

**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: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction.

The National Association of Broadcasters (“NAB”)¹ submits these reply comments in response to the Commission’s *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.² Informing the public of national, state and local emergencies is the hallmark of broadcasters’ public service. NAB continues to support the Commission’s efforts to improve public safety via enhancements to the Emergency Alert System (“EAS”). NAB agrees with the joint comments of the Named State Broadcasters Associations and the Association for Maximum Service Television, Inc. that extending EAS to emerging digital technologies, and the use of a common alerting protocol (“CAP”), are necessary steps towards modernizing EAS.³ As discussed in detail below, however, some of the

¹ NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

² In the Matter of Review of the Emergency Alert System, *Report and Order and Further Notice of Proposed Rule Making*, EB Docket No. 04-296, rel. Nov. 10, 2005 (“Notice”).

³ See In the Matter of Review of the Emergency Alert System, *Joint Comments of the Named State Broadcasters Associations*, EB Docket No. 04-296, Jan. 24, 2006 at 11-12; In the Matter of Review of the Emergency Alert System, *Comments of The Association for*

Commission's proposals would not, at this time, lead to improvements in public warning. On the other hand, as explained herein, further regulatory action is needed to ensure cable viewers have full access to broadcasters' emergency information. NAB limits its replies to three issues: (1) gubernatorial EAS requirements, (2) audio transcription requirements, and (3) cable overrides.

II. Carriage Requirements For Gubernatorial Messages Are Unnecessary.

Broadcasters are proud partners with the government in public warning. As a universal and free-over-the air service, local broadcasters' television household penetration rates reach 98.2% of the approximately 112,232,500 American households.⁴ Local radio reaches a weekly audience of 228,910,000 persons.⁵ Through their ability to reach virtually all Americans, broadcasters are keenly aware of the unique role they play in disseminating emergency information. While an integral part of a modernized, digital alert and warning system is strengthening and incorporating state emergency plans, NAB agrees with the Named State Broadcasters Associations that requiring carriage of EAS gubernatorial messages is a solution in search of a problem. *See* Named State Broadcasters Associations Comments at 13. As partners in emergency warnings, broadcasters work closely with governors and other state officials in disseminating emergency information, both via the EAS and live news coverage. As MSTV aptly states, "[i]f the governor issues a warning of significance to broadcasters' viewers, broadcasters air it." MSTV Comments at 7. Notably absent from the record is any demonstrated need for a gubernatorial carriage requirement, or that broadcasters, have in any measure, refused to carry gubernatorial messages. NAB also

Maximum Service Television, Inc., EB Docket No. 04-296, Jan. 24, 2006 at 4-7 ("MSTV Comments").

⁴ *See* Nielsen Media Research TV Household Estimates, 2005-2006.

⁵ *See* RADAR, Fall Survey Reports, Copyright Arbitron.

notes that there is serious doubt as to the Commission's authority to require carriage of non-presidential messages.⁶

The record, however, does contain evidence that state and local plans are lacking adequate resources to meet the public warning needs and first responders' needs – including the necessary equipment and training for state and local emergency personnel to initiate EAS messages.⁷ This indicates that even if the Commission were to require carriage of gubernatorial messages, many governors would not be able to issue EAS warnings at this time. NAB thus advocates strong federal oversight, including the development of model state and local emergency plans, to ensure that state governors can be fully incorporated into EAS.

Should the Commission formally adopt a gubernatorial EAS carriage requirement, the scope of such a requirement should be limited by three guiding principles. First, NAB agrees with MSTV and Named State Broadcasters Associations that carriage be limited to EAS messages initiated by state governors, and not other delegated officials, thereby reducing the risk of public desensitization from EAS overuse. *See* MSTV Comments at 9; Named State Broadcasters Associations Comments at 14. Second, the Commission must coordinate with broadcasters, governors and federal agencies to ensure that, during

⁶ For a full discussion of the limits of federal regulation over state and local emergency alerts, *see* In the Matter of Review of the Emergency Alert System, *Comments of NAB*, EB Docket No. 04-296, Oct. 29, 2004 at 25-30 (“2004 NAB Comments”).

⁷ *See, e.g.*, In the Matter of Review of the Emergency Alert System, *Comments of the National Public Safety Telecommunications Council*, EB Docket No. 04-296, Jan. 23, 2006 at 7 (“the greatest need is EAS’ lack of operational effectiveness at the local level”); Named State Broadcasters Associations Comments at 14-15; In the Matter of Review of the Emergency Alert System, *Comments of Cox Broadcasting, Inc.*, EB Docket No. 04-296, Jan. 24, 2006 at 6-7 (“Cox Comments”); In the Matter of Review of the Emergency Alert System, *Comments of the Society of Broadcast Engineers*, EB Docket No. 04-296, Jan. 24, 2006 at 19-20 (“SBE Comments”).

emergencies in multi-state jurisdictions, effective plans are in-place to ensure coordinated dissemination of emergency information. NAB also concurs with Cox Broadcasting, that the Commission should work closely with the Federal Emergency Management Agency and the Department of Homeland Security to delineate which federal agency has clear authority, and that a “clear protocol” for initiating alerts is established.⁸ Finally, any carriage requirements for gubernatorial messages must be expressly limited to times of emergencies.⁹ In lieu of such regulation, however, NAB urges the Commission to recognize that the key to a successful public warning system, including EAS, is through *voluntary cooperation* of broadcasters and federal, state and local emergency officials. We now turn our attention to the issue of the audio transcription requirements.

III. Rather Than Impose Audio Transcription Requirements, The Commission Should Work Towards Effective Technical Solutions To Harmonize Audio and Video Emergency Information.

Any EAS regulations that would strip away broadcasters’ flexibility to deliver their voluntarily carried state and local emergency warnings or act as a deterrent to such dissemination would not serve the public interest. As articulated in our initial comments,¹⁰ voluntary cooperation cannot be readily sustained under the Commission’s proposed EAS transcription requirement. *See Notice* at ¶ 79. While the goal of ensuring equal access of emergency information is laudable, mandating the audio transcription of emergency information, at this time, is not a viable option. In its comments, Telecommunications for the Deaf and Hard of Hearing, Inc. *et al.* (“TDI”) asks the Commission to require that in a

⁸ Cox Comments at 7.

⁹ It would be inappropriate, for example, for the Commission to require carriage of gubernatorial political advertisements.

¹⁰ In the Matter of Review of the Emergency Alert System, *Comments of NAB*, EB Docket No. 04-296, Jan. 24, 2006 at 7-13 (“2006 NAB Comments”).

time of emergency, “all parties subject to the EAS rules must provide a transcription of the audio message in real-time, utilizing open captions.”¹¹ This request, however, ignores the simple reality that there are not enough real-time captioners available in America today to make audio transcription feasible.¹² And, in a quickly evolving emergency situation, there may be substantial delays in procuring real-time captioning services. Moreover, TDI’s argument, that because emergencies are not commonplace, broadcasters would “incur very little expense,”¹³ is without merit. An audio transcription requirement would impose substantial costs. The expense associated with securing real-time captioning contracts is not proportional to the amount of use.

Rather than impose requirements that may act as a deterrent to timely and voluntary dissemination of emergency information for all Americans, the Commission should instead focus on viable solutions that can assist those persons with hearing disabilities in an emergency, such as the proposals detailed by WGBH National Center for Accessible Media and Rehabilitation Engineering Research Center on Telecommunications Access (“WGBH”).¹⁴ As WGBH notes, there are a “variety of mandatory and voluntary compliance schemes at the national and local level,” and as a result there exists a “complicated and often confusing and contradictory set of emergency notification

¹¹ In the Matter of Review of the Emergency Alert System, *Comments of Telecommunications for the Deaf and Hard of Hearing, Inc.; Association of Late-Deafened Adults; Deaf & Hard of Hearing Consumer Advocacy Network; National Association of the Deaf; and Hearing Loss Association of America*, EB Docket No. 04-296, Jan. 24, 2006 at 6-8 (“TDI Comments”).

¹² See 2006 NAB Comments at 10 (citing different studies that estimate the number of captioners available nationwide ranges between 300-650 total).

¹³ TDI Comments at 8.

¹⁴ In the Matter of Review of the Emergency Alert System, *Comments of WGBH National Center for Accessible Media and Rehabilitation Engineering Research Center on Telecommunications Access*, EB Docket No. 04-296, Jan. 24, 2006 (“WGBH Comments”).

requirements, commonly misunderstood at the local community level.”¹⁵ Additionally, WGBH observes that physical “collisions” of the two messages are “quite common, particularly during voluntary local and state emergency notification.”¹⁶ NAB agrees that as new alerting technologies are developed, the goal should be to streamline the information generated by emergency officials and also eliminate caption “collisions.”

Thus, in lieu of requiring real-time captioning, which undermines the automated nature of EAS (by requiring human-generated transcriptions) and may result in the delay of timely dissemination of emergency information, NAB concurs with WGBH that the solution to harmonizing aural and visual emergency information is through “delivering equivalent text *within* the EAS message ... [which] if delivered in standard formats might be able to drive conventional character generators, graphic systems or caption encoders.”¹⁷ NAB views this solution as an efficient means to deliver crucial information to those persons with hearing disabilities, and it would obviate the need for the real-time captioning.

WGBH also notes that it is currently “exploring the use of the CAP standard to enable the delivery of multiple video, text and audio versions of emergency messages in a single CAP ‘package.’”¹⁸ And as SBE states, “a next generation system utilizing the text-based CAP would present the fewest technical challenges in implementing specialized alert outputs for diverse audiences.” SBE Comments at 25. NAB therefore supports the efforts of WGBH to develop a fully integrated CAP package, and recommends that the Commission work with WGBH and industry to develop feasible solutions for improved,

¹⁵ WGBH Comments at 6.

¹⁶ *Id.*

¹⁷ *Id.* at 8 (emphasis added).

¹⁸ *Id.* at 9.

cost-effective methods of captioning emergency information, including the development of voice-recognition or other technologies to enhance the quality of the visual text EAS information displayed onscreen. The Commission should ensure that it leaves providers with sufficient flexibility so as to avoid a loss of emergency information for the public at large while meeting the needs of persons with hearing disabilities.

IV. The Commission Must Address The Problems of Cable Overrides.

Since 1993, NAB has asked the Commission to modify its EAS regulations so that local viewers would maintain access to the critical, timely, and updated information that local television stations air during emergency conditions.¹⁹ Specifically, NAB petitioned the Commission to amend its rules to require the local cable operators to implement “selective override” so that certain channels can be selectively omitted during a cable system’s EAS interruption. The cost of such a system for analog cable is incremental, with costs ranging from about \$10,000-15,000 per cable facility.

Current rules allow broadcasters to negotiate with local cable operators to implement selective override. To date, however, the Commission has refused to mandate “selective

¹⁹ See Comments of NAB, FO Docket Nos. 91-301 and 91-171, filed November 12, 1993 at 14-16; NAB Petition for Partial Reconsideration, FO Docket Nos. 91-301 and 91-171, filed January 27, 1994; Comments of NAB, FO Docket Nos. 91-301 and 91-171, filed February 22, 1995; NAB Reply to Oppositions, FO Docket Nos. 91-301 and 91-171, filed March 6, 1995 at 4-9, Comments of NAB on Second Notice of Proposed Rulemaking, FO Docket Nos. 91-301 and 91-171, filed April 20, 1998, Reply Comments of NAB on Second Notice of Proposed Rulemaking, FO Docket Nos. 91-301 and 91-171, filed May 5, 1998. See also Letter from Edward O. Fritts, President, NAB, to Beverly Baker, Chief, FCC Compliance and Information Bureau, May 30, 1997; Letter from Edward O. Fritts, President, NAB, to Reed Hundt, Chairman, FCC, May 30, 1997; Letter from Edward O. Fritts, President, NAB, to Hon. James Lee Witt, Director, FEMA, May 31, 2000; Letter from Edward O. Fritts, President, NAB, to Hon. Greg Rohde, Assistant Secretary for Communications & Information, NTIA, July 18, 2000; Letter from Edward O. Fritts, President, NAB, to Chairman Michael Powell, FCC, Aug. 11, 2004; 2004 NAB Comments at 19-22.

override” of broadcast stations.²⁰ This refusal has created a problem. Although many broadcasters have negotiated selective override agreements on local cable operators’ analog tier, they are now being told by cable operators that it is impossible to implement selective override on the *digital tier* because of limitations in digital cable equipment. In current digital cable technology, EAS alerts are accomplished in the set top box (“STB”) at the customer’s premises. When an emergency alert is initiated, data is sent to all the STBs in the cable system. That data causes the box to take some action to override the programming on all channels and display the emergency message –typically a crawl over a full blue screen. Without an override, the automatically generated “blue screen with text” offered by most cable operators could prevent a viewer from seeing in-depth and detailed emergency information provided by broadcasters.

It is clearly feasible to program the STB not to interrupt all channels, but rather to selectively omit certain channels *i.e.*, the local broadcast channels. This capability is now inherent in most digital cable STBs and head end equipment. Indeed, a current cable industry standard specifies the inclusion of “selective override” functionality in cable equipment.²¹ Presumably, all cable STBs and head end equipment in the near future will include this capability; thus, whatever technology limitations that may have been perceived in the past simply no longer exist. The implementation of selective override will be a near

²⁰ In the Matter of Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding The Emergency Broadcast System, *Third Report and Order*, FO Docket Nos. 91-171 and 91-301 (1998).

²¹ See American National Standards Institute, (*ANSI J-STD-042-2002; Emergency Alert Messaging for Cable* (2002) at § 5 (specifying the protocol for conveying to an STB a list of services (channels), called *exception services*, for which an emergency alert event shall not apply). See also *Id.*, note in § 8.3 (which specifically acknowledges that terrestrial broadcast channels provide emergency alert functions and that those channels can be identified so that the cable alerts do not apply when STBs tuned to those channels).

zero-cost item for many cable systems. Nonetheless, without a mandate, some cable operators will be reluctant to agree not to override and digital cable viewers will be deprived of the detailed emergency information that could save lives.²²

As the Commission contemplates the nature of an advanced public warning system, surely it cannot intend that the public receive less information (the blue screen with text) rather than more (broadcasters' detailed coverage). In the digital television era, the public can benefit from up-to-the-minute information supplied by specialized multicast channels and other services provided by local broadcasters. NAB thus urges the Commission to revise its EAS rules to require cable systems to implement "selective override" of broadcast stations for both digital and analog cable.

V. Conclusion.

For the above-stated reasons, NAB continues to support the Commission's efforts to improve public safety via EAS enhancements and looks forward to working with the Commission to implement common alerting protocol ("CAP") and other digital technologies. NAB, however, urges the Commission to refrain from requiring carriage of gubernatorial messages because there is no demonstrated need. Further, the Commission should not impose audio transcription mandates because such a requirement undermines the automated nature of EAS and would not, at this time, lead to improvements in public

²² Similarly, in markets where Direct Broadcast Satellite systems are providing local-into-local service, it makes little sense to mandate that a national subscription service originate local and state emergency messages. Not only could this lead to an additional "override" problem for satellite viewers, NAB also agrees with Echostar that additional alerts "might obliterate one another and create consumer confusion." In the Matter of Review of the Emergency Alert System, *Comments of Echostar Satellite, LLC*, EB Docket No. 04-296, Jan. 24, 2006 at 5. *See also* Named State Broadcasters Associations Comments at 11.

warning. Finally, NAB urges the Commission to revise its rules so that detailed emergency information is not overridden by cable systems.

Respectfully submitted,

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