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October 29, 2004

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Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20544

**Re: In the Matter of Review of the Emergency Alert System
EB Docket No. 04-296**

Dear Ms. Dortch:

Enclosed please find, on behalf of Hearst-Argyle Television, Inc., an original and four copies of Comments in the above-referenced matter.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with the undersigned.

Sincerely,



David Kushner

Enclosures

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Before the
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Washington, D.C. 20554

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OCT 29 2004

Federal Communications Commission
Office of Secretary

In the Matter of

Review of the Emergency Alert System

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EB Docket No. 04-296

COMMENTS OF HEARST-ARGYLE TELEVISION, INC.

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October 29, 2004

voluntary.¹ When stations receive state or local EAS alerts, they are in the best position to know whether the alert is genuine or has been sent in error (there have been a number of Amber alerts sent in error²), whether it is timely and relevant to the local community (weather alerts have been received after the expiration time stated in the message as well as for locales outside a station's viewing area), and whether the station's own reporting is likely to be more detailed and useful in keeping the local citizenry informed than the simple content contained in the EAS message. In 1997, for example, KCRA-TV, Sacramento, California, received an EAS message stating that an evacuation order had been issued for all of Sacramento County due to flooding. In fact, the evacuation order only pertained to a relatively few residents in low-lying rural areas of a small part of the county. This is but one instance when the local EAS message was less than accurate. Mandatory state or local participation could defeat some of the most timely and reliable emergency information services that local stations provide to their communities. It is especially critical that the Commission refrain from requiring broadcasters to turn over control of and make their facilities available to local emergency managers.³ Control of a station's program content, including emergency program content, should—indeed, must—at all times remain with the licensee, with the sole exception of the mandatory delivery of an emergency Presidential message. Hearst-Argyle's stations frequently provide more accurate real-time weather emergency information than even the National Weather Service (let alone a local emergency manager). Moreover, Hearst-Argyle's stations have extensive experience communicating emergency information to the public. It is a responsibility the stations

¹ *See Notice* at ¶ 3 (seeking comment).

² As one example, on July 14, 2004, WLWT(TV), Cincinnati, Ohio, received an erroneous Amber alert instead of the required monthly test. WLWT's news department verified its invalidity, but other area stations did not catch the error, and the false alert also appeared on local electronic highway signs, creating public concern and confusion.

³ *See Notice* at ¶ 24 (seeking comment).

take very seriously and perform consistently and well. Furthermore, many Hearst-Argyle stations' viewing areas include more than one state. For example, WNNE(TV), Hartford, Vermont, covers portions of Vermont, New Hampshire, and New York, and WYFF(TV), Greenville, South Carolina serves portions of South Carolina, North Carolina, and Georgia. Conflicting demands of multiple state or local emergency managers for broadcast time with inconsistent or conflicting information could create chaos during an emergency—exactly the opposite, of course, of what is needed.

Second, to ensure that broadcasters are not subordinated to multiple masters whose requirements and protocols may differ, licensees should only be answerable to one governmental authority, and that authority should remain the Commission.⁴ While the Department of Homeland Security (“DHS”) (and its component part, FEMA) can and should take the lead role in ensuring that the nation is prepared for national emergencies, broadcasters should be responsive to the ascertained needs of DHS through the regulatory structure of the Commission. That is to say, the Commission should cooperate fully with DHS in fashioning and implementing a national emergency preparedness framework, but the specific requirements pertaining to Commission licensees should be promulgated and overseen by the Commission only.

Third, a troubling current weakness of EAS is its Hydra-headed nature. The myriad disparate (and potentially conflicting) state and local EAS plans compromise the overall effectiveness of the system.⁵ In addition, many plans are out of date. Hearst-Argyle believes that, in this particular instance, greater centralization and federal oversight would augment the efficacy of EAS. Ideally, all states would be required to develop EAS plans and update them at least once every five years. It is, however, unclear whether the Commission or DHS currently has the statutory authority to

⁴ See Notice at ¶ 23 (seeking comment).

⁵ See Notice at ¶¶ 25-26 (seeking comment).

require states to adopt such plans.⁶ If such authority exists or were to exist, the Commission, in cooperation with DHS, FEMA, and NOAA, should establish national guidelines and standards for the structure of such plans. It must be recognized, however, that one size will not fit all. What might work in Rhode Island or Hawaii might not work in Texas or Alaska. The guidelines and standards, therefore, should provide a general, overall framework so that EAS, taken as a whole at the national, state, and local levels, can be tailored to specific local needs. The Commission should review such plans and actively work with state and local emergency communications committees (“SECCs” and “LECCs”) to assure that the plans developed by adjacent jurisdictions are properly coordinated. Affected local stations should be invited to comment on and make specific recommendations to the

⁶ The Communications Act does not contain any such express authority, and Section 4(o) is ambiguous. See 47 U.S.C. § 154(o) (“For the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property, the Commission shall *investigate* and *study* all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.” (emphases added)). The authorizing legislation for homeland security organization is also ambiguous as to federal authority to require states to adopt emergency preparedness plans but is somewhat stronger than the language in the Communications Act. See 6 U.S.C. § 112(c) (listing, as functions of the Secretary of Homeland Security, “coordinating and, as appropriate, consolidating, the Federal Government’s communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities” and “distributing or, as appropriate, *coordinating* the distribution of, warnings and information to State and local government personnel, agencies, and authorities, and to the public” (emphasis added)); 6 U.S.C. § 121(d)(5) (providing that it is the responsibility of the Under Secretary for Information Analysis and Infrastructure Protection “[t]o develop a comprehensive *national* plan for securing the key resources and critical infrastructure of the United States, including . . . emergency preparedness communications systems” (emphasis added)); 6 U.S.C. § 238(c) (providing that it is the responsibility of the Director of the Office for Domestic Preparedness to, *inter alia*, “coordinat[e] or, as appropriate, consolidat[e] communications and systems of communications relating to homeland security at *all* levels of government” (emphasis added)); 6 U.S.C. § 312 (providing that it is the responsibility of the Under Secretary for Emergency Preparedness and Response to, *inter alia*, “build[] a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters” and “develop[] comprehensive programs for developing interoperative communications technology”); 6 U.S.C. § 361 (creating an Office for State and Local Government Coordination that is cooperative rather than preemptive); 31 U.S.C. § 1105(a)[(35)](33)(A)(iii) (providing that expenses for Homeland Security are to be provided in its budget submission, including an estimate of expenses for homeland security activities by State and local governments).

Commission on the proposed local plans. Funding for the development of such plans and annual training of emergency management personnel, as well as of broadcast station personnel, should be provided by DHS.⁷

Fourth, one of the most potentially harmful aspects of the current law is that it permits a cable system to override the EAS messages and emergency reporting and information broadcast by local television stations. Although cable systems are permitted, through a written agreement, to elect not to interrupt the emergency content of broadcast stations,⁸ many of Hearst-Argyle's stations have been unable to reach such an agreement with the local cable system.⁹ It is our understanding that this is a problem in various markets all over the country. Such cable overrides are harmful not only because they may provide the public with less vital and up-to-date emergency information than the more timely and complete emergency updates transmitted by local television stations, but they have, in the past, actually interfered with the broadcast of such information. For example, a cable override relaying a message urging individuals to tune to local broadcast stations for further information is rendered useless if the local broadcast station's emergency information has been overridden by the cable system! An additional problem with cable overrides is that many cable headends appear to be under-manned or un-manned so that there is no one to oversee that the system is functioning properly. In one instance affecting KOAT-TV, Albuquerque, New Mexico, the cable system failed to relay a proper end-of-message code and, for several hours after the emergency had passed, all of

⁷ See Notice at ¶ 44 (seeking comment); see also 31 U.S.C. § 1105(a)[(35)](33)(A)(iii) (providing a subvention mechanism for DHS to fund such planning and training).

⁸ See 47 C.F.R. § 11.51(h)(4).

⁹ Examples include KCRA-TV, Sacramento, California; KQCA(TV), Stockton, California; WXII-TV, Winston-Salem, North Carolina; WESH(TV), Daytona Beach, Florida; KOAT-TV, Albuquerque, New Mexico; KOCT(TV), Carlsbad, New Mexico; KOFT(TV), Farmington, New Mexico; KOVT(TV), Silver City, New Mexico; WMTW-TV, Poland Spring, Maine; WPTZ(TV), North Pole, New York; WNNE(TV), Hartford, Vermont; WMUR-TV, Manchester, New Hampshire; KSBW(TV), Salinas, California.

the local stations were broadcasting a shopping channel. Because broadcasters have made substantial investments for their emergency reporting, the Commission should not accept a regulatory regime that permits cable overrides to undermine those investments and the benefit they bring to local communities at their greatest time of need. Accordingly, Hearst-Argyle respectfully urges the Commission to allow local television stations to elect to prohibit cable operators from overriding local station's EAS messages or other emergency information and reporting. A local station's election to exercise this option should, correspondingly, relieve the cable operator of any EAS obligation for that local station.

Fifth, Hearst-Argyle supports the Commission's attempts to restructure EAS in what will soon be a fully digital world. Thus, Hearst-Argyle supports the application of EAS requirements to DTV channels, including on all multicast channels, rather than the force-tuning of receivers to a single stream.¹⁰ In many instances, emergency information can be adequately provided in a crawl on all multicast streams. Moreover, licensees must retain the ability to determine whether more detailed emergency information is appropriate or necessary on each stream. In addition, many stations do not possess equipment that would permit them to redirect multicast streams to the main stream.

Sixth, and finally, radio broadcasters should continue to play a significant role in any emergency alert system. Many emergencies are attended by power outages, and while many television stations have back-up power generators that will permit them to broadcast for many hours, most citizens do not have personal generators or even battery-powered television sets. Most people do, however, possess or have access to battery-powered radios. Consequently, Hearst-Argyle urges the Commission not to lose sight of the important link that radio stations provide in the EAS.

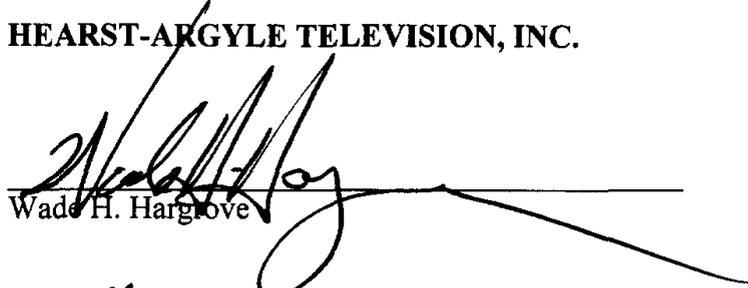
¹⁰ See Notice at ¶ 30 (seeking comment).

Conclusion

Hearst-Argyle commends the Commission for its leadership in keeping EAS as up-to-date and responsive as possible, and it respectfully requests that the Commission consider the recommendations set forth herein.

Respectfully submitted,

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