

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

In the Matter of	)	
	)	
Review of the Emergency Alert System	)	EB Docket No. 04-296
	)	
Independent Spanish Broadcasters	)	
Association, the Office of Communication of	)	
the United Church of Christ, Inc., and the	)	
Minority Media and Telecommunications	)	
Council, Petition for Immediate Relief	)	

**COMMENTS OF**



**NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

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**COMMENTS OF  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its reply comments in the above-captioned proceeding. NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90 percent of the nation's cable television subscribers, as well as more than 200 cable programming networks and services. The cable industry is the nation's largest provider of high-speed Internet access after investing over \$110 billion since 1996 to build out a two-way interactive network with fiber optic technology.

**INTRODUCTION AND SUMMARY**

Over many decades, the cable industry has played an important role in disseminating state and local emergency information to the public. And, as the Commission has recognized, cable's voluntary participation in the Emergency Alert System (EAS) at the state and local level has generally worked well. But the effectiveness of such participation is hampered by the presence of overlapping, often duplicative or conflicting, EAS-type requirements imposed on cable operators in their local franchise areas. The Commission now proposes to make the dissemination of EAS activations by local officials *mandatory* for all cable systems. But

adopting a local EAS mandate on top of widely different franchise-based alerting requirements runs counter to the Commission's desire for a more uniform and coordinated nationwide public alert and warning system.

In light of this concern, we believe that the best policy course is for the Commission to restrict and preempt the extensive and disparate EAS-type franchise regulation that exists today and thereby ensure that EAS operates as an effective and fully integrated federal, state and local program.

With regard to multilingual EAS, NCTA submits that the provision of emergency information in a language other than English may be accomplished if the originator of the EAS message, whether a federal, state or local government entity, issues the message in English and Spanish (or another appropriate language). If an audio message is received in this format, the cable system will simply pass it through in the two-minute EAS window. Regarding the more complicated visual text message, some cable operators have and others may voluntarily upgrade their EAS equipment, if feasible and cost-effective, to provide messages in Spanish in communities with significant Spanish-speaking populations. But they should not be required to implement burdensome steps during the interim period before common alert protocol standards are adopted in order to deploy multilingual EAS.

Similarly, EAS message originators should provide emergency alerts in both audio and visual format so that individuals with hearing and visual disabilities receive functionally equivalent information.

Finally, regarding AT&T's "Petition for Limited Waiver" of the effective date for implementing EAS capability, we urge the Commission not to base any part of its decision on the company's mischaracterization of how cable systems deliver EAS messages.

## DISCUSSION

### **I. THE COMMISSION SHOULD NOT EXTEND MANDATORY EAS TO LOCAL OFFICIALS BUT RESTRICT AND PREEMPT THE EXTENSIVE AND DISPARATE EAS-TYPE REQUIREMENTS THAT ARE IMPOSED ON CABLE OPERATORS AT THE LOCAL LEVEL**

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In the *Second Report and Order*, the Commission required all EAS participants to receive and transmit all alerts initiated by state governors, whether state-wide or targeted to certain geographical areas within the state.<sup>1</sup> While the Commission concluded that “voluntary participation by cable and broadcast EAS Participants in accommodating state and local level alerting in the existing EAS has been generally successful,” it found “compelling policy reasons” to order EAS Participants to transmit all alerts activated by state governors or their designees.<sup>2</sup> Noting that EAS use has been overwhelmingly related to weather and other state and local alerts, the Commission found that states will be more inclined to deploy the necessary resources to upgrade to “Next Generation EAS,” including the ability to simultaneously transmit multiple and differentiated common alert protocol (CAP) messages. The rule applies only to states with Commission-approved EAS state plans that provide for delivery of such alerts.

In the *Further Notice*, the Commission now seeks comment on whether it should extend mandatory transmission of EAS alerts to other government entities, such as local, county, and tribal authorities.

Apart from whether the Commission has the legal *authority* to adopt mandatory carriage of local EAS alerts, we see no *reason* to mandate the provision of local EAS alerts. As the Commission notes in the *Order*, “EAS equipment is in place in television, radio and cable

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<sup>1</sup> *In the Matter of Review of the Emergency Alert System, Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council*, Petition for Immediate Relief, EB Docket No. 04-296, *Second Report and Order and Further Notice of Proposed Rulemaking*, rel. July 12, 2007 (“*Order*” and “*Further Notice*,” respectively).

<sup>2</sup> *Order* at ¶ 55. The Commission suggests that other public officials, beyond the governor, may “in appropriate circumstances” be permitted to activate EAS alerts. *Order* at ¶ 54.

facilities nationwide and has been used effectively for state and local emergencies for decades.”<sup>3</sup> Many cable companies are actively involved in State Emergency Communications Committees (SECCs) and Local Emergency Communications Committees (LECCs), as well as state emergency management agencies. Moreover, the state governor or his or her designees, as the *Order* acknowledges, has the ability to activate the system on a geo-targeted basis which ensures that important emergency information will reach the communities most affected on a mandatory basis.

In fact, now that the Commission has mandated transmission of EAS communications by state governors, rather than *extending* this requirement to transmissions by local governments, the best next step is to *restrict* and *preempt* the extensive and disparate EAS-type requirements that are imposed on cable operators at the local level, generally through the cable franchising process. The continuation of dual federal and local regulation of emergency alerting for cable simply will not serve the Commission’s goal of a more effective and efficient public warning system and the development of “next generation” EAS.

Indeed, the Commission recognizes in the *Order* that “requiring EAS Participants to receive emergency alerts directly from state political subdivisions, such as counties and cities, could be unduly complex and costly and would create the potential for some alerts to reach those who may not be affected by a particular emergency.”<sup>4</sup> Accordingly, the Commission decided only to require EAS Participants to disseminate CAP-formatted EAS messages delivered by a state governor. This makes sense, especially since the rules require that a Commission-approved state plan with all the appropriate protocols and procedures for issuing an alert must be in place.

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<sup>3</sup> *Order* at ¶ 11.

<sup>4</sup> *Order* at ¶ 56.

But as NCTA has repeatedly discussed in the EAS proceeding, cable operators are still subject to a patchwork of emergency alert obligations under thousands of local franchise agreements.<sup>5</sup> And there is no consistency from state-to-state, and town-to-town on the protocols and procedures that govern the circumstances under which franchise-required activations should occur.<sup>6</sup> Local officials often have the discretion to activate a cable system's alerting system with no regard to the state plan or other guidelines and procedures. At the same time, cable operators routinely disseminate local EAS alerts from the National Weather Service and other entities.

Over ten years ago, the Commission expressed concern "about possible conflict between requirements of local jurisdictions and federal regulations regarding the EAS rules," concluding that "should any local jurisdictions' EAS requirements conflict or interfere with those adopted by the Commission, the local jurisdictions' requirements will be preempted."<sup>7</sup> As we have detailed in other filings, this multi-layered governmental approach to emergency alerting often results in duplicative, inconsistent or unnecessary emergency warnings to viewers – at the risk of desensitizing the public to the importance of an emergency alert. Since state-activated public warnings are usually implemented pursuant to state emergency plans and protocols, there are

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<sup>5</sup> See *In the Matter of Review of the Emergency Alert System*, EB Docket No. 04-296, NCTA Comments, filed October 29, 2004; NCTA Reply Comments, filed November 29, 2004; NCTA Comments, filed January 24, 2006; NCTA Reply Comments, filed February 23, 2006.

<sup>6</sup> In some cases, the franchise requires cable operators to provide a designated town or county official with a separate emergency override capability to enable the official to interrupt and disseminate an audio and video message on all channels, for as long and as frequently as deemed necessary by the official. In other cases, cable operators are subject to local emergency alerting mandates that disregard federal EAS protocols and procedures as set forth in state EAS plans. The state plan, for example, may authorize certain local emergency management officials to activate the system, while a local franchise agreement may give a town or county official complete discretion to activate emergency messaging. Town officials may not appreciate that their overrides of cable programming may extend beyond their community to areas not affected by a potentially hazardous situation. For a complete discussion of these issues, see NCTA Comments in this docket, filed October 29, 2004.

<sup>7</sup> Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, *Second Report and Order*, 12 FCC Rcd 15503, 15520 (1997).

likely to be better controls in place to manage emergency alerts and to ensure that television viewing is not needlessly and excessively interrupted.

This is not to say that a local official's use of the cable emergency override capability is unjustified in some situations. But it is the often discretionary aspect of such overrides where local officials may, for example, activate the system for less than a real emergency, or without appreciating that the message may extend beyond the relevant community or conflict with another local EAS message, that is most troubling. Given these occurrences, the Commission's proposal to consider extending the mandatory transmission of Presidential and state governor EAS alerts to local officials, coupled with cable's obligations under *existing* franchise-based emergency alerting systems, will result in a quagmire of problems that will be counterproductive and detrimental to the functioning of an efficient and effective EAS system.

Therefore, we believe that, as a policy matter, the Emergency Alert System should operate as the integrated federal, state and local program and should supersede disparate franchise-based alerting requirements – especially if the Commission determines that local EAS alerts should be mandatory.

In our view, the time for the preemption of local EAS-type regulation is overdue, and there are several bases for such preemption. For example, preemption is proper and indeed essential where state or local regulation impedes the full achievement of important federal objectives, *i.e.*, homeland security and emergency preparedness, or when there is a conflict between federal and state law.<sup>8</sup> As the Commission has stated, “courts routinely recognize that there may be circumstances where state regulation would necessarily conflict with the

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<sup>8</sup> See *e.g.*, *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368-69 (Supreme Court summarizes circumstances where federal law and policy preempt state law).

commission's valid exercise of authority."<sup>9</sup> There is little doubt that the Commission has the authority to preempt local emergency alert requirements to the extent they interfere with the operation of the federal EAS.<sup>10</sup> And it should conclude as much in this case.

**II. MULTILINGUAL EAS IS BEST ACCOMPLISHED IF THE ORIGINATOR OF THE EAS MESSAGE – WHETHER FEDERAL, STATE OR LOCAL – ISSUES THE MESSAGE IN BOTH ENGLISH AND SPANISH (OR ANOTHER LANGUAGE)**

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In the *Further Notice*, the Commission seeks comment on the provision of emergency information at the national, state and local level to persons who do not speak English. The cable industry appreciates the importance of developing solutions across all media and telecommunications platforms to ensure that communities with a high percentage of non-English speaking residents have timely access to emergency information in the appropriate language. But as we explained in our earlier reply comments in the Commission's review of the emergency alert system, the mandatory provision of multilingual EAS messages poses a number of technical and operational challenges for cable operators.

First of all, cable systems retransmit EAS alerts to cable customers on an automated basis on all channels as the messages are received from the local primary broadcast station(s) or directly from an EAS originating source, such as the National Weather Service. In other words, the installed base of cable EAS equipment is set up to operate unattended and pass-through emergency messages and has no capability to reformat, modify or translate messages into a language other than English.

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<sup>9</sup> *In the Matter of Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, WC Docket No. 03-211, ¶ 19, rel. November 12, 2004.

<sup>10</sup> *See e.g.* Review of the Emergency Alert System, EB Docket No. 04-296, NCTA Reply Comments, November 29, 2004 at 6; Joint Comments of Municipalities, November 29, 2004 at 12. Again, the FCC may not possess legal authority to require mandatory carriage of local EAS alerts.

However, as discussed in our earlier comments, today some EAS decoders have the ability to transcribe information derived from the header codes (identifying the entity, event, geographic area, and time period) from English to Spanish in order to create a *text* message (usually a crawl or banner). NCTA recently determined that at least two of the three major EAS vendors have built decoder equipment capable of supporting English and Spanish. NCTA understands that the other vendor has the capability to provide software upgrades to existing equipment to incorporate Spanish language functionality.<sup>11</sup>

Some cable operators in areas of the country with significant populations of Spanish-speaking residents have voluntarily deployed this bilingual equipment to ensure the delivery of emergency information to those customers. Other cable operators may likewise consider upgrading to bilingual EAS capability before the end of the useful life of their existing equipment if feasible and the needed software is cost-effective. In either case, decisions about acquiring new equipment or installing software upgrades are best left to operators to voluntarily make on a case-by-case basis, depending on the needs of the local communities which they serve, as well as the associated cost and operational impact.

This makes sense particularly where the provision of dual language EAS may be accomplished today without additional operator costs if the originator of the EAS message – whether a federal, state or local government entity – issues the message in both English and Spanish. Indeed, if the *audio* message is received in this format, cable systems will simply pass it through as received.

The audio dissemination of a single alert in two languages is operationally feasible because existing EAS equipment allows two minutes for an emergency message. This two-

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<sup>11</sup> NCTA is not aware of any EAS decoder equipment that is capable of transcribing and disseminating messages in any language other than Spanish.

minute window is rarely consumed by the message so it could be easily transmitted in both English and Spanish. Thus, the *originator* of the emergency information would first provide the message in English, immediately followed by the Spanish translation. The primary entry point stations would then relay it to the cable systems and broadcasters, which in turn pass it through on all channels to its customers. This approach would require no changes to the present cable EAS equipment.<sup>12</sup> Adding a third, fourth, or fifth language, however, would be problematic given the constraint of a two minute total audio message window. Based on today's technology, an EAS regime with multiple languages would be enormously difficult and burdensome to implement.

There appears to be widespread agreement among the EAS participants (broadcast, cable, satellite and others) that this is the best solution. The government entity originating the emergency information, often state governors and state and local emergency managers, is best suited to provide the message in a language other than English. In addition, we support efforts by the Commission and other interested parties to raise awareness about the importance of government-issued multilingual alerts as a policy matter in the aftermath of Hurricane Katrina and other natural disasters affecting communities that are densely populated with Spanish-speaking residents.

As noted above, with regard to the visual *text* message, some cable operators serving communities with large Spanish-speaking populations may voluntarily upgrade existing equipment to respond to bilingual EAS alerts, where practicable. But there is no need to install

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<sup>12</sup> We note that the messages should not be distributed as two separate alerts – *e.g.*, one in English and one in Spanish – because the unattended decoding equipment would interpret the second message as a duplicate and delete it. Moreover, issuing the second language message as a separate alert of up to two minutes in duration is not advisable because of the length of the interruption from dual languages. By handling both languages in the two-minute window, the originator ensures that critical emergency information is passed through without overly disrupting customer viewing, especially where the emergency alert does not affect the customer's community.

and incorporate additional receivers at hundreds, or even thousands, of headends to monitor and transmit messages from additional Spanish-language or other stations as proposed by the Minority Media & Telecommunications Council (“MMTC”) *et al.* if the message is issued in both English and Spanish.

Indeed, given that the Commission has mandated that all EAS participants be required to accept alerts and warnings in the common alert protocol (CAP) format once the standards for this protocol are adopted by FEMA, there are likely to be technological developments on this front which will improve upon existing mechanisms for delivery of bilingual messages, making any requirement to transition to such solutions premature.<sup>13</sup> As the Commission has noted, it is widely expected that this robust and flexible EAS format will take full advantage of digital technology and thereby “facilitate more accurate and detailed multilingual alerts.” The Commission expects this could happen:

either as a result of the development of comprehensive, nation-wide Next Generation EAS under FEMA’s auspices, or pursuant to the earlier development of CAP-based transmission systems at the state level per coordination between state planners and FEMA. This [CAP] requirement will ensure that the initiator of any EAS alert has the technological capability to deliver simultaneously messages in English and any other language determined to be appropriate for a given alert.<sup>14</sup>

Although the cable industry needs more information about the technical parameters of the proposed CAP standards to fully assess its capabilities on a cable network, we too are hopeful that CAP will provide an efficient, cost-effective means to deliver emergency information to different communications distribution systems to meet the needs of non-English speakers and persons with visual and hearing disabilities. In light of standards work undertaken by FEMA, we

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<sup>13</sup> Order at ¶ 26.

<sup>14</sup> Order at ¶ 40; *see also* ¶¶ 22 – 25.

believe that the federal government and private sector EAS stakeholders should continue to work together toward incorporating multilingual messaging and other capabilities in the CAP standards.

**III. EAS MESSAGE ORIGINATORS SHOULD PROVIDE THE MESSAGES IN BOTH AUDIO AND VISUAL FORMAT SO THAT INDIVIDUALS WITH HEARING AND VISUAL DISABILITIES RECEIVE THE SAME INFORMATION**

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The Commission again asks about the best way to make emergency information more accessible to persons with disabilities. One of the main concerns for persons with hearing and visual disabilities is the presentation of the same information in both audio and text format. Here again, as the Commission itself has recognized, the wisest course is for EAS message originators, such as NWS, FEMA and state emergency operations centers, to provide EAS messages in both audio and visual format to video programming distributors so that individuals with hearing and visual disabilities receive the same information.

This is the most practicable and feasible means to ensure that EAS messages are received by both hearing and visually disabled persons. As noted above, because cable systems receive and disseminate emergency alerts on an unattended, automated basis, there are no personnel at cable headends (many of which are operated on a remote basis) who are able to transcribe audio EAS messages in real-time for visual presentation through closed captioning, crawls, scrolls or banners. Similarly, it is not feasible to convert a text message to an audio message because of the same resource constraints.

The *Further Notice* also inquires about the interaction between the Part 11 EAS rules and the closed captioning rules in § 79.2. These rules involve the provision of emergency information. But they are two completely different regulatory obligations. The *EAS* rules require cable systems to override the audio and video on *all* channels when a presidential EAS

message is issued. The Commission’s *closed captioning* rules require provision of the “critical details” of local emergency information that appears on local and regional cable news channels, such as News Channel 8 or New York One, or local origination channels during live programming coverage.<sup>15</sup> Cable operators do not interrupt national program networks carried on their systems with emergency information, except to pass through station-relayed EAS messages issued by the President and state and local EAS messages on a voluntary basis.

The EAS override includes “open captions” but is limited to the information that is contained within the incoming EAS message. In order to expand the amount of text information (*e.g.*, so it would be the same as the audio information), it would require changes to the EAS protocol itself, over which operators have no control. And EAS equipment does not contain such capabilities.

As with multilingual EAS, the Commission believes that CAP technology holds great promise in facilitating the provision of functionally equivalent EAS alerts and warnings to persons with visual and hearing disabilities.<sup>16</sup> As CAP standards and next generation EAS develops, the cable industry will continue to work with visual and hearing disability organizations and others involved in public safety efforts to further improve access to emergency information for such persons. We urge the Commission to continue its efforts to encourage

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<sup>15</sup> The rules require video programming distributors to provide local emergency information, *i.e.*, “critical details” about the emergency and how to respond to the emergency (*e.g.*, the affected areas, evacuation orders, evacuation routes, approved shelters, road closures). Section 79.52 video programming distributors must make the audio portion of emergency information accessible to persons with hearing disabilities using closed captioning or other methods of visual presentation. For persons with visual disabilities, video programming distributors are required to make emergency information provided in the video portion of a regularly scheduled newscast, or a newscast that interrupts regular programming, accessible through aural description in the main audio. Emergency information that is provided in the video portion of programming (*i.e.*, textual information in a crawl or scroll) that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.

<sup>16</sup> *Order* at ¶ 37.

FEMA, the National Weather Service and other government agencies to provide equivalent audio and visual EAS messages.

#### **IV. THERE IS NO NEED TO ADOPT FURTHER EAS EQUIPMENT TESTING REQUIREMENTS**

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The Commission also seeks comment on several options for ensuring that EAS operates as intended in an emergency, including whether additional EAS testing, especially CAP testing, should be required. It also asks whether it should require assessments of EAS performance after an alert is triggered.

The existing EAS regime, which requires cable operators to conduct monthly and weekly EAS tests, is more than adequate. There is no demonstrated need to adopt further equipment testing requirements given the high reliability of the cable distribution network. In fact, cable companies have implemented sophisticated network reliability measures to ensure that their broadband networks meet both internal and external emergency preparedness and business continuity best practices, including regular checks of EAS equipment. Increasing the number of EAS tests would only disrupt cable viewing unnecessarily on a consistently dependable network with no corresponding benefit to public safety.

Regarding CAP testing, the standards are still under development but we expect that once the CAP standard is adopted and implemented, cable operators and equipment manufacturers will conduct further tests of the technology to ensure compliance with the standards and performance in cable systems. As such, NCTA does not believe that mandatory rules concerning CAP testing will be necessary.

**V. THE COMMISSION SHOULD NOT DECIDE AT&T'S EAS WAIVER REQUEST ON ITS MISCHARACTERIZATION OF HOW CABLE SYSTEMS DELIVER EAS MESSAGES**

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On November 14, 2007, AT&T filed a "Petition for Limited Waiver" of the effective date for implementing EAS capability for its U-Verse television service. It seeks to defer its obligation to provide emergency alert information to its customers until July 31, 2008. In its waiver request, AT&T argues that its particular network architecture, which it characterizes as a "sophisticated, IP-based switched data services network that utilizes two-way communications," is somehow so different from what it terms "a traditional cable system" that it should be entitled to special treatment with respect to its EAS obligations. It also incorrectly states that the manner in which cable systems deliver EAS messages differs from the manner in which its "IP-based switched data services network" would deploy EAS.<sup>17</sup>

In discussing its "encrypted IP network and complex client-server architecture," AT&T states that cable systems modify unencrypted video streams to add the message which then becomes part of the video signal.<sup>18</sup> This is not the case. Nearly all digital content on cable systems is encrypted, with the exception of local broadcast stations carried on the system. In providing emergency alert messages, cable systems do not modify their video streams. They send the EAS message to set-top boxes in a separate, out-of-band communications channel. The set-top boxes convey the EAS message for display on the television screen by overlaying the information onto the video output of the box itself, likely the same manner in which AT&T's network accomplishes the text messaging. Contrary to AT&T's assertion, encrypted video signals transmitted from the cable headend are not modified in order to deliver an EAS text

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<sup>17</sup> See AT&T Waiver Request at 4, ¶¶ 1, 2.

<sup>18</sup> This description is also reflected in the Declaration of Matthew Wallace, Executive Director of Advanced Access Technologies, attached to the waiver request at ¶ 5.

message. The record in this proceeding should be clear that cable systems in no way “create unacceptable security risks to the network, customer information or content,” as AT&T claims, by disabling the video encryption.

In sum, if the Commission deems it appropriate to grant AT&T’s request for an additional six months beyond the effective date of the rules, it should not do so based on false assertions about cable systems and the nature in which EAS messages are delivered.

**CONCLUSION**

For the foregoing reasons, the Commission should restrict and preempt local franchise authorities from continuing to impose EAS-type requirements on cable systems. The Emergency Alert System should operate as *the* integrated federal, state and local public warning system for communications providers, especially if the transmission of local EAS alerts is made mandatory.

Respectfully submitted,

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