

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

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

**REPLY COMMENTS OF MUNICIPALITIES AND MUNICIPAL ORGANIZATIONS
CONSISTING OF:**

National Association of Telecommunications Officers and Advisers;

International Municipal Lawyers Association; National Association of Counties;

United States Conference of Mayors; National League of Cities;

Texas Coalition of Cities for Utility Issues;

City of Ann Arbor, Michigan; City of Belding, Michigan; City of Detroit, Michigan;

City of Livonia, Michigan; City of Marquette, Michigan; City of Mesa, Arizona;

City of Wyoming, Michigan; Glen Arbor Township, Michigan;

Huron Township, Michigan, Telecommunications Commission;

Village of Paw Paw, Michigan; Village of Skokie, Illinois

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Municipalities and Municipal Organizations ("Municipalities"), consisting of the National Association of Telecommunications Officers and Advisers; the International Municipal Lawyers Association; the National Association of Counties; the National League of Cities; the Texas Coalition of Cities for Utility Issues; the United States Conference of Mayors; the City of Ann Arbor, Michigan; the City of Belding, Michigan; the City of Detroit, Michigan; the City of Livonia, Michigan; the City of Marquette, Michigan; the City of Mesa, Arizona; the City of Wyoming, Michigan; Glen Arbor Township, Michigan; the Huron Township, Michigan, Telecommunications Commission; the Village of Paw Paw, Michigan; and the Village of Skokie, Illinois hereby submit their Reply Comments pursuant to the Commission's August 12, 2004 Notice of Proposed Rulemaking ("NPRM") in the above entitled matter

SUMMARY

Broadcasters and their associations have requested that the Commission mandate a "selective override" so as to exempt their stations from being overridden by emergency alerts. However, because local alert systems are used for emergencies which are too localized to be carried by broadcasters or the Federal EAS, such local alerts are often the only means of alerting

the local public to an emergency. Furthermore, for those emergencies for which local broadcasters do provide coverage, it is important for local officials to have a dependable and reliable means for getting out important information which may not be carried by the broadcasters, or may be delayed by broadcasters seeking to avoid interruption of other programming or advertising. Responding to emergency situations is a governmental function and local officials must formulate the strategies for addressing emergencies and then put those strategies into action. It is therefore necessary that local officials have an unfiltered means for broadcasting the emergency information they deem most important. Broadcasters cannot be entrusted with deciding what, when, and how to provide emergency information, thereby fulfilling what is, essentially, a governmental function. For these reasons, the broadcasters' request for mandated selective override should be rejected.

Similarly, the National Cable & Telecommunications Association has requested that cable franchise-based local alert systems be preempted. Such a move would lead to the Commission exceeding its Congressionally granted authority under the Cable Act, and would be bad policy as it would eliminate alert systems which provide needed coverage of local emergencies, and also would remove necessary backup systems for the Federal Emergency Alert System. Preemption of local alert systems would not decrease repetitious alerting, but rather would leave most people without any effective television-based system for receiving local emergency alerts.

All emergencies must first be responded to on the local level, whether those emergencies affect the nation, the region, or only a single community. Local officials therefore bear great responsibility in formulating and enacting strategies for addressing emergency situations as they arise. It is therefore important that these officials be provided with the tools they deem necessary

to respond to emergencies on the local level, and that their ability to respond is not hampered by imposing rigid Federal requirements which reduce or eliminate local flexibility in responding to emergencies. All emergencies are not alike, nor will a one-size-fits-all system adequately enable local officials to address local needs during emergencies. For these reasons, the Commission should reject the requests of the broadcasters and the cable operators and refuse to preempt local alert systems or to hamper their functioning by restricting their ability to override certain channels.

I.

INTRODUCTION

Several of those who provided Comments in this rulemaking have stressed that "all disasters are inherently local." *See, e.g.*, Comments of Michael D. Brown for FEMA, page 3. This is the case because it is the local officials who are typically called upon to first formulate and enact a response to any emergency – be it national, regional, or local – as it affects local residents. For this reason, how to respond to an emergency situation is dependent upon a host of local factors, including availability of resources and infrastructure, about which local officials are most knowledgeable. It is therefore important that local officials be left free to provide the kinds of emergency alerting services which they deem to be most effective in reaching their local residents, and that the discretion of when and how to alert those residents lie with those local officials. For these reasons, the requests by broadcasters and their associations that they be exempted from emergency override requirements, and the requests by the cable and telecommunications industry associations that local alert systems be preempted must be decisively rejected by the Commission as inimical to effective emergency alerting on a local level.

II.

THE COMMISSION MUST AFFIRM ITS REFUSAL TO MANDATE SELECTIVE OVERRIDE

The National Association of Broadcasters and other broadcaster organizations ("Broadcasters") have once again raised the issue of "selective override" of local broadcasts during emergency alerts, seeking to prevent cable operators from overriding local broadcasters with emergency alert messages. While the broadcasters style this issue as opposition to a cable industry practice, in reality, it is a blow aimed at local government. The ability of local governments to properly alert their residents to emergency situations would be harmed by a mandated selective override which prevented the all-channel override called for in many cable franchise provisions addressing local alert systems. The National Cable & Telecommunications Association ("NCTA") points out in their comments that some broadcasters are (improperly – see discussion below) requiring cable systems to contract not to override their broadcast station signals as part of their retransmission consent agreements. *See*, NCTA Comments, note 12. As NCTA observes, these efforts are aimed at local cable franchise provisions which require all-channel overrides.

As the broadcasters themselves admit, this has been an issue they have raised with the Commission repeatedly for nearly a decade. *See*, Joint Comments of the National Association of Broadcasters and The Association for Maximum Service Television, Inc., p. 20. Consistently in the past the Commission has ruled that mandated "selective overrides" would not serve the local public interest, in part because broadcast stations cannot cover local emergencies in as targeted and effective a manner as a cable-based alert can. *See, In re. Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Third Report and Order, FCC 98-329 (December 23, 1998), ¶13 (quoted below). In fact, it is unlikely that broadcasters

will cover very localized emergencies at all, leaving local officials only with the cable franchise-based alert system for reaching their local residents via television.

The Commission should again affirm that the public interest is best served when decision making with regard to local emergencies is left to the local officials whose responsibility it is to respond to such emergencies, and should affirm the ability of these officials to use cable franchise-based local alert systems which override all programming.

A. The Commission Has Affirmed the Importance of Local Alert Messages

The Commission has responded before to the very concerns raised by Broadcasters here. In the Third Report and Order, the Commission responded to the National Association of Broadcasters' requests for mandated "selective override" as follows:

[C]able systems may be better suited [than broadcasters] to provide necessary emergency information to local communities. For instance, the record indicates that many local governments view cable television systems as a primary means of notifying residents about local emergencies since municipalities can control such emergency notifications through cable franchise agreements -- control they do not have over broadcasters. The record further suggests that because broadcast stations often serve a wide coverage area crossing hundreds of communities, they may not cover local emergencies that affect only a single community. By contrast, cable franchise agreements frequently require local cable systems to cover all local emergencies. Additionally, many local governments consider cable television systems to be a primary means for alerting local residents of non-weather related emergencies, such as hazardous materials spills or local road restrictions, which tend to affect a more confined area than weather-related emergencies and therefore may not be covered by an area TV station. . . . Neither NAB ["National Association of Broadcasters"] nor any commenters supporting NAB's proposal have raised a compelling basis for changing our existing policy by regulating local EAS messages through mandatory selective override.

In re. Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Third Report and Order, FCC 98-329 (December 23, 1998), ¶13 (footnotes omitted, emphasis added). The broadcasters have presented nothing new in their arguments for

selective override in this proceeding, and the Commission's response in 1998 is as applicable today as it was then.

B. Local Officials Should be in Charge of Local Emergency Message Dissemination

The Broadcasters entirely fail to address the concern raised by the Commission and Municipalities that because broadcasters typically cover a much larger area than a cable system, they may be reluctant to give air time to very localized emergencies which cover only a small portion of their broadcast area. Instead, the Broadcasters focus their arguments on the relative amounts of information that could be provided by a local alert and by the coverage a broadcaster could provide if it chose to cover the same emergency in its broadcast.

While it may be true, as the Broadcasters assert, that in a few individual cases a broadcaster may provide more detailed information than can be put into a cable-based emergency alert message, in other situations that is certainly not the case, especially where broadcasters choose not to cover the matter at all. The truth of the Broadcasters' assertion must certainly depend upon the size of the local broadcaster's broadcast area, its relationship with the communities its broadcasts cover, and the nature, severity, and extent of area impacted by the emergency in question. While cable systems can often target individual communities with an emergency message, a broadcaster's coverage area often covers hundreds of communities with no way of localizing an alert message. *See, e.g.*, Figure 1 in the Comments filed by the Municipalities in this proceeding (showing that Grade A of a Chicago TV station covers hundreds of municipalities).

Thus, if local broadcasts may not be overridden by a local cable system, then many residents of the local community affected by an emergency will not get any emergency alert at all if (as occurs with most local alerts) they are too local to warrant an alert by a broadcaster.

Thus, rather than preventing duplicate alerts or conflicting messages, the exemption from overrides sought by the broadcasters would result in large segments of the public receiving no alert at all. Nor is it possible for the Commission to craft a selective override rule which would make the necessary fact and situation-dependent distinctions beforehand. The issue of whether to override or not is best decided on the local level, as it is now through negotiated exemptions to override, where appropriate. It is also worth noting that local broadcasters build relationships with their local communities, and if local officials find that a broadcaster is capably alerting local citizens to emergencies, then the local officials can take that into account when choosing whether or not to override broadcast programming with an emergency alert in any given situation. Again, such decisions are best left in the hands of local officials.

C. Local Alerts Are a Governmental Function

Local alerts are essentially a governmental function and are not a responsibility which can be turned over wholesale to the private sector, as the Broadcasters advocate. Unlike the local emergency officials who are currently tasked with deciding whether a local alert should be sent or not and what its content should be, local broadcasters have no training in emergency management and are not directly accountable to the public in the way that local officials are. Ultimately, broadcasters owe their primary duty to their company's owners, be they public stockholders or private owners. This duty — in general to make money — and its concomitant interests make broadcasters reluctant to interrupt programming and disadvantage advertisers. By contrast, ensuring the safety of local residents is a primary local governmental responsibility and is why state police power is vested in local officials. Their duty and interests are owed solely to the public, and therefore they should be the decision-makers regarding when and how the public should be alerted in the event of an emergency. Broadcasters' claims that they can do a better job

than local officials in determining when, how and what should be broadcast as a local emergency message are not convincing.

D. Some Broadcasters Have Sought Illegally to Prevent Override of Their Programming

The comments of the NCTA reveal that some broadcasters have been unilaterally implementing "selective override" in violation of this Commission's orders and the requirements of local cable franchises. This violation of law and local franchises shows that some broadcasters are critically undermining the current emergency alert process, and shows that broadcasters generally cannot be exempted from local emergency alerts as they seek here.

Specifically, in its comments in this proceeding, the NCTA states as follows:

"Another area of growing concern is the conflict between franchise provisions requiring the override of all broadcast and non-broadcast channels with EAS messages and broadcast retransmission consent agreements prohibiting cable operators from overriding broadcast station signals. Some broadcasters are prohibiting such overrides in retransmission consent agreements in order to circumvent the Commission's repeated decisions not to require the "selective override" of broadcast vs. non-broadcast channels by cable systems in light of, among other things, local franchise-required all-channel overrides. See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Alert System*, Third Report and Order, 14 FCC Rcd 1273 (1998)."

Comments of National Cable & Telecommunications Association at p 9, fn 12 (emphasis supplied).

This revelation is alarming and astounding. It shows that "some broadcasters" are knowingly and deliberately:

- Placing the public safety at risk by overriding the Congressionally given directive¹ to local franchising authorities (cities and other municipalities) to place in cable franchises

¹ See Cable Act Section 626, discussed at pages 14 and following below, requiring municipalities to renew cable franchises with terms which they determine meet their community's needs, such as all-channel emergency alert systems.

requirements for all channel local emergency alert systems where the municipality determines that such alert systems are necessary to meet community needs.

- Doing so apparently without advising the municipalities in question, so that they do not know that local emergency alerts on the cable system are not going to the most heavily watched channels, namely local broadcast stations. Local officials are thus placed in the terrible position of believing their alert system is working when in fact it is not.
- Violating Commission orders, including the specific procedures promulgated by this Commission in 47 CFR 11.51(h)(4) – namely allowing selective overrides only "based on a written agreement between all parties, so that (among other things) municipalities' consent would be sought for any proposed selective override, and thus (if consented to) they would know that their emergency alert system would not be effective on channels carrying local broadcast stations.

The approach adopted by the Commission in Section 11.51(h)(4) makes sense: As shown in Municipalities' initial Comments in this proceeding and on pages 14 and following below, Congress has given municipalities the authority to determine whether an all-channel emergency alert system is needed to meet community needs. Congress has not given this Commission any authority to preempt such systems. Thus, broadcasters desiring selective override need to obtain a written agreement from both the municipality with the all-channel local alert system franchise requirement and the cable operator in order for selective override to occur.

The approach taken in the Commission's rules makes sense not only legally but from a policy perspective — if in fact due to local circumstances the broadcaster is doing a good job on its own providing alerts as to local emergencies presumably the municipality will consent. But it is the municipality's task both as a guardian of public safety and with the specific authority given

it by the Cable Act to determine whether consent is appropriate. Such decisions cannot and should not be made solely by means of negotiations between a cable operator and a broadcaster each of whom has to be primarily concerned with profits and the interests of its shareholders, as contrasted to a municipality for whom public safety and community needs are of paramount importance.

Initially broadcasters complied with the requirements of Section 11.51(h)(4) by seeking municipal consent for selective overrides. Thus Municipalities and Municipal Organizations are aware of municipal consent being sought by broadcasters for such overrides after Section 11.51(h)(4) was adopted. Now "some broadcasters" are ignoring this requirement.

This Commission cannot countenance violations of its orders, applicable laws or cable franchises, especially where (as here) they jeopardize the public safety (and apparently leave local officials in the dark that safety has been jeopardized). The Commission may wish to open a proceeding to determine precisely which broadcasters have acted in the fashion described by the NCTA and whether steps should be taken to prevent such circumventions of Commission rules and orders in the future.

As regards the current proceeding, the NCTA revelation shows that some broadcasters cannot be entrusted with the discretion to provide local emergency information in lieu of the local alerts, from which they request exemption via mandated selective override. Some broadcasters have clearly placed their own self-interest ahead of the public interest, and ahead of public safety. It would be folly to reward such transgressions with an exemption from carrying local emergency alerts even when required by cable franchises, especially when — pursuant to Congressional directive — municipalities have determined such alerts to be essential to meet their communities' needs.

III.

LOCAL ALERT SYSTEMS PROVIDE LOCAL OFFICIALS WITH GREATER FLEXIBILITY IN RESPONDING TO EMERGENCIES

While the Broadcasters complain about the "blue screen" and "canned messages" which used to characterize emergency alerts, this is old technology that is being phased out. Increasingly cable-based local alert systems use text crawls for conveying their emergency messages, where the text crawl tells viewers to turn to their local government channel (operated by the municipality), where detailed and up-to-date emergency information can be found. By using such government channels provided for in cable franchises (where typically each municipality has its own separate channel) local emergency officials can disseminate highly targeted alerts to specific audiences much better than can be done by local broadcasters.

For instance, some communities have had occasion to lock down their schools during a local emergency, and at such times some have made use of the local education channel to broadcast to the school children age-appropriate information regarding the emergency situation faced by the community. Many cable-based local alert systems allow municipal officials to create and broadcast a voice message via telephone, thus enabling them to easily update the alert message and to provide the latest information and instructions. For communities who lack such capabilities and who believe their local broadcasters do good job of disseminating emergency information, the current option of a negotiated selective override provides a means to ensure continued broadcast of the emergency information made available by broadcasters.

Clearly there is no one-size-fits-all answer to how emergency alerts should be handled.² Local communities must be free to establish systems which make sense in the context of local

² This is a view shared by several of those providing Comments in this rulemaking, including Michael D. Brown, Under Secretary for FEMA (at page 3) and Dr. Peter L. Ward, Founding Chairman of Partnership for Public Warning (at page 7).

needs and the particular kinds of emergencies that community is likely to face. Understanding and meeting local needs is the job of local officials, both in general, and particularly when negotiating cable franchise provisions. Federally mandated selective override, which exempts local broadcasters from being overridden by emergency alerts, would stifle rather than promote the kinds of local innovation and adaptability which are fostered when each community is primarily responsible for satisfying its own emergency alerting needs. The tools to create such local alerts, and the decision-making power over when and how to use them must remain in the hands of the local officials tasked with being the first responders to emergencies.

IV.

THE COMMISSION CANNOT AND SHOULD NOT PREEMPT LOCAL EMERGENCY ALERT SYSTEMS REQUIRED BY CABLE FRANCHISES

The NCTA asks the Commission to preempt local emergency alert systems required by cable franchises. In summary, this request must be denied for four basic reasons: First, the Commission lacks the legal authority to preempt such franchise requirements. As Municipalities pointed out in their initial comments, Congress made local franchise authorities the decision maker as to whether local emergency alert systems (or other requirements) are necessary to meet community needs. The legal authority the Commission has noted as its basis for potentially acting on EAS matters by its terms does not extend to matters where Congress has deprived the Commission of jurisdiction.

Second, the request must be rejected on policy grounds. As Municipalities have pointed out, and as NCTA acknowledges,³ franchise-based local emergency alert systems are used for purely local alerts. They are used by municipalities for alerts that are not carried by the Federal

³ NCTA correctly states that most locally triggered emergency alerts "relate to non-weather related occurrences, such as local road restrictions or hazardous materials spills or school closings, that area confined to a specific area" NCTA Comments, page 9.

EAS system. Any preemption of the local emergency alert systems required by cable franchises would not prevent duplicate alerts. Instead it would prevent large segments of the public from getting any alert at all as to the emergency in question.

Third, local alert systems provided a necessary and important redundant capacity to the Federal EAS. In the event of a failure of the Federal EAS during a regional or national emergency, such local alert systems provide a backup means for officials to broadcast emergency messages. Eliminating that backup capacity would weaken the Federal EAS.

Fourth, in requesting and implementing cable franchise-based local emergency alert systems, municipal officials are sensitive to and take into account factors such as those cited by NCTA, such as avoiding duplication with Federal EAS alerts, cost, and avoiding alerts which unnecessarily disrupt programming or which go to adjacent communities.⁴ These factors should be raised — and are raised—by cable operators in the franchise renewal process. And based on the specific factors involved, municipalities change or tailor the local emergency alert system, for example, by making sure the alert is a "crawl" (not screen blanking) so as to lessen the intrusion on the viewer.

The preceding points are addressed in more detail below.

A. The Commission Lacks the Statutory Authority to Preempt Local Emergency Alert Systems Required by Cable Franchises

As Municipalities pointed out in their initial comments, the Commission lacks the statutory authority to preempt cable franchise-based local alert systems. Congress has made

⁴ In fact, under the Federal Cable Act, in the cable franchise renewal process municipalities are required to take into account the cost of implementing local emergency alert systems, such as the cost of various means of limiting the alert to the community in question. See Federal Cable Act Section 626 (c)(1)(D), 47 U.S.C. Section 546(c)(1)(D), which requires municipalities to "take into account the cost of meeting" proposed franchise requirements.

municipalities the sole decision maker as to whether a local alert system is required in a cable franchise, and has deprived the Commission of the authority to override such decisions.

1. The Commission's Authority is Limited by the Cable Act

Specifically, the authority of municipalities to require local alert systems in cable franchises is governed by Section 626 of the Cable Act dealing with franchise renewals. 47 U.S.C. Section 546.⁵ In Section 626 Congress gave municipalities (not the FCC) the authority to decide what provisions (such as a local emergency alert system) are necessary in a cable franchise to meet their community needs. Under the Cable Act, a municipality's decision is dispositive unless appealed to the courts. 47 U.S.C. Sections 546(e), 555. Appeals do not go to the Commission. Congress provided no role for the Commission in franchise renewals, including their local alert system requirements.

As pertinent here, Section 626 solely gives to the local municipality the authority to impose and approve franchise terms which the legislative body of the municipality determines meet the "cable related needs" of the municipality. For example, Section 626(a)(1), 47 U.S.C. Section 546(a)(1) requires a municipality to conduct a proceeding to identify its "future cable-related community needs and interests":

A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting

⁵. The Commission has previously recognized that municipalities can obtain local alert systems via their cable franchises through franchise agreements with the cable operator. See *In re. Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Third Report and Order, FCC 98-329 (December 23, 1998), ("Third Report and Order") at ¶13 ("municipalities can control such [local] emergency notifications through cable franchise agreements").

the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

Likewise, 47 U.S.C. Section 546(c)(1)(D) states that the failure of a cable operator's proposal for a renewed franchise to meet "future cable-related community needs and interests" is one of only four grounds upon which a municipality may deny the renewal of cable franchise:

(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether —

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. [Emphasis added.]

Congress appropriately has thus made each municipality the paramount decision-maker as to what is necessary in a cable franchise to meet its needs, subject only to court review as set forth in later portions of Section 626.

By contrast, the Commission's authority regarding emergency alert systems, including any ability to regulate or preempt local alert systems required by cable franchises, is limited to that which it possesses under the Federal Communications Act of 1934, as amended, 47 U.S.C.

Section 151 and following ("the Communications Act"), of which the Cable Act is Title VI. As the NPRM notes,⁶ the statutory authority on which the Commission relies to issue revised rules regarding emergency alert systems largely rests on Section 4(i) of the Communications Act, which gives the Commission the authority to perform those acts "not inconsistent with [the Communications Act]" necessary to fulfill the Commission's functions. 47 U.S.C. Section 154(i). Any attempt to preempt cable franchise-based local alert systems is inconsistent with the express provisions of Cable/Communications Act Section 626 and thus beyond the Commission's authority.

2. The 1992 Cable Act Amendments Confirm the Lack of Commission Authority to Preempt Local Emergency Alert Systems

The Commission's lack of authority to preempt franchise based local emergency alert systems is confirmed by the 1992 amendments to the Cable Act. In these amendments Congress required cable systems to “comply with such standards as the [Federal Communications] Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations,” 47 U.S.C. § 544(g).

Notably, Congress said nothing about preempting or limiting the franchise based local emergency alert systems which Congress was aware of and which (as NCTA and Municipalities pointed out in their initial comments in this proceeding)⁷ date back at least to the 1960's. The lack of any intent to preempt such systems — which were the only cable-based alert systems at the time — is reinforced by the fact that all Congress required of cable systems in 1992 was to

⁶ NPRM, ¶10.

⁷ NCTA Comments at 2, Municipalities Comments at 3.

carry Federal alerts. Carriage by cable operators of local alerts from the Federal EAS was (and is) voluntary.

The clear intent of Congress (as regards cable systems) was to permit two alert systems which complement each other (and provide needed redundancy): The Federal EAS system which carries more severe and more regionally oriented alerts and the franchise-based local systems which address local alerts typically not carried by the Federal system. Thus Congress has not given the Commission the authority to preempt franchise-based local emergency alert systems.

B. Preempting Franchise-Based Local Alert Systems Would Prevent Large Segments of the Public From Getting Any Alert About Local Emergencies

Local emergency alert systems provided for in cable franchises are generally the only way for municipalities to immediately alert their residents when there is no alert on the Federal EAS. As indicated above and in Municipalities Comments in this proceeding, this is because local emergency alert systems are used for matters which are not carried on the Federal EAS, either because the emergency does not involve a wide area or is not sufficiently severe.

In particular, cable franchise-based local alert systems provide the only direct, immediate means, which is totally under the municipality's control, for a municipality to communicate with its residents in the event of an emergency.⁸ Such cable-based local alerts typically go only to residents of a specific municipality or municipalities and address emergencies that are either (1) localized (hazardous material spills, sudden road closures) and thus pertinent only to the municipality in question, or (2) are not as severe as those carried over the Federal EAS. In both cases the alerts are not appropriate for broadcast to the much larger area (typically one or more

⁸ All other means of communication require the cooperation or acquiescence of third parties, such as state or local emergency management officials and broadcasters, which cooperation may or may not be given and which delays the alert.

counties) covered by the EAS and are not carried on the Federal EAS. Cable franchise based local emergency alert systems provide local emergency officials with an alert system which is targeted to a much more limited geographic area than the alert system than is provided under the current Federal EAS. Cable franchise based emergency alert systems thus complement (but do not duplicate) the Federal EAS, as well as provide a back-up system for the Federal system when it fails to work.

For these reasons, preemption of local emergency alert systems would not result in the elimination of duplicate alerts. Instead it would result in the public not getting any alert at all (or at least no immediate alert) as to the emergency in question. Such a result is not in the public interest and is indefensible.

C. Local Emergency Alert Systems Provide Needed Redundancy for the Federal System

At bottom, NCTA's request flies in the face of logic, policy and Federalism. Municipalities today have cable franchise-based local emergency alert systems to provide alerts not carried on the Federal EAS, and to provide a backup in case the Federal EAS does not work. In fact, as Municipalities have noted, the current Federal EAS (which has been subjected to decades of development and testing) still sometimes fails to operate. In its Comments in this proceeding, the City of Mesa, Arizona points out that Federal EAS test alerts did not go on any digital channels in the entire State of Arizona, which is one of the reasons that City requires redundant emergency alert systems.

NCTA would deprive municipalities and their residents of a backup emergency alert system for a new system more complicated than the present one (and whose nature and contours are not known), and which has not even been designed or tested yet, where the current system which has had decades of development still has failures making a backup system necessary.

D. In Implementing Local Emergency Alert Systems Municipalities Take Into Account Factors Cited by NCTA

NCTA lists a variety of concerns which it suggests argue in favor of there being only one emergency alert system, which (it assumes) municipalities can use. Among these factors are avoiding duplication with Federal EAS alerts, cost, and avoiding alerts which unnecessarily disrupt programming or which go to adjacent communities. The short answer is that these are concerns which municipalities share and which they can and do take into account in setting up franchise-based local emergency alert systems under Title VI of the Cable Act.

By way of example, if in a particular region and municipality alerts about local emergencies in fact are generally carried on the Federal EAS, the municipality is not going to require provisions for a separate local emergency alert system in a cable franchise. It is not needed, and a duplicate system would impose unnecessary complications and expense on the municipality, as well as on the cable operator.

Similarly, local emergency officials are very sensitive to unnecessarily disrupting the programming on the system with emergency alerts, especially if the alert goes to adjacent communities to whom it does not apply. This is because they are well aware of the risk of desensitizing residents to alerts if there are too many, they are inapplicable, or they unnecessarily interrupt programming. For this reason, as Municipalities pointed out in their initial Comments, municipalities work with cable operators in the re-franchising process to tailor a local alert system to the specific situation of the cable operator and municipality in question. This depends greatly on the local situation, for example in some instances the cable system (or its nodes) correspond with municipal boundaries. In others, there is some overlap of such boundaries, but only along the edges of the municipality in question. In still other cases the cable system (or the alerts the cable operator puts on it) go to multiple municipalities.

These factors are taken into account by municipalities and affect their decision on the type and substance of the alert message they require. For example, if an alert will go to multiple municipalities, often a municipality instead of requiring “screen blanking” will require a crawl stating that there is a local emergency in the City of X, and directing residents of that City to its government channel for details.⁹ This is a good solution, because it is minimally intrusive on viewers, but allows residents of the municipality in question to get the needed information. This more effectively targets a specific municipality because typically cable companies can restrict the viewing of a government channel to one municipality, where this is not as possible technically for emergency alerts.

The key point is that the considerations raised by NCTA are very important to local emergency managers as well and are taken into account by municipalities in the franchise renewal process — as Congress has directed. Congress has prescribed the process by which these issues are addressed in the context of determining community needs; the process is working, and there is no need for Commission action.

V.

MUNICIPALITIES AGREE THAT FEDERAL EAS TESTS AND ALERTS TAKE PRECEDENCE OVER LOCAL ALERTS

The Commission’s rules currently require Federal EAS tests and alerts to take precedence over all other programming, including tests or alerts from franchise-based local emergency alert systems. *See, e.g.*, 47 C.F.R. § 11.44(c) (“Activation of the National level EAS must preempt State and Local Area EAS operation.”).

⁹ Pursuant to franchise, most municipalities have a local government channel which they program.

Municipalities firmly believe that this rule is correct — that Federal tests and alerts take precedence over all other programming, including local tests and alerts. In fact, cable franchises often contain provisions expressly stating that cable operators must ensure that Federal EAS tests and alerts take precedence over tests or alerts on the local emergency alert system.

However, some cable operators have contended — incorrectly — that they are not required to have Federal EAS tests and alerts take precedence over all other programming, including local tests and alerts. The Commission in this rulemaking should prevent such erroneous interpretations by revising the preceding rule to make clear that the obligation is on the cable operator to make sure that Federal EAS tests and alerts take precedence over local tests and alerts.

VI. CONCLUSION

For the reasons discussed above, the Municipalities respectfully request that the Commission firmly reject any requests for blanket exemptions from local alert requirements, as well as any attempts to preempt local alert systems and reaffirm the importance of strong and flexible local alert systems in providing warning of local emergencies and providing a necessary backup to the Federal EAS in the event of regional or national emergencies.

Respectfully submitted for,

MUNICIPALITIES AND
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