly Test ("RMT") within 15 minutes of receipt of the RMT message.[31] SBE requests that we extend the relay window for RMTs from 15 minutes to 60 minutes.[32] SBE asserts that if broadcasters have more time to relay a RMT, they will likely be able to insert it into a less disruptive portion of programming, which will increase acceptance of EAS. NAB and Fox support this proposal.[33] We tentatively conclude that a longer relay window for RMTs would ease scheduling difficulties for all EAS participants without negatively affecting EAS test procedures. Accordingly, we propose to amend Part 11 to increase the time for retransmitting RMTs to 60 minutes from the time of receipt of the RMTs and seek comment on this proposal.

Modulation Level of EAS Codes

23. SBE requests that we reduce the modulation level of the EAS codes from 80% to 50% of full channel modulation limits.[34] SBE states that in most cases the tone insertion equipment must be inserted after station processing to attain the required modulation level. According to SBE, this situation is "adverse to acceptable engineering practice."[35] We agree with SBE and propose to amend Section 11.51(f) of the Rules to permit a minimum modulation level of 50%. We invite comment on this proposal.

Compatibility of EAS Equipment with NWR-SAME System

24. NWS requests that we amend Section 11.33(a)(4) and (a)(5) of the Rules to permit EAS decoders to display or log receipt of only those event codes and accompanying location codes for which the decoder is programmed for mandatory receipt and those optionally set by the device user.[36] Section 11.33(a)(4) and (a)(5) requires EAS decoders to display messages from any valid EAS header codes received.[37] Therefore, EAS participants monitoring NWR-SAME transmissions receive every message transmitted, even test messages originated by NWS. We have received several reports from broadcasters who were unhappy with receiving unwanted NWS messages, and some have even stopped monitoring NWR on their EAS equipment. To address this problem, we seek comment on whether we should amend Part 11 to permit equipment manufacturers to include an optional feature in EAS equipment that would

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[31] *See* 47 C.F.R. §§ 11.51(l), 11.52(e)(2) and 11.61(a)(1)(v).

[32] SBE Petition at 3.

[33] NAB Comments at 3; Fox Comments at 1-2.

[34] *Id.* at 6.

[35] *Id.*

[36] NWS Petition at 1; NWS Letter at 3-4.

[37] 47 C.F.R. § 11.33(a)(4) and (a)(5).

allow EAS users the capability to program their EAS decoders to select only certain received EAS messages for processing. This selection capability would only apply to EAS messages that contain state and local event codes. Because this selection capability would be an optional feature of EAS equipment, existing EAS decoders which function according to the original specifications would still be in compliance with Section 11.33.

Protocol for Text Transmission

25. The existing EAS rules are designed to function with both radio and television systems and to accommodate information received in either audio or text formats. Subject to certain requirements that are intended to ensure that persons with disabilities have access to emergency information, television broadcasters and cable operators participating in the EAS system have the option as to whether to pass audio or text information on to the public. SBE does not propose any changes in terms of these options, but requests that we amend the Part 11 rules to include a more specific protocol for text transmission.[38] If included in the relevant equipment and utilized by entities participating in the EAS system, SBE suggests that a protocol for text transmission would improve the options available to those broadcasters and cable operators desiring to make greater use of already formatted text messages. This would include, according to SBE, those broadcasters wishing to include detailed disaster information updates in the next programming break or newscast rather than immediately upon reception. SBE maintains that the lack of a detailed text transmission capability has caused considerable criticism of EAS, particularly from the hearing impaired community and local emergency managers. SBE suggests that EAS would have "the ultimate capabilities of disaster warning as well as disaster follow up management if the proper means of text transmission were included in the protocol."[39] Under SBE's suggestion, text information would be transmitted immediately following the existing EAS message format, using the existing Audio Frequency Shift Keying ("AFSK") technique. By providing the text message following the existing EAS message, SBE states that "text can be incorporated without affecting existing decoders."[40] We seek comment on this suggestion, but we note that at this time, we have no information or data to support the addition of text messaging to the EAS system using the AFSK technique or any other scheme. In addition, we are aware of no comprehensive field tests that have been conducted to show the viability of different text formats. Moreover, SBE provides no data in its petition on the costs of adding text processing to EAS equipment. Nevertheless, we seek comment on whether we should amend the rules to provide broadcasters and cable operators with additional text transmission options.

26. As an alternative to SBE's suggestion, we could add a local event code (TXT) that can be used as an indicator that textual information will be transmitted after the End of Message code or we could permit other modifications to the EAS codes to test text transmission techniques. This would allow for the testing of different textual formats and could eventually lead to an industry standard. Another possible alternative is the transmission of textual information on sub-carrier or auxiliary signals. We seek comment on these alternatives.

Use of Common EAS Equipment by Co-Located Broadcast Stations and Cable Systems

27. Under the Part 11 rules, broadcast stations that are co-owned and co-located with a combined studio and cable systems that are co-owned and co-located with a combined control facility are

[38] *Id.* at 10-11.

[39] *Id.*

[40] *Id.* at 11.

permitted to use a common set of EAS equipment to comply with the EAS rules.[41] SBE raises concerns in its petition regarding co-owned, co-located "key" stations -- broadcast stations that are designated as state or local primary EAS sources in their EAS plan and thus are monitored by other stations in their EAS area.[42] SBE states that since EAS equipment does not provide for the relay of a message originated by itself, co-located key stations that do not simulcast program originations must originate tests and alerts separately. Because EAS encoders are required to affix date/time codes automatically to all messages,[43] when the same EAS message is originated on co-located key stations at different times, two apparently separate messages for the same event circulate through the EAS relay web, and automated, unattended, or manned stations set to automatic will air both messages. SBE therefore suggests that we amend Part 11 to provide that where more than one of the co-owned and co-located broadcast stations or cable systems are designated as key stations or systems, the common EAS equipment must be configured such that the EAS message of one key station or system is either simulcast or relayed by the remaining key station(s) or system(s). Although we have not received any reports of specific instances of this problem from any state or local primary EAS sources, we are concerned that confusion may result when the same EAS message is originated on co-located key stations or systems at different times. We accordingly seek comment on SBE's suggestion. Commenters should address what equipment modifications would be necessary to implement this suggestion, and the costs associated with such modifications.

Carriage of Audio of Presidential Messages from Non-EAS Sources

28. SBE requests that in the case of a national EAS alert, broadcast stations be permitted to air the President's voice message from a source other than the EAS source from which the alert was received.[44] In support of this request, SBE states that most broadcast stations are equipped with high audio quality network connections, whereas the audio received on an EAS decoder may be of questionable quality. SBE also expresses concern that severe video to audio synchronization problems may occur if a television station chooses to air the video of the President from the station's network feed, but is required to air the audio portion of the President's message from the EAS source which provided the activation. We invite comment on this request as it applies to broadcast stations.

EAN Network

29. The EAN network was one of two networks used to distribute national emergency messages from the federal government. It consisted of a dedicated communications service connecting industry networks, wire services and common carriers with government activation points. The other network used to distribute national level messages is the PEP system which was originally developed to serve as a backup to the EAN network. The PEP system consists of a nationwide network of broadcast stations designated as National Primary ("NP") sources that are connected with government activation points. In a Memorandum to the Director of FEMA dated September 15, 1995, President Clinton indicated that the PEP system would be the exclusive distribution network for the national level EAS and directed FEMA to "[p]hase out the dedicated circuitry and associated equipment of the Emergency Action Notification (EAN) network and incorporate the network nodes into the national-level EAS as

[41] *See* 47 C.F.R. §§ 11.51(j) and 11.52(c).

[42] SBE Petition at 14.

[43] 47 C.F.R. § 11.32(a)(5).

[44] SBE Petition at 16.

required."[45] Consistent with this directive, FEMA approved the removal of all EAN network equipment and circuits.[46] Accordingly, because the EAN network no longer exists, we propose to delete those portions of the Part 11 rules which reference the EAN network and its participants.

International High Frequency Stations

30. In a letter dated August 30, 1996, the National Association of Shortwave Broadcasters, Inc. ("NASB") requested that the Commission exempt FCC licensed international HF broadcast stations from the requirement to purchase and install EAS equipment.[47] Under Section 11.54(b)(9) of the Rules, stations in the International Broadcast Service ("IBS") are required to cease broadcasting immediately upon receipt of a national-level EAS message and must remain off the air until they receive an EAS message terminating the activation.[48] IBS stations may, however, be issued an emergency authorization by the FCC, with the concurrence of the Office of Science and Technology Policy ("OSTP") in the Executive Office of the President, to transmit federal government broadcasts and communications.

31. In support of its request, NASB asserted that the technical and political concerns which gave rise to the requirements of Section 11.54(b)(9) are no longer relevant. On September 13, 1996, Commission staff forwarded NASB's request to the OSTP for comment.[49] After consulting with the White House Military Office and FEMA, OSTP responded that it had no objection to granting NASB the requested exemption.[50] By letter dated December 20, 1996, the Commission staff exempted all FCC licensed international HF broadcast stations from the requirement to purchase and install EAS equipment.[51] We propose to amend Part 11 to eliminate the requirement that international HF broadcast stations purchase and install EAS equipment and to delete Section 11.54(b)(9).

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[45] Memorandum from President William J. Clinton to James L. Witt, Director, Federal Emergency Management Agency (September 15, 1995). This Memorandum sets forth the responsibilities of the FCC, FEMA, the White House Military Office, and the National Oceanic and Atmospheric Administration with respect to the development and operation of the EAS.

[46] Memorandum from John D. Hwang, Associate Director, Information Technology Services Directorate, Federal Emergency Management Agency, to James L. Witt, Director, Federal Emergency Management Agency (September 22, 1995).

[47] Letter to Frank Lucia, Director, Emergency Communications, Federal Communications Commission, from Douglas W. Garlinger, Chairman, EAS Compliance Committee, National Association of Shortwave Broadcasters, Inc. (August 30, 1996).

[48] 47 C.F.R. § 11.54(b)(9).

[49] Letter to Thomas A. Furman, National Security and Affairs Division, Executive Office of the President, Office of Science and Technology Policy, from Arlan K. van Doorn, Deputy Chief, Compliance and Information Bureau, Federal Communications Commission (September 13, 1996).

[50] Letter to Arlan K. van Doorn, Deputy Chief, Compliance and Information Bureau, Federal Communications Commission, from Thomas A. Furman, National Security and Affairs Division, Executive Office of the President, Office of Science and Technology Policy (December 6, 1996).

[51] Letter to Douglas W. Garlinger, Chairman, EAS Compliance Committee, National Association of Shortwave Broadcasters, Inc., from Arlan K. van Doorn, Deputy Chief, Compliance and Information Bureau, Federal Communications Commission (December 20, 1996).

Other Matters

32. NWS and SBE have also suggested a number of other changes. For example, NWS suggests that we delete from the State and local EAS event code list certain events that in its view do not provide information about immediate life-threatening situations; and that we include an explicit statement in the Part 11 rules that EAS equipment manufacturers should ensure that their equipment is compatible with the non-EAS applications of NWR-SAME. SBE suggests that we add the event code for Evacuation Immediate situations to the list of national event codes for which immediate transmission is required; that we require location code verification of all EAS tests and activations; that we replace the Required Monthly Test with a Required Quarterly Test; that we make the two-tone Attention Signal optional; and that we take steps to "coax" participation in EAS at the local level. We do not propose to adopt these suggestions because amendments to the rules in these areas appear either unnecessary or not in the public interest. Nevertheless, parties may comment on these matters if they choose.

IV. CONCLUSION

33. In this *NPRM*, we solicit comment on revisions to the EAS rules suggested in petitions for rulemaking filed by NWS and SBE. We seek comment on additions and modifications to the list of digital header codes used in the transmission of EAS messages. In addition, we propose to increase the relay time for RMTs, to reduce the modulation level of the EAS codes, to delete references in the EAS rules to the EAN network and its participants, and to delete the requirement that international HF stations purchase and install EAS equipment. We request comment on all of the issues and proposals addressed in this *NPRM* and encourage full participation from broadcast licensees and cable operators, equipment manufacturers, state and local emergency management personnel, and other interested parties. We also invite comment on what effects the proposals and issues addressed in this *NPRM* may have on consumer equipment.

V. PROCEDURAL MATTERS

34. Comments and reply comments. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before 75 days after publication in the Federal Register, and reply comments on or before 105 days after publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322, 11326 (1998).

35. Comments filed through ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and instructions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at http://www.fcc.gov/e-file/email.html.

36. Parties who choose to file by paper must file an original and four copies of each filing. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original and nine copies. Also, if more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking

number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Rm. TW-A325, Washington, D.C. 20554. Copies of all filings are available for public inspection and copying during regular business hours at the FCC Reference Information Center, 445 12th St., S.W., Rm. CY-A257, Washington, D.C. 20554.

37. Ex parte Rules. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(b).

38. Initial Regulatory Flexibility Analysis. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained in Appendix C. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in the *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* specified in paragraph 34 above. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register. *See id.*

39. Initial Paperwork Reduction Act of 1995 Analysis. This *NPRM* does not propose a new or modified information collection.

VI. ORDERING CLAUSES

40. According, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i) and (o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (o), 303(r), 554(g) and 606, NOTICE IS HEREBY GIVEN of the proposals described in this *Notice of Proposed Rulemaking*.

41. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

42. For additional information on this proceeding, please contact the FCC Enforcement Bureau, Technical and Public Safety Division, at (202) 418-1160.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas WFC
Secretary

APPENDIX A

Recommended Event Code List

Nature of Activation	Event Code	Change
National (Required)		
Emergency Action Notification	EAN	No change
Emergency Action Termination	EAT	No change
Required Monthly Test	RMT	No change
Required Weekly Test	RWT	No change
State and Local (Optional)		
Administrative Message	ADR	No change
Avalanche Warning	AVW	Recommended addition
Avalanche Watch	AVA	Recommended addition
Blizzard Warning	BZW	No change
Civil Danger Warning	CDW	Recommended addition
Civil Danger Watch	CDA	Recommended addition
Coastal Flood Warning	CFW	Recommended addition
Coastal Flood Watch	CFA	Recommended addition
Dam Break Warning	DBW	Recommended addition
Dust Storm Warning	DSW	Recommended addition
Dust Storm Watch	DSA	Recommended addition
Earthquake Warning	EQW	Recommended addition
Earthquake Watch	EQA	Recommended addition
Evacuation Immediate	EVI	No change
Fire Warning	FRW	Recommended addition
Flash Flood Statement	FFS	No change
Flash Flood Warning	FFW	No change
Flash Flood Watch	FFA	No change
Flood Statement	FLS	No change
Flood Warning	FLW	No change
Flood Watch	FLA	No change
Hazardous Materials Warning	HMW	Recommended addition
Hazardous Materials Watch	HMA	Recommended addition
High Wind Warning	HWW	No change
High Wind Watch	HWA	No change
Hurricane Statement	HLS	No change
Hurricane Warning	HUW	No change
Hurricane Watch	HUA	No change
Law Enforcement Warning	LEW	Recommended addition
Local Area Emergency	LAE	Recommended addition
Missing Child Statement	MIS	Recommended addition
National Hazard Warning	NHW	Recommended addition*
National Information Center	NIC	No change
National Periodic Test	NPT	No change
Network Message Notification	NMN	Recommended addition**
911 Telephone Outage Message	TOM	Recommended addition

Nuclear Power Plant Test Message	NPM	Recommended addition
Nuclear Power Plant Warning	NPW	Recommended addition
Radiological Hazard Warning	RHW	Recommended addition
Radiological Hazard Watch	RHA	Recommended addition
School Closing Statement	SCS	Recommended addition
Severe Thunderstorm Warning	SVR	No change
Severe Thunderstorm Watch	SVA	No change
Severe Weather Statement	SVS	No change
Shelter in Place Warning	SPW	Recommended addition
Special Marine Warning	SMW	Recommended addition
Special Weather Statement	SPS	No change
System Demonstration/Practice	DMO	No change
Tornado Warning	TOR	No change
Tornado Watch	TOA	No change
Transmitter Primary On	TXP	Recommended addition***
Transmitter Backup On	TXB	Recommended addition***
Transmitter Carrier On	TXO	Recommended addition***
Transmitter Carrier Off	TXF	Recommended addition***
Tropical Storm Warning	TRW	Recommended addition
Tropical Storm Watch	TRA	Recommended addition
Tsunami Warning	TSW	No change
Tsunami Watch	TSA	No change
Volcanic Ash Warning	VAW	Recommended addition
Volcano Warning	VOW	Recommended addition
Volcano Watch	VOA	Recommended addition
Winter Storm Warning	WSW	No change
Winter Storm Watch	WSA	No change

* NWS suggests that the National Hazard Warning code be used for hazards that affect all or a large part of the country. It would be used in messages originated by NWS.

** NWS suggests that the Network Message Notification code would be an internal-only, non-broadcast EAS message, with no specific text message, to alert EAS stations that an important message will be disseminated at a time defined by the expiration/purge time in the header.

***NWS states that these codes would be used by NWS to control its remote transmitter sites.

APPENDIX B

PROPOSED LOCATION CODES FOR MARINE AREAS

73 - Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C.
75 - Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL., including the Caribbean
77 - Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL.
57 - Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border
58 - North Pacific Ocean near Alaska, and along Alaska coastline, including the Berring Sea and the Gulf of Alaska
59 - Central Pacific Ocean, including Hawaiian waters
65 - Western Pacific Ocean, including Mariana Island waters
61 - South Central Pacific Ocean, including American Samoa waters
91 - Lake Superior
92 - Lake Michigan
93 - Lake Huron
94 - Lake St. Clair
96 - Lake Erie
97 - Lake Ontario
98 - St. Lawrence River above St. Regis

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act ("RFA"),[52] the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("*NPRM*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 34. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[53] In addition, this *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[54]

A. Need for, and Objectives of, the Proposed Rules

In this *NPRM*, the Commission solicits comment on petitions for rulemaking filed by the National Oceanic and Atmospheric Association National Weather Service ("NWS") and the Society of Broadcast Engineers ("SBE") requesting revisions to the Part 11 rules governing the Emergency Alert System ("EAS").[55] The requested revisions are intended to enhance the capabilities of EAS equipment, reduce burdens on EAS participants, and improve the overall performance of the EAS.

B. Legal Basis

Authority for the actions proposed in this *NPRM* may be found in Sections 1, 4(i) and (o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (o), 303(r), 554(g) and 606.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[56] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[57] A

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[52] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Fairness Enforcement Act of 1996.

[53] *See* 5 U.S.C. § 603(a).

[54] *See id.*

[55] 47 C.F.R. §§ 11.1, *et seq.*

[56] 5 U.S.C. § 601(6).

[57] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3). While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and

small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[58] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[59] Nationwide, as of 1992, there were approximately 275,801 small organizations.[60] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[61] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[62] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[63] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

Television and radio stations. The proposed rules would apply to television broadcasting licensees and radio broadcasting licensees. The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[64] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[65] Included in this industry are commercial, religious, educational, and other television stations.[66] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[67] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[68] There were

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is not suitable for purposes of determining the impact of the proposals on small radio stations, for purposes of this Notice, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations subject to the proposed rules in this Notice and to consider further the issue of the number of small entities that are radio broadcasters or other small media entities in the future. *See Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), *citing* 5 U.S.C. § 601(3).

[58] Small Business Act, 15 U.S.C. § 632 (1996).

[59] 5 U.S.C. § 601(4).

[60] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[61] 5 U.S.C. § 601(5).

[62] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[63] *Id.*

[64] 13 C.F.R. § 121.201, SIC code 4833.

[65] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995) ("1992 Census, Series UC92-S-1").

[66] *Id.*

[67] 1992 Census, Series UC92-S-1, at Appendix A-9.

[68] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

1,509 television stations operating in the nation in 1992.[69] That number has remained fairly constant as indicated by the approximately 1,663 operating television broadcasting stations in the nation as of September 30, 2000.[70] For 1992,[71] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[72]

The SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[73] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[74] Included in this industry are commercial, religious, educational, and other radio stations.[75] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[76] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[77] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[78] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[79] As of September 30, 2000, Commission records indicate that 12,717 radio stations were operating.[80]

Thus, the rules may affect approximately 1,663 full power television stations, approximately 1,280 of which are considered small businesses.[81] Additionally, the proposed rules may affect some 12,717 full power radio stations, approximately 12,208 of which are small businesses.[82] These estimates may

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[69] FCC News Release No. 31327 (January 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

[70] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[71] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." *See* 1992 Census, Series UC92-S-1, at III.

[72] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[73] 13 C.F.R. § 121.201, SIC code 4832.

[74] 1992 Census, Series UC92-S-1, at Appendix A-9.

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each colocated AM/FM combination counts as one establishment.

[79] FCC News Release, No. 31327 (January 13, 1993).

[80] FCC News Release, "Broadcast Station Totals as of September 30, 2000."

[81] We use the 77% figure of TV stations operating at less than $10 million for 1992 and apply it to the 1999 total of 1,663 TV stations to arrive at 1,280 stations categorized as small businesses.

[82] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,717 individual station count to arrive at 12,208 individual stations categorized as small businesses.

overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non- television or non-radio affiliated companies. There are also 2,395 low power television ("LPTV") stations.[83] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Cable systems. The proposed rules would also affect small cable entities. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[84] This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[85]

The Commission has developed its own definition of a "small cable system" for purposes of the EAS rules. Cable systems serving fewer than 10,000 subscribers per headend are considered small cable systems and are afforded varying degrees of relief from the EAS rules.[86] Based on our most recent information, we estimate that there are 8,552 cable systems that serve fewer than 10,000 subscribers per headend.[87] Consequently, we estimate that there are fewer than 8,552 small cable systems that may be affected by the rules proposed herein.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[88] The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[89] Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals

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[83] FCC News Release, "Broadcast Station Totals as of September 30, 2000".

[84] 13 C.F.R. § 121.201, SIC 4841.

[85] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[86] The Commission developed this definition based on its determination that requiring cable systems serving fewer than 10,000 subscribers to comply with the EAS rules immediately may have an adverse economic effect on their operations. *Second Report and Order*, 12 FCC Rcd at 15516-17. Cable systems serving between 5,000 and 10,000 subscribers per headend must install EAS equipment and provide audio and video EAS messages on all programmed channels by October 1, 2002. Cable systems serving fewer than 5,000 subscribers per headend must either provide the national level EAS message on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002. *See* 47 C.F.R. § 11.11.

[87] *Television and Cable Factbook*, Warren Publishing, Inc., at I-98 (2000).

[88] 47 U.S.C. § 543(m)(2).

[89] 47 C.F.R. § 76.901(f).

1,450.[90] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[91] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Multipoint Distribution Systems. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[92] This definition of small entity in the context of MDS auctions has been approved by the SBA.[93] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts.[94] This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, we find that there are approximately 440 small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules proposed herein.

Instructional Television Fixed Service. The SBA definition of small entities for pay television services also appears to apply to ITFS.[95] There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.[96] However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 ITFS are small businesses and may be affected by the proposed rules.

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[90] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[91] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's Rules. *See* 47 C.F.R. § 76.990(b).

[92] 47 C.F.R. § 21.961(b)(1).

[93] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

[94] 13 C.F.R. § 121.201.

[95] 13 C.F.R. § 121.201.

[96] 5 U.S.C. § 601(3).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no reporting or recordkeeping requirements proposed in this *NPRM*. The proposals set forth in the *NPRM* are, for the most part, intended to enhance the performance of the EAS during state and local emergencies. We emphasize that participation in state and local EAS activities remains voluntary and that we do not wish to impose additional costs or burdens on broadcast stations and cable systems that choose not to participate in state and local area EAS plans. The *NPRM* seeks comment on proposed additions and revisions to the EAS digital header codes used in the transmission of state and local EAS alerts. In addition, the *NPRM* proposes to increase the time period for retransmitting Required Monthly Tests of the EAS system and to reduce the modulation level for EAS codes. These proposals would lessen operational burdens on EAS participants. The *NPRM* also seeks comment on various suggestions by NWS and SBE to revise EAS operational and equipment requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In setting forth the proposals contained in this *NPRM*, we have attempted to minimize the burdens on all entities. We seek comment on the impact of our proposals on small entities and on any possible alternatives that would minimize the impact on small entities.

F. Federal Rules that Duplicate, Overlap, or Conflict with the Proposed Rules

None.

DISSENTING STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH

Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Notice of Proposed Rulemaking

The current Emergency Alert System ("EAS") provides a valuable service to the American public. Its usefulness has been demonstrated in countless situations where the public has been notified of impending emergencies and has been informed of the details as those emergencies develop. Current EAS rules are grounded both in law and good practice. The Notice of Proposed Rulemaking ("NPRM") suggests new EAS rules, some voluntary, others not. The new rules would not be as clearly grounded in law, nor would they necessarily reflect sound policy. For these reasons, I dissent.

I am particularly troubled about the adoption of voluntary rules in all instances. How are such rules applied and enforced? What meaning do they have? If the law requires a regulated entity to provide a certain service, that service cannot be voluntary. Conversely, the agency should not suggest voluntary compliance with rules that have little or no statutory basis.

Specifically, the NPRM suggests additional warning rules for state and local emergencies without adequately exploring the effect such rules, albeit proposed as voluntary, may have on broadcasters and cable operators. For example, while questions are raised as to the costs of providing such warnings, the NPRM does not recognize or consider the fact that local franchising authorities may require cable operators to issue local emergency warnings as a condition of a franchise renewal—thus, turning a voluntary action into a mandatory requirement at the local level. The NPRM also considers additional rules for alerting persons with disabilities, yet does not examine whether the rules in place adequately address the concerns raised. It is important to note that these suggested proposals, and others like them in the item, are proffered for consideration even before the original EAS requirements have been completely implemented by some of the affected entities.[97]

In sum, the Commission should have issued a Notice of Inquiry that reflects upon the current state of EAS. After such an inquiry, if it were found that additional policies were necessary to fix the current system consistent with the law, or that other communications services need to be included to better effectuate the goal of alerting the public to dangers, then the Commission would be on firmer ground to go forward.

[97] Cable systems with fewer than 10,000 subscribers and wireless cable systems are required to install EAS equipment by October 1, 2002.