

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

**WASHINGTON, D.C. 20554**

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

To: Office of the Secretary

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

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Dated: October 29, 2004

## SUMMARY

The State Associations fully share the Commission's strong interest in evaluating the efficacy of EAS, as well as its commitment to improving EAS at all levels. Toward that end, the State Associations intend to participate actively in this proceeding in order to advance those goals.

The Federal government should fully assess the operational status of the Federal EAS system and of the various state and local EAS systems. It should use its authority, resources and bully pulpit to encourage continued voluntary cooperation among the many governmental and nongovernmental authorities, organizations and persons who have a stake in further improving EAS at the Federal, state and local levels. In particular, there is an urgent need to educate various sectors of state and local government about the critical need for reliable, redundant and effective public warning systems at all levels. There needs to be a wider recognition among emergency-related agencies, entities and personnel of the unique ability of broadcasters to reach huge audiences quickly in times of emergency. The broadcast industry is eager to do its part. The State Associations need the Federal government to very strongly support that effort.

The Federal government should acknowledge that many, but not all, governmental participants in this area accept their separate responsibilities to cooperate and improve current EAS systems at all levels. Those that do not should be prompted to do better. However, it would be impractical at best, and inappropriate at worst, to try to force governmental and nongovernmental parties to reach agreements on state and local EAS plans. Too many entities are involved, and there are many unique differences in needs and resources, state to state, and locality to locality. Furthermore, any "one-size-fits-all" approach for state and local EAS plans

would be counterproductive given these differences and the stifling effect such an approach would have on experimentation and innovation. The voluntary use of “best practices” and reference to “model EAS agreements” to jumpstart the development and refinement of EAS plans are preferable.

The Federal government should also acknowledge that the broadcast industry has a long track record of voluntarily airing the emergency messages of State and local authorities and otherwise cooperating with these authorities to provide emergency information, and therefore it is not necessary to require broadcast stations to turn over their facilities to state and local emergency management authorities. Furthermore, there is a genuine question whether the FCC has the authority to impose such a requirement, a requirement that would lead to chaos at the worst possible time. There is simply no suitable substitute for government agencies, broadcasters and others to work together cooperatively to reach voluntary, detailed agreements that are individually tailored by market. Just as the Federal government should not force State and local governments to enter into such agreements, the broadcast industry should not be forced to either.

Finally, retransmission services, such as cable and satellite, should not be permitted to override the time sensitive, locale targeted, critical emergency information broadcast by over-the-air television broadcast stations. The override practice increases risk to lives and property in times of emergency. The Commission should outlaw the practice immediately.

The State Associations urge the Commission to use this proceeding to encourage the full cooperation of, and funding by, the Federal, state and local governmental authorities to insure the highest levels of redundant, reliable emergency communications. Based on the foregoing, the

State Associations respectfully request that the Commission resolve the issues raised in this proceeding consistent with these Joint Comments.

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Alabama Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Broadcasters Association, Idaho Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee

Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations”), by their attorneys in this matter, and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submit their Joint Comments in response to *Notice of Proposed Rule Making (“NPRM”)*, FCC 04-189, in the above-referenced docket, released August 12, 2004, pertaining to the Commission’s Emergency Alert System (“EAS”).

## I. INTRODUCTION

The State Associations applaud the Commission for initiating this proceeding. The highest calling of any government is to provide the necessary infrastructure and resources to protect its citizens and institutions. Indeed, Section 1 of the Communications Act of 1934, as amended, contemplates that the Commission, as a “centralizing authority,” will regulate interstate and foreign communications by wire and radio in order to make available “a rapid, efficient, Nation-wide, and world-wide wire and communications service with adequate facilities...., *for the purpose of the national defense, [and] for the purpose of promoting safety of life and property...*” (Emphasis added). By initiating this proceeding, FCC Chairman Powell, and FCC Commissioners Abernathy, Copps, Martin, and Adelstein are diligently pursuing that high calling and statutory imperative in a very meaningful and timely fashion. The fact that this is a Notice of Propose Rule Making proceeding, rather than a Notice of Inquiry proceeding, is strong evidence that the Commission recognizes the need not only to gather the best and brightest ideas on the subject, but also to promote proactive decision making at all levels of Federal, state and local government.

Since the inception of the Nation's first broadcast stations, the broadcast industry has played a central role in providing the general public with timely information about natural and man-made emergencies so that members of the public have the opportunity to protect themselves and their properties. In fact, it can be argued that when a broadcaster airs emergency information, it engages in the highest and best use of its broadcast license. This is certainly recognized by broadcasters and more importantly by members of the public. The public's long standing, primary reliance on the free, local, over-the-air broadcaster in such circumstances is clear. The role of radio is critical during large-scale power outages; citizens are often left with a battery operated portable radio as the only means of receiving emergency information. When the terrorists attacked the World Trade Center in New York City on September 11, 2001, 93% of the adults in the United States relied primarily on radio (15%) and television (78%) for their information.<sup>1</sup>

An important benefit of this proceeding is the opportunity for the government and others to publicly recognize, and thus publicly promote, not only the continuing commitment of the broadcast industry as the ubiquitous, electronic media lifeline for the Nation in times of peril, but also the efforts of the many entities and persons inside and outside government which continue to strive to improve emergency communications at the Federal, state and local levels. In connection with the FCC, the State Associations wish to thank the Enforcement Bureau, Office of Homeland Security, as well as the many men and women who have served and are serving on the Commission's Media Security and Reliability Council ("MSRC"), including its component Public Communications and Safety Working Group ("PCWSG") and its four subcommittees. In

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<sup>1</sup> *The Emergency Alert System (EAS): An Assessment*, PPW Report 2004-1, p. 22 (February 2004).

particular, the State Associations want to recognize the efforts of Ann Arnold, the current President of the National Alliance of State Broadcasters Associations (“NASBA”) and the Executive Director of the Texas Association of Broadcasters, who was the first Chair of the Subcommittee on Government to Media of the PCWSG; C. Patrick Roberts, the President of the Florida Association of Broadcasters and the EAS coordinator for the State of Florida for the past 17 years, who serves on the Subcommittee on Government to Media of the PCWSG; and Richard E. Wyckoff, President of the Pennsylvania Association of Broadcasters who serves on MSRC II, along with many other distinguished members of the broadcast industry.

In addition to the FCC, the United States Department of Homeland Security and its component, the Federal Emergency Management Agency (“FEMA”), as well as the Department of Commerce, and its component the National Oceanic and Atmospheric Administration’s National Weather Service, need to be recognized for their outstanding work. So also the State Offices of the Governor, State Offices of Homeland Security, the many State Emergency Coordination Committees and Local Emergency Coordination Committees and their equivalents, as well as the numerous local (county, municipal and area) first responders, must be complimented for their fine contributions to implementing and improving EAS at all levels.

High on the list of partners of the government in this important effort are the National Association of Broadcasters (“NAB”), the Association of Maximum Service Television, Inc. (“MSTV”), the Association of Public Television Stations (“APTVS”), Radio and Television News Directors Association (“RTNDA”), the National Center for Missing and Exploited Children (“NCMEC”) and others, as well as the 50 State Broadcasters Associations. The contributions of these organizations are well documented in their comments to be filed in this proceeding.

As demonstrated in these Joint Comments, the State Associations have been instrumental in the development, implementation, and updating of numerous State EAS plans, as well as many local EAS plans. Indeed, the State Associations remain one of the major drivers of the development and refinement of these plans.

Finally, many other sectors of government and private industry continue to play significant roles in this matter, through the introduction of satellite-based, Internet-based, and other communications infrastructures, technologies, equipment, software and know-how. As examples, the State Associations hereby make note of the National Association of State Chief Information Officers; the Partnership for Public Warning; the EMNet Satellite EAS system (“EMNet”) that has been deployed in eleven states and is currently awaiting funding in seven states<sup>2</sup>; the AMBER Alert Web Portal which has been implemented in two States and is being developed in five States, in significant part due to the efforts of the Washington State Association of Broadcasters led by its President and CEO, Mark Allen and by the Arizona Broadcasters Association led by its President and CEO, Art Brooks; the implementation of Send Word Now which sends emergency notifications to voice and text devices; the development of a prototype hybrid DTV/ITFS two-way emergency alert system by Thirteen/WNET in conjunction with the National Technology Alliance; and the launching of a six-month pilot program by APTVS and FEMA to design a digitally based alert and warning system.

The State Associations fully share the Commission’s strong interest in evaluating the efficacy of EAS, as well as its commitment to improving EAS at all levels. Toward that end, the

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<sup>2</sup> EMNet has been deployed in Delaware, District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, North Carolina, Pennsylvania, Virginia, and Washington State. The following states are currently working on funding in order to possibly implement EMNet in the near future: Kentucky, Maine, Michigan, New Hampshire, Rhode Island, and Tennessee.

State Associations intend to participate actively in this proceeding in order to advance those goals.

The Federal government should fully assess the operational status of the Federal EAS system and of the various state and local EAS systems. It should use its authority, resources and bully pulpit to encourage continued voluntary cooperation among the many governmental and nongovernmental authorities, organizations and persons who have a stake in further improving EAS at the Federal, state and local levels. In particular, there is an urgent need to educate various sectors of state and local government about the critical need for reliable, redundant and effective public warning systems at all levels. There needs to be a wider recognition among emergency-related agencies, entities and personnel of the unique ability of broadcasters to reach huge audiences quickly in times of emergency. The broadcast industry is eager to do its part. The State Associations need the Federal government to very strongly support that effort.

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Retransmission services, such as cable and satellite, should not be permitted to override the time sensitive, locale targeted, critical emergency information broadcast by over-the-air television broadcast stations. The override practice increases risk to lives and property in times of emergency. The Commission should outlaw the practice immediately.

With that background, the State Associations hereby submit their Joint Comments on the proposed rule changes in the *NPRM*. While these Joint Comments contain specific proposals, they are not at this stage intended to be exhaustive in scope or depth. The subject matter of this proceeding has many aspects where the views of government authorities, among others, need to be carefully considered, and where considerable deference may need to be accorded. Accordingly, the State Associations reserve the right to comment in reply. The State Associations intend to review the comments filed by others in an effort to refine their views on this entire subject matter as the proceeding progresses.

## II. DISCUSSION

### A. The FCC Should Look To The State Associations As An Important Driver For Creating and Improving State and Local EAS Plans.

There are 50 State Broadcasters Associations which represent radio and television broadcasters in the 50 states, the District of Columbia and Puerto Rico. To date, there are at least 45 State EAS plans, and numerous local EAS plans.<sup>3</sup> A number of the existing plans are in the process of being updated. Where State EAS plans do not presently exist, the State Broadcasters Associations there are helping to spearhead efforts to bring those plans into existence.

The Commission is fully familiar with the outstanding work of the State Broadcasters Associations in establishing and maintaining Alternative Broadcast Inspection Programs. Their commitment to the broadcast industry and to serving the public interest does not stop there. One need only consider the following examples to learn what the State Broadcasters Associations have accomplished in cooperation with numerous governmental and nongovernmental parties in the area of EAS.

The Washington State Association of Broadcasters (“WSAB”) completely revised and updated the Washington State EAS plan in January 2004. Additionally, WSAB hosts and maintains an EAS section on its website which is the single-source location for access to the Washington State plan, for the Required Monthly Test (“RMT”) schedule, and for the minutes of each State Emergency Communications Commission (“SECC”) meeting.

Similarly, in June 2004, the Colorado Broadcasters Association (“CBA”) formed a task force to revise its EAS state plan. The CBA also applauded the efforts of its broadcasters given their willingness to participate in the voluntary AMBER alerts.

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<sup>3</sup> See Exhibit 1, Status of “State and Territory EAS Plans.”

The Connecticut Broadcasters Association maintains an EAS committee and an AMBER plan subcommittee that meets monthly to discuss emergency procedure information. The EAS committee produced the first state EAS plan and has amended it twice to account for changes in the industry.

The New Hampshire Association of Broadcasters (“NHAB”) maintains a section on its website that provides information to broadcasters on new and upcoming transmitters that can be used to facilitate efficient distribution of local emergency information.

In Massachusetts, the President of the Broadcasters Association is involved with EAS on a Federal level as a member of the Presidential Primary Entry Point Advisory Committee. Additionally, a member of the Massachusetts Broadcasters Association is the chair of the SECC and has participated directly with the state AMBER Alert Committee.

As South Carolina approached Phase 2 of its implementation of the Amber Alert system, the President and Chair of the AMBER committee for the South Carolina Broadcasters Association met with other officials and reviewed the role of the broadcasters in the program. The Chairman of the South Carolina Engineering Committee serves as the state EAS coordinator and is intricately involved in managing the state plan along with other local officials. Additionally, the South Carolina Broadcasters Association incorporates regular EAS training in its association workshops throughout the year.

Working with stakeholders, the Maine Association of Broadcasters developed the statewide Maine EAS plan in 1995 and revised it in 2002 to reflect changes in the Part 11 Rules and changes in the industry; the Association’s website is the sole statewide source for

information on the State plan, the Required Monthly Test Schedule, the Maine Amber Alert Plan, and other information related to EAS.

When EAS replaced EBS, the President of the Oklahoma Association of Broadcasters (“OAB”) was the only party willing to take the leadership role in getting the program established. All of the start-up costs were borne by the OAB and currently the Association incurs the expense related to a backup telephone line from Oklahoma Emergency Management to the secondary stations.

In Montana, the President of the Montana Broadcasters Association spearheaded the effort to create a plan by approaching the Governor, with the result that state Department of Emergency Services, the broadcasters, and others have moved forward to the point that Montana is in the final stages of development of their plan and will test it shortly. These are just a few examples of the numerous initiatives undertaken by the various State Associations in this area.

The Florida Association of Broadcasters (“FAB”) meet with the emergency management staff at both the state and local levels at least twice a year; the broadcast engineers and local emergency management engineers meet at a central location annually to review the EAS plan and coordinate activations. The President of the FAB has chaired the SECC for the past seventeen years and is an active participant at the Florida Emergency Operations Center. He works closely with the Governor of Florida, his staff, and state and local emergency management directors before and after a disaster. The efforts of Florida broadcasters are a large part of the reason that state has such an exemplary EAS operation that saves lives and prevents property damage despite some of the worst hurricanes and other natural disasters imaginable.

The Texas Association of Broadcasters' ("TAB") EAS chair organized the efforts to create an EAS plan in 1996 and recruited the Local Primary Stations ("LP-1" or "LP-2"), State Primary Stations ("SP"), Local Primary Spanish stations to relay messages in Spanish given the state's large Hispanic population. The State Association also hosted a statewide conference for broadcasters and Texas Emergency Operational Center directors to announce the new plan. The TAB has continued to work with the state SECC to resolve EAS monitoring assignment problems, and issued a revised version of the Texas EAS plan early in 2004. TAB conducted a nationwide survey of state EAS systems to compile information about the status of EAS and presented that information to the MSRC I - PCSWG. TAB also hosts a message board on the EAS section of its website for Texas broadcasters to post any general statewide EAS issues as well as information on upcoming event code changes and the Required Monthly Test schedule.

The Directors of the Texas and Florida Broadcasters Associations have worked hard to increase DHS awareness of the issues and challenges facing those which, like the broadcast industry, are trying mightily to sensitize all levels of government about the importance of emergency communications systems. Toward that end, these Directors have met with DHS Secretary Tom Ridge, Undersecretary for Emergency Preparedness and Response, Mike Brown, and the Director of the Office of National Security Coordination, Reynold Hoover.

The leadership of the various State Associations have taken active roles at the state and local levels in ensuring that there is a continuous dialogue amongst all interested parties. In at least six states, a State Association officer or director serves as AMBER Alert Coordinator or, Chair or Co-Chair of the state's AMBER Alert committee. In yet another five states, either an officer or director of the State Association participates as a member or was a charter member of

the Amber Alert committee. Similarly, in at least seven states, the leadership of the State Association serves either as EAS Coordinator, Chair or Co-Chair of the state EAS committee.

The State Associations also continue to assist in the evaluation of various communications distribution technologies in order to add redundancy and thus reliability to State and local EAS plans. Some states, in addition to use of the hierarchical over-the-air broadcast “daisy chain” monitoring system, have implemented “parallel” systems to ensure that even the most remote areas of the state are covered. In Washington State, Idaho, Maine and Illinois, they use a network of microwave systems. Other states, including California, Florida, Maryland, and Pennsylvania, use satellite to assist in distributing EAS messages. A strategic partnership including the Washington State Association of Broadcasters and the Arizona Broadcasters Association developed a pilot project that enhances the current AMBER Alert plan. It allows local law enforcement officials to post up-to-date information about an abducted child to the integrated AMBER Alert Web Portal.

Early next year, the State Associations intend to host a conference for state EAS coordinators and the chairs of the various State Emergency Communications Committees in order to assess the operational status of state and local EAS plans nationwide, provide a forum for them to exchange ideas and identify needed resources, and to provide further impetus and resources for the development and further refinement of those plans and the effective deployment of EAS nationwide.

The goal of these State Associations is to focus more state and local attention on the need for carefully crafted, state of the art, emergency communications plans. In this process, the State Associations promote inclusion rather than exclusion. They want the best and brightest ideas

brought to the table. But they insist on action, as should the Federal government. It is clear from this that State Associations have made and continue to make major contributions to the Federal, state and local EAS systems and therefore should be looked to as “point person” resources to continue to improve those systems.

**B. The Federal Government Has An Important, Non-Regulatory Role to Play in Improving EAS at All Levels Throughout the Nation**

Rather than burdening the broadcast industry with more regulations which will not solve the shortcomings associated with the current national EAS system, the Federal government should look for ways that truly improve the reliability and effectiveness of the national EAS system, and that promote wider use of improved, state and local EAS plans and systems.

The FCC is doing its part through this rule making proceeding. In addition, the Commission has done an outstanding job of mandating that broadcasters install (at considerable cost), maintain, and regularly test their EAS equipment capable of alerting the vast majority of the public in emergencies. However, the Federal EAS system suffers from a design flaw inherent in the “daisy-chain” dissemination system. There are too few direct links between the EAS message sender and the broadcaster upon whom the public is relying for its emergency information. Furthermore, while progress has been good, there is still unevenness at the state and local levels in terms of appreciating the need for state of the art, reliable, effective public warning dissemination networks, and having the resolve to develop those networks.

The Federal government can and should play a much more proactive role in promoting the use of effective public warning plans, procedures and systems by the various state agencies and local state officials, emergency operators, and first responders. Partly as a result of the work of MSRC I, DHS Secretary, Tom Ridge, is helping. At his direction, and that of Mike Brown,

Undersecretary for Emergency Preparedness and Response (previously the FEMA director), the Department of Homeland Security has tasked Reynold Hoover with responsibility for resolving problems in disseminating a presidential emergency message. The State Associations understand that Mr. Hoover is working to provide redundancy in the communications pathways from the White House Communications Room to the PEP Stations by arranging for satellite delivery of messages, and that he is also exploring the possibility of utilizing public television stations' digital broadcasting capability as another means for disseminating national emergency messages. The State Associations also support consideration being given to expanding the number of point of entry ("PEP") stations from the original 34 PEP stations which were selected when the United States first became concerned about national emergency messaging capability during the Cold War. The PEP system has always contemplated that the messages broadcast on those 34 AM radio stations would be monitored and rebroadcast by other stations in accordance with each state's EAS plan. However, that system assumes that all stations had that capability then and that such capability remains strong today. To the State Associations' knowledge, no entity has ever done a live check to make sure that the system indeed works as contemplated. A number of states have raise serious concerns about the ability of stations to hear a PEP station or to otherwise receive a national emergency message. A number of states have said that the PEP signal is not reliable in their area. See Exhibit 2, attached hereto which is a survey conducted by the Texas Association of Broadcasters in connection with its participation on MSRC I.

### **1. The National EAS System**

With respect to the national EAS system, the State Associations are struck with the lack of redundancy in the system, as well as with the lack of direct connectivity between the Federal and state message "senders" on the one hand, and the thousands of broadcasters on the other

hand. Originally, the EAS system was intended to be the last resort method for the President to communicate an emergency message to the Nation. When the system was created, the White House also had direct telephone communication links to the wire services, AT&T and the national television networks. Since the elimination of those phone links for budget considerations in 1995, the EAS system now relies on what was intended only as the last resort when the plan was created. However, this last resort is no plan at all unless it is reliable. When the public warning system was first created under the Truman administration, the PEP stations were chosen based on their location in out of the way areas not expected to be key targets for Russian missiles. The system was designed so that PEP stations would be outside any potential blast area from a nuclear attack. That rationale needs to be reexamined in light of the vastly different threats America faces today and the fact that these links to 34 AM radio stations are the only means provided for the President to deliver an EAS emergency message.

An expansion of the number of PEP stations needs to be considered to allow for better geographic coverage. As mentioned above, redundant means of delivering messages from the White House to the PEP stations also should be considered such as the satellite delivery system DHS is currently contemplating to add to existing phone lines. Once satellite deliverability is possible, options should be explored further to deliver the message to more PEP stations, all Local Primary stations across the nation, and/or ideally all broadcast stations. That would eliminate the daisy chain nature of the current system for disseminating national messages. That would ensure much greater geographic reach and to reduce the risk that a terrorist group could take down all or most of the PEP stations and completely eliminate this national EAS system of last resort.

In addition to expanding the number of PEP stations and considering satellite delivery to all stations, the federal government should immediately initiate efforts to reestablish links and enlist the voluntary participation of the major national radio, television, and cable networks in the PEP system. Network affiliated broadcast stations can then receive national level EAS (Presidential) messages on their network receivers for broadcast to their audiences or they can connect the receivers to their EAS equipment for transmission to their audiences. The Federal government should consider the development of redundant, direct pathways to ensure the delivery of a Presidential message in the event that all or part of the PEP network is rendered inoperable. By implementing direct path methodologies, the EAS infrastructure eliminates the widely held concern that many stations cannot reliably monitor their PEP stations and thus would not be able to retransmit messages to stations further down the “daisy chain.”

While the State Associations do not endorse any particular solution, the following is one example of a direct path plan that has proven successful in several states and was first initiated by Florida as the result of the efforts by the Florida Association of Broadcasters led by C. Patrick Roberts. In 2002, Pennsylvania implemented what could be called the “seven-second-solution” to the problems associated with the “daisy chain” methodology. By employing Comlab’s EMNet system (“EMNet”),<sup>4</sup> all Pennsylvania broadcast stations that are EMNet equipped can directly receive, in only seven seconds, encrypted emergency messages via satellite, thereby eliminating all intermediaries. The system also sends a receipt to the originator once the message is received and again when the message is read by the other party. Additionally, the messages are not limited to EAS alerts; any of the stations and organizations connected to

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<sup>4</sup> EMNet has been implemented in eleven states which are collectively serving approximately 79 million viewers.

EMNet can send less substantial emergency messages to each other via the EMNet Message Manager, allowing the broadcaster receiving the information to decide whether further action should be taken to warn its viewers. If an EAS alert is warranted, it can only be originated by one of four organizations. In Pennsylvania, the originators of EAS alerts are limited to the Pennsylvania Emergency Management Agency (“PEMA”), Pennsylvania State Police, Pennsylvania Association of Broadcasters and the Pennsylvania Public Television Network.<sup>5</sup> When an EAS alert is sent, the process is akin to sending an e-mail to the station in the affected area, and that information may then be transmitted over-the-air. Moreover, the first 140 characters of the alert are also distributed via text messaging to all Nextel subscribers in the area of alert. Once the digital television transition is complete, Pennsylvania anticipates using the new digital capabilities to send emergency messages directly to public, such as firehouses, schools and malls, via the state’s public broadcast stations.

EMNet can also address the national delivery problems with the current PEP system. Given the satellite based backbone of EMNet, it has the ability to function nationally in scope. For example, instead of the President or FEMA making direct contact to PEP stations, they could “uplink” the alert to the EMNet satellite which would directly feed a control point set up in each state, and the state can then disseminate the message within its borders. Additionally, the layers of redundancy in EMNet would greatly improve upon the structure of the current system. If the EMNet satellite were to malfunction, messages could still be sent via an alternate satellite, over the Internet, or, as a true last resort, via the daisy chain method. There are additional burdens

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<sup>5</sup> The Pennsylvania State Police is the only entity authorized to activate AMBER Alerts. Five child behavioral officials on the police force have the ability to initiate an AMBER Alert while in the field via laptop. In the event that they are unable to initiate an alert, they can request the National Center for Missing and Exploited Children to send the alert on their behalf as NCMEC is also equipped with an EMNet terminal.

that could be alleviated through the use of an improved satellite system such as EMNet. First, because the messages are encrypted there would be no need for the authentication procedures and codes currently in place under the “daisy chain” delivery system. Second, EMNet can be configured so that stations only have to monitor other stations, off-air, as a form of redundancy because all of the participating stations can receive direct messaging from the satellite. Finally, as a two-way messaging system, obtaining confirmation of receipt is a far less arduous process. This is just one example of how the existing EAS structure can be augmented to produce a better public warning system. In all cases, whether through EMNet or comparable technology, there should exist some dedicated circuit with the ability to receive direct national alerts at a control point in each state.

The Federal government should also concentrate on, and provide funding for, the education and training of state and local emergency managers so that they can accurately execute their activation and relay responsibilities. Notably, some states have taken the leadership role in this arena. For example, in Nevada, there is an extensive EAS training program. In June 2003, the Nevada Broadcasters Association (“NBA”) began re-training the staff at virtually every radio station, television station and cable operator covered by the state’s EAS plan. Additionally, the NBA took it one step further and also trained many of the Federal, State and local emergency officials who may interact with or activate EAS. However, more assistance is necessary at the Federal level to ensure comprehensive training is equally available around the country.

The American public believes that when they hear the EAS tests every month the system works. Broadcasters do have the equipment to make the system work. It is imperative that federal and state governments step up to the plate and do whatever is necessary to disseminate emergency messages for the broadcasters to air so that the public is adequately warned.

## 2. State and Local EAS Plans

Concerning State and local EAS plans, the Commission's rules provide that, once created, State and local EAS plans must be reviewed and approved by the FCC prior to implementation in order to ensure they are consistent with "national plans, FCC regulations, and EAS operation."<sup>6</sup> In the NPRM, the Commission invites comment on whether the Commission should adopt rules requiring that State and/or local EAS plans be created and whether national guidelines should be developed for the structure and/or implementation of such plans.<sup>7</sup>

Unfortunately, officials at a number of state and local agencies appear inadequately concerned about the adequacy of their emergency information dissemination capabilities. The State Associations are fearful that many local authorities may be oblivious to the existence of EAS. A high official in the New York City Fire Department reported that he had never heard of EAS or the communications facilities broadcasters could offer until he joined the working groups of MSRC years after 9-11. The Federal government needs to do more to get the word out. The broadcast industry is doing its part and intends to do even more.

What is not needed is more regulations on broadcasters. What is needed is for the Federal government to encourage and cajole state and local officials to work cooperatively with the broadcasters. The FCC has no jurisdiction over those state and local governments so they cannot be forced to come up with EAS plans. All sectors of government dealing with emergency planning need to recognize the value of EAS. More rules imposed on broadcasters will accomplish nothing.

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<sup>6</sup> See 47 C.F.R. §11.21.

<sup>7</sup> See NPRM at ¶ 25.

Several incentives exist for government agencies to work together with broadcasters and these should be highlighted and expanded. Emergency response agencies are charged with the responsibility of public safety; and ensuring adequate dissemination of emergency-related information is a critical component of that directive. Also, if the warnings are effective, then local emergency personnel have less rescue and recovery situations to handle, which could in turn decrease associated costs. The Joint Comments already demonstrate the numerous ways that these sectors are working together. The Commission should use this proceeding as an opportunity to encourage these types of relationships.

Good progress toward improving the EAS system is being made throughout the country at both the State and local levels. As mentioned above, all of the states either have established plans or are in the process of developing such plans. EAS plans on a local level are steadily increasing. Where State EAS plans do not currently exist, the Department of Homeland Security and/or the FCC should write to the governors of those states urging such states to join with their respective State Broadcasters Associations and others to design and implement such plans as soon as possible. Where plans do exist, these Federal agencies should send letters to the respective governors complimenting their efforts and urging them to continue to examine ways to improve their plans in cooperation with their State Broadcasters Associations and others. It can reasonably be expected that the governors will respond with the requisite commitments and the contact persons for immediate follow-up. Furthermore, the Federal government should take immediate steps to elevate the stature and authority of all SECCs so that they feel proud and empowered to carry out their important missions.

Notwithstanding the unevenness in state and local commitments to EAS in this area, it should be recognized that many existing plans contain intricate details related to emergency

situations that are of particular concern to the parties involved in their drafting; and the various State Associations are working diligently in cooperation with many state emergency management officials and others to improve, harden, and insure the efficacy of their systems, as well as to make sure the implementation of their state plans take into account unique and diverse local situations and concerns, and are state of the art. Some examples follow:

In New Jersey, the state plan includes special directives in the event of a nuclear power plant incident. The plan directs the State Primary (“SP”) facility to serve as the lead station for the power plant and activate EAS on the order of the State Director of the Office of Emergency Management. If the SP is within a 50 mile radius of the affected nuclear power plant, EAS must be activated by the facility.

In Arizona, the parties decided to incorporate a microwave network to ensure EAS messages were being distributed across the entire state. To assure better coverage in remote areas of the state, state-wide EAS alerts will be relayed to the SP and State Relay (“SR”) stations via the Arizona National Guard Broadband Consumer VHF network. Additionally, LP-1 and LP-2 stations that are not able to hear a SR station, but can hear a Broadband Consumer Repeater, can monitor that repeater.

In Arkansas, EAS messages are disseminated via satellite to towers around the state.<sup>8</sup> As a result, while the FCC rules generally require that broadcast stations monitor two EAS sources, the Arkansas EAS state plan specifically requires that at least one of the sources be an Arkansas Education Television Network station.

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<sup>8</sup> See State Survey Results Summary, Media Security and Reliability Council, p. 11 (May 2003).

In Colorado, the parties involved in creating the plan determined that special EAS codes should be created for incidents at the Pueblo Chemical Depot and the Rocky Flats Plant. Further, both entities have the authority to initiate EAS alerts if there is an incident at either plant.<sup>9</sup>

In Connecticut, the emergency officials and broadcasters provided some level of redundancy to account for any failures that may occur with the primary method. The plan has dedicated a landline loop, linking 6 sources of EAS monitoring. Also, to facilitate EAS activation by local officials, the plan allows officials to request activation via the Connecticut Online Law Enforcement Telecommunications System (“COLLECT”). The Connecticut EAS plan also includes more discrete plans that provide guidance for emergencies related to nuclear facilities, hazardous materials, floods and abducted children.

In Georgia, EAS messages are delivered via the Georgia Emergency Management Agency (“GEMA”) Satellite which is also in place as a source for long-form statewide emergency planning, such as transmission of messages from the Governor.

Iowa is in the process of implementing a state-owned fiber network as a redundancy plan to its current system.

In Michigan, the parties anticipate channels being reserved on the digital radio system, being constructed by the Michigan State Police, for distribution of EAS messages statewide. It is hoped that suitable receivers will be installed in all LP stations, insuring a solid, multi-point delivery network.

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<sup>9</sup> The Pueblo Chemical Depot once assembled chemical weapons and the Rocky Flats Plant manufactured components for nuclear weapons.

In Washington State, the plan assigns up to 6 sources of EAS information to each station, even though FCC rules only require each station to monitor two EAS sources.

The Pennsylvania EAS plan has deployed the satellite based EMNet EAS System as a primary delivery for EAS, with the Pennsylvania Public Television Network fiber optics network serving as a secondary source. The Pennsylvania plan also contains stringent monitoring requirements. LP stations *must* monitor the EMNet, the LP-1 or LP-2, the NOAA Radio *and* the fiber optic network. Further, any station that can monitor EMNet must do so and monitor both the LP-1 and LP-2.

The Minnesota EAS state plan has been revised several times with 9 of the 14 sections being revised 4 to 6 times. The plan also contains a memorandum of understanding between the Minnesota Emergency Alert System Team and the Minnesota Public Radio (“MPR”) where MPR has agreed to provide its radio network for transmission of all statewide EAS alerts and both parties have agreed to work toward plans that will increase redundancy.

In Virginia, because some stations experience difficulty in receiving State Relay or LP-1 stations, plans are being implemented to use the Virginia Radio Network (“VRN”) satellite delivery system to carry all statewide activations to VRN network affiliates located in each local area.

Recognizing the shortcomings in the current “daisy chain” architecture of EAS, as well as the lack of audio-to-text messaging that results in incomplete alert messages for TV text crawls, the Maine Association of Broadcasters has been working since late 2002 to develop and fund “MaineNET,” an enhanced alert-and-warning system that builds on and improves the current EAS platform by adding EMNet satellite capability to top-level emergency management

agencies and data streams over the Maine PBS digital-TV network to individual fire and police agencies and other first responders.

The Florida EAS plan delivers EAS alerts through a state relay network via a statewide EMNet satellite-based system (ESATCOM). Additionally, the plan divides its major EAS operational areas into “sub-areas” due to geographic and demographic hurdles that could affect the efficiency of emergency alert distribution.

While Vermont is currently in the process of revising its state EAS plan, the current plan is highly specific to the terrain in different parts of the state. Its operational areas are grouped according to risks that are common to particular areas. The plan also lists the hazards that are specific to each operational area and detail which EAS alerts are common. Due to reliability problems with the “daisy chain,” Vermont’s current system provides every station with no more than one relay path between the station and the State Primary station. Future plans include implementing a direct feed to every station in the state via a closed circuit subcarrier hosted by one or more of the State Relay stations.

The Wisconsin EAS plan was revised as recently as September 2004 and Wisconsin broadcast stations and cable operators can join a listserv to receive e-mail notices of any updates to the plan. Additionally, to offer some redundancy to its primary delivery method, Wisconsin has made 2 channels available on the Galaxy-4R Satellite, Transponder 3; uses WTMJ in Milwaukee digital “Channel D”, and the Wisconsin Radio Network in Madison to provide additional layers to the state emergency alert distribution.

The Nevada plan accounts for a number of nuances in the state, the first being its sparse population and limited resources. 87% of Nevada is owned by the Federal government and the

smaller isolated communities do not have modern phone service nor reliable 2-way radio communications. Moreover, there is no access to the state-wide microwave relay network; therefore, the only way to activate statewide EAS is via direct telephone contact with each LP station. As a result, the plan contains a checklist and guide for Nevada officials that must originate alerts via telephone and each station maintains an EAS hotline phone number.

The EAS network in Tennessee is largely administered by Information Communications Technologies, Inc. (InComTec), a non-profit Tennessee corporation which was formed to facilitate partnership communications projects between the government and the public and private sectors. InComTec helped develop the Tennessee EAS plan and overcame many challenges related to the topographical fluctuations in Tennessee's different locations. InComTec helped form an agreement with Clear Channel Tennessee Radio Network who agreed to uplink all required monthly tests to a satellite channel for distribution. Notably, the Tennessee plan also proposes an EAS system that would be divided into four layers, where three of the four layers would operate independent from all others providing redundancy in the event of layer failure. Currently in Tennessee, they have implemented two of the four layers to increase redundancy in their state.

These examples serve to highlight the collective thought, hard work, and in some cases extraordinary creativity that local broadcasters and state and local officials have invested in developing their plans. And they highlight once again the difficulty of developing a top-down, one-size-fits-all solution to EAS. However, the FCC should not assume that every state and local official has given their all to this urgent need. More must be done by the Federal government to make EAS a high priority in every state and throughout every state.

The State Associations oppose any national criteria for state and local plans. It is highly questionable whether a national criteria for state and local EAS plans would work. State and local EAS plans require not only the cooperation of many parties; they also require the agreement and buy-in of many parties. Most state plans include cooperative efforts of the state SECC, emergency management agency, broadcasters association, cable association, police and National Weather Service (“NWS”). For example, in Arizona, the parties involved in the development of the state EAS plan included the Arizona SECC, Arizona Division of Emergency Management, National Weather Service (“NWS”) – Phoenix, Arizona Broadcasters Association, Arizona Cable Association and other state and local officials. In Arkansas, the parties to the EAS plan included the Arkansas SECC, Arkansas Department of Emergency Management, NWS – North Little Rock, Arkansas Broadcasters Association, Arkansas Cable Telecommunications Association and other state and local officials. In Pennsylvania, the agencies and entities involved included the Pennsylvania SECC, EAS Operational Area Committees, Pennsylvania Emergency Management Agency, Pennsylvania State Police, Pennsylvania Public Television Network, Pennsylvania Association of Broadcasters, Broadcast Cable Association of Pennsylvania and the National Weather Service. State and local governments are indispensable parties to these agreements. These governments operate within tight financial and other constraints. Unless an agreement meets both their needs and their priorities, they will not execute the agreement. Certainly, the broadcast industry should not be penalized because it was not able to persuade all relevant parties to execute a State or local EAS agreement.

Also, a mandatory requirement for State and local EAS plans also implies that there are reasonable plans and unreasonable plans. Is the FCC prepared to say that one plan should be

acceptable to a State or local area based on the fact that the same or similar plan was adopted somewhere else? Such an approach is not likely to take into account the unique needs and resources of each State and locality. Local governments interact with their citizens far more frequently than Federal agencies do, and, therefore, they are in the best position to recommend and implement changes to EAS. Most emergencies are local in scope and would be better addressed if the local government is involved in the dissemination of warnings. For example, local emergency management agencies in Washington State are familiar with the effects of its volcanic landscape and have instituted a “lahar” warning system in the event of a volcanic eruption.<sup>10</sup> It would be very costly and burdensome for the Commission to promulgate rules that take into account the unique aspects of different local areas. The demographics, environment, and geography of different areas would result in an enormous set of rules, none of which would incorporate the discrete knowledge and experiences of the local officials. Moreover, if the Commission, instead, adopted national “one-size-fits-all” regulations, EAS would be further compromised and could seriously under-serve communities with unique circumstances. Furthermore, strict requirements naturally tend to discourage flexibility, experimentation and innovation. However, examples of voluntary “best practices” and “model agreements” to help jumpstart new or refined state and local EAS plans would be welcomed.

Finally, the Commission should also consider the effect of nationwide regulations on local efforts that are currently underway. Many state and local governments have expended considerable amounts of time, money and resources to create a plan that works for their local region. If the state or local plan is suddenly preempted by national regulations, the efforts of the

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<sup>10</sup> “Lahar” is a hot volcanic mud flow that can travel in excess of 60mph and could reach certain county population centers within an hour if Mount Rainier erupted.

localities would have been thwarted, at their expense and not necessarily with added value. The preferred approach would be for the Commission to facilitate discourse amongst local authorities, broadcasters and others where they can structure a plan that accounts for the nuances associated with the local region.

**C. Mandatory Broadcaster Participation in State and Local EAS Alerts is Unnecessary and Counterproductive.**

For many of the same reasons, the Commission should not adopt a requirement that broadcast EAS essentially turn over their stations to State and local governmental authorities for emergency messaging. The current requirement that broadcasters participate on the national level involves limited use by the President in a national emergency. This situation is manageable. However, State-wide and particularly locally, there can be an enormous number of agencies and jurisdictions that could request stations to broadcast an emergency alert. Additionally, there is a potentially unlimited number of occasions for such activations. According to the summarized results of the Media Security and Reliability Council's state survey, the States said there were multiple activations on the local level, especially in years where there is a lot of severe weather.<sup>11</sup> Of concern to every broadcaster is that a message may be over-inclusive, resulting in no "match" between the message and the relevance to the station's potential audience. Consequently, the incidence of use could be excessive, which could lead to the public "tuning out" EAS messages, thus putting life and property in jeopardy. All this demonstrates that EAS requires great care in design and execution, and that no Federal requirement can replace that need.

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<sup>11</sup> State Survey Results Summary, Media Security and Reliability Council, available at [www.tab.org](http://www.tab.org) (May 2003).

The success of the “Amber” Plan – with no mandatory carriage requirements – clearly shows how effective the operation can be in a voluntary system. And experts in the field have warned repeatedly that making carriage of any warnings mandatory might remove the expertise that broadcasters have in making sure the warnings do not become so frequent or routine that they are ignored by the public.

Similarly, any attempt by the Commission to fashion a national standard regarding state and local EAS activation would present a host of problems. Considering the geographic and topographical area-specific issues previously mentioned, it would be impossible to develop nationally standardized criteria that are appropriate in all circumstances. The Commission would have to account for the needs of each state and local area in an effort to offer equal access to emergency information. For example, if the Commission limited activation based on the potential number of people affected, residents in sparsely populated areas would be adversely affected. Additionally, if the Commission allowed for EAS activation only in certain emergency situations, this would not account for new and different disasters. As the world progresses, the scope of potential emergencies, yet unheard of, expands as well. The Commission cannot realistically account for the myriad of circumstances that exist through national activation rules.

At bottom, broadcasters nationwide are eager to participate in state and local EAS alerts. The Massachusetts Broadcasters Association President and CEO confirmed that the broadcasters there have never turned down local EAS activations from an emergency manager. Broadcasters nationwide have responded to this call to public service. In Florida, the local broadcasters were the most accurate in their predictions of Hurricane Charley as it related to their area. They worked cooperatively with the Governor and activated the state’s EAS, distributing messages in

both English and Spanish. In May 2003, local radio and television stations throughout the Midwest likely saved hundreds of lives because of their storm and tornado warnings.<sup>12</sup>

In short, there is no need for a mandatory requirement and very good reasons why such a requirement would be unworkable and counterproductive. The State Associations urge the Commission, instead, to use this proceeding, and its prestige, to encourage and motivate State and local governments and others to build cooperative relationships with their local broadcasters in working toward the goal of implementing properly tailored, effective and reliable State and local EAS plans.

**D. The Commission Should Bar Cable Systems From “Overriding” the Critical Emergency Warnings of Television Broadcast Stations**

In its NPRM, the Commission seeks comment on rules that it may adopt to enhance the effectiveness of EAS.<sup>13</sup> There is one clear area where added FCC regulation would enhance the public’s right to know. The FCC should ban the practice of many cable operators who override the live television broadcasts of up-to-date emergency information by stations whose programming is being retransmitted by the cable system. Such practices undermine the public safety.

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<sup>12</sup> There are no exceptions to the broadcast industry’s commitment to providing timely emergency information. The often referred to “Minot, North Dakota” case is not to the contrary. On January 12, 2002, a train derailed in Minot causing the release of anhydrous ammonia. The radio station in question had personnel on duty and at the scene and broadcast emergency information so that citizens could protect themselves. The Minot Police Department complained that it could not reach the station. It turned out the police department was using an old telephone number for the station’s former “EBS” system. Furthermore, it was discovered that the police department owned EAS equipment which would have allowed them to trigger an EAS alert over the station. However, the police department never unpacked the equipment which had been left in a closet.

<sup>13</sup> See *NPRM* at ¶20.

Local television stations invest considerable sums of money in technology, equipment and personnel to ensure their viewers receive the most current and precise weather and emergency information – most of the time specific to each community within a local region. Currently, if there is a local EAS activation, many cable operators will cut out all audio on the broadcast station’s programming and direct viewers to tune into another cable channel. Once the viewer tunes in to the suggested channel they are often presented with a blue screen containing a largely outdated video crawl describing the emergency. The current rules permit the cable operators to override live emergency coverage. It is true that the rules allow cable systems to enter into agreements with local television stations where they agree not to override the signal, but it functions merely as a placebo.<sup>14</sup> For example, the Washington State Association of Broadcasters has reported that Washington cable operators have refused stations’ requests to do so. Local television stations are providing critical, potentially life-saving information in an effort to serve their communities, and these efforts are being stymied by many cable operators. These practices must stop immediately. The Commission must make them stop. The cable systems should not be the judge of what type of emergency information its subscribers are able to receive. The subscribers should be the judge, with a full panoply of options, including emergency information from the regular television stations they watch.

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<sup>14</sup> See 47 C.F.R. §11.51.



**EXHIBIT 1**

## STATUS OF “STATE AND TERRITORY EAS PLANS”

<u>STATE/TERRITORY</u>	<u>STATUS</u>	<u>STATE/TERRITORY</u>	<u>STATUS</u>
<b>Alabama</b>	Revised as of August 1996	<b>Montana</b>	In the final stages of initial development
<b>Alaska</b>	Revised as of May 2003	<b>Nebraska</b>	Revised as of August 2003
<b>Arizona</b>	Revised as of February 1998	<b>Nevada</b>	Revised as of 2003
<b>Arkansas</b>	Revised as of April 1997	<b>New Hampshire</b>	Revised as of December 2000
<b>California</b>	Revised as of November 2002	<b>New Jersey</b>	Revised as of June 2001
<b>Colorado</b>	Revised as of June 1998	<b>New Mexico</b>	Revised as of September 2004
<b>Connecticut</b>	Revised as of January 2001	<b>New York</b>	Revised as of October 1998
<b>District of Columbia</b>	Revised as of August 2003	<b>North Carolina</b>	Revised as of January 2003
<b>Delaware</b>	Revised as of June 2004	<b>North Dakota</b>	Revised as of August 2002
<b>Florida</b>	Revised as of June 2002	<b>Northern Mariana Islands</b>	Unknown
<b>Georgia</b>	Revised as of January 2002	<b>Ohio</b>	Revised as of September 2003
<b>Guam</b>	Unknown	<b>Oklahoma</b>	Revised as of June 2002
<b>Hawaii</b>	Revised as of June 2003	<b>Oregon</b>	Revised as of October 2004
<b>Idaho</b>	Revised as of May 2004	<b>Pennsylvania</b>	Revised as of April 2004
<b>Illinois</b>	Revised as of June 2003	<b>Puerto Rico</b>	Unknown
<b>Indiana</b>	Revised as of October 2002	<b>Rhode Island</b>	Unknown
<b>Iowa</b>	Revised as of October 1997; 2004 revision pending	<b>South Carolina</b>	Revised as of July 2003; 2004 revision pending
<b>Kansas</b>	Revised as of June 1998; 2004 revision pending	<b>South Dakota</b>	Revised as of January 2001
<b>Kentucky</b>	Revised as of 1995; 2004 revision pending	<b>Tennessee</b>	Revised as of June 1998
<b>Louisiana</b>	Revised as of 2003	<b>Texas</b>	Revised as of March 2004
<b>Maine</b>	Revised as of July 2003	<b>U.S. Virgin Islands</b>	Unknown
<b>Massachusetts</b>	Revised as of January 1997	<b>Utah</b>	Revised as of June 2003
<b>Maryland</b>	Revised as of August 2004	<b>Vermont</b>	Revised as of 2000
<b>Michigan</b>	Revised as of June 1998	<b>Virginia</b>	Revised as of March 2004
<b>Minnesota</b>	Revised as of July 2001	<b>Washington</b>	Revised as of January 2004
<b>Mississippi</b>	Revised as of February 1997	<b>West Virginia</b>	Revised as of August 2003
<b>Missouri</b>	Revised as of July 1997	<b>Wisconsin</b>	Revised as of May 2004
		<b>Wyoming</b>	Revised as of December 2002