Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters 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

JOINT COMMENTS OF THE OHIO, VIRGINIA, AND NORTH CAROLINA ASSOCIATIONS OF BROADCASTERS

December 3, 2007

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Summary

In the instant proceeding,[1] the Commission seeks comment in several discrete areas: the provision of EAS alerts and other emergency information to non-English speakers; the provision of EAS alerts and other emergency information to viewers and listeners with hearing and vision disabilities; activation of EAS alerts by state and/or local officials (other than state governors); and mechanisms to assess EAS operation.

Concerning issues related to the provision of EAS messages to non-English speakers and to persons with disabilities, the Associations strongly support the Commission's efforts to ensure that all Americans are provided with emergency- or disaster-related information. However, the Associations respectfully note that regulating in this area is a broad undertaking which involves additional federal agencies, and they urge the Commission to proceed with caution.

The Associations agree with the Commission's determination that state governors should be empowered to generate EAS alerts, but they strongly oppose any proposal that would allow local, county, tribal, or other state governmental entities to initiate mandatory state and local alerts. The Associations advocate continuation of the same flexible, voluntary approach to EAS that has worked effectively in the past.

With regard to requiring additional EAS and CAP testing, certification of compliance, and performance assessments, the Associations encourage the Commission to refrain from adopting any additional requirements because they are unwarranted and unnecessary at this stage.

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[1] *In the Matters 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*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007) ("*Further Notice*").

Finally, although the Associations note that the Commission has not requested comment on this matter, the Associations wish to urge the Commission, at the appropriate time, to address the matter of EAS messages originated by cable companies that override broadcast station signals retransmitted to those cable companies.

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To: The Commission

JOINT COMMENTS OF THE
OHIO, VIRGINIA, AND NORTH CAROLINA
ASSOCIATIONS OF BROADCASTERS

The Ohio Association of Broadcasters, Virginia Association of Broadcasters, and North Carolina Association of Broadcasters (collectively, the "Associations"), through their attorneys, hereby jointly file these comments in response to the Commission's Second Report and Order and Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned matter.[2]

I.
Introduction

In 2004, in response to the Commission's Notice of Proposed Rulemaking in the above-captioned matter, the Ohio and North Carolina Associations individually filed comments. All of the Associations continue to support the Commission's efforts to improve the Emergency Alert System ("EAS") and to modernize it as an effective emergency warning mechanism for the twenty-first century.

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[2] *In the Matters 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*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007) ("*Further Notice*").

In the *Further Notice*, the Commission seeks comment in several discrete areas: the provision of EAS alerts and other emergency information to non-English speakers; the provision of EAS alerts and other emergency information to viewers and listeners with hearing and vision disabilities; activation of EAS alerts by state and/or local officials (other than state governors); and mechanisms to assess EAS operation. The Associations address these areas below.

II.
Comments on the Further Notice of Proposed Rulemaking

As an initial matter, the Associations applaud the Commission for its efforts to be thorough and deliberate in its consideration of these significant issues. In the *Further Notice*, the Commission pledged its "inten[t] to issue an order addressing the issues set forth [in the *Further Notice*] within six months."[3] The *Further Notice* was released on July 12, 2007, and, if the six-month timeline were to begin running upon the date of release, the self-imposed six-month timeline would have the Commission issue an order by January 12, 2008. With the comment period scheduled to close in mid-December 2007, the Associations respectfully suggest that the Commission spend six months' time following the close of the comment period to consider the comments filed in this proceeding. Alternatively, the Associations urge the Commission to interpret the self-imposed six-month timeline as commencing with the publication of the *Further Notice* in the Federal Register, which would also provide the Commission with a more reasonable period of time in which to evaluate the issues and comments.

A. Non-English Speakers

The issues relating to the provision of EAS alerts to non-English speakers are largely the province of government agencies. Indeed, the Executive Order[4] mandating the provision of EAS alerts to non-English speakers tasks the Secretary of Homeland Security with determining how to "include in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities and those without an understanding of the English language."[5]

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[3] *Further Notice*, n.220.

[4] Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 28, 2006).

[5] *Id.* at 36975.

Because the Department of Homeland Security has not yet opined on these issues, the public and EAS participants would be better served by the Commission's taking a wait-and-see approach, to ensure that the Commission's rules and policies are consistent and harmonious with the rules and policies ultimately adopted by Homeland Security. At a minimum, the Commission should carefully coordinate its rulemaking efforts with Homeland Security to avoid confusion and duplicative or inconsistent regulation or expectations.

The strength of EAS lies in its automation and consistency. EAS messages are transmitted one time from their point of origin, and stations all receive (and retransmit) the identical message—it is a turnkey system. When considering issues relating to non-English speakers, it is important that the Commission maintain the "turnkey" qualities of the system and not impose on local stations any obligation to translate or evaluate the accuracy of pre-translated EAS messages. In the event the Commission requires broadcasters to provide EAS messages in languages other than English, the Associations strongly urge the Commission to require the originating authority to provide EAS messages in all required languages and impose no obligations on EAS participants to translate or otherwise generate multilingual (Spanish and/or other languages) messages at the local level.

Similarly, any Commission rule requiring the transmission of non-English alerts should expressly recognize that compliance for EAS participants consists exclusively of the retransmission of the content of such alerts in the form they are received. Such a "pass-through" requirement would maintain uniformity and minimize error with respect to non-English alert messages. Moreover, any requirement that local stations provide or evaluate translations of EAS messages would be unduly expensive and burdensome, as virtually all affected broadcast stations would be required to hire additional personnel to provide, at unpredictable times, this unique service. Additionally, in some small markets, it may well be impossible to identify and hire personnel who could adequately perform those services. The issue, at a minimum, should be reviewed.

B. Persons with Disabilities

The Executive Order[6] mandating the provision of EAS alerts to persons with disabilities tasks the Secretary of Homeland Security with determining how to "include in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities . . . ."[7] Because the Department of Homeland Security has not yet opined on these issues, the public and EAS participants would be better served by the Commission's taking a wait-and-see approach, to ensure that the Commission's rules and policies are consistent and harmonious with the rules and policies ultimately adopted by Homeland Security. At a minimum, the Commission should carefully coordinate its rulemaking efforts with Homeland Security to avoid confusion and duplicative or inconsistent regulation or expectations.

The Commission specifically seeks comment on the "interaction between [its] Part 11 rules and section 79.2 of [its] rules."[8] It is important to understand that the emergency access rules are broader in scope than the EAS rules. According to the emergency access rules, Section 79.2 covers "tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather."[9] While some of these conditions are routinely the subject of EAS alerts, others, such as school closings and changes in school bus schedules have probably never been (and perhaps never should be) the subject of EAS alerts. Co-extensivity between the rules would be problematic if it meant that school closings would become the subject of EAS alerts.

In addition, the emergency access rules contemplate certain ongoing obligations that last for as long as a station's provision of emergency information continues. This differs from the EAS rules which merely require the one-time retransmission of EAS tests and alerts. Given the

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[6] Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 28, 2006).

[7] *Id.* at 36975.

[8] *Further Notice*, ¶ 73.

[9] 47 C.F.R. § 79.2(a)(2).

significant difference in the duration of these relative obligations, the Commission should be careful not to take any action that would conflate the two sets of requirements, which could result in confusion and, potentially, overuse of EAS. Thus, because of the differing scope between the rules, the Associations believe that it is important for the EAS rules in Part 11 and the emergency access rules in section 79.2 to remain separate and not co-extensive.

To be sure, there is an area of overlap between the rules: if a television station airs an EAS alert that contains "emergency information" (as that term is defined in Section 79.2), then the requirements for making such emergency information accessible either by audio or video would be triggered. For example, if a television station airs an EAS alert relating to a tornado, compliance with the emergency access rules would require the station to provide the information visually if the EAS alert was provided aurally. The Associations encourage the Commission to clarify that compliance with both rules may, in some circumstances, be self-executing. For example, EAS alerts are required to be accompanied by aural tones (the audio Attention Signal); when emergency information airs visually during non-news programming, it is required to be accompanied by an "aural tone" pursuant to the emergency access rules. In such instances, the Part 11 EAS Attention Signal should be adequate to serve as the Section 79.2 "aural tone."

C. Other Local Official Alerts

The Associations agree with the Commission's decision to empower state governors to generate EAS alerts.[10] The Associations strongly oppose any proposal to enable local, county, tribal, or other state governmental entities to initiate mandatory state and local alerts. This proposal appears to be a solution in search of a problem.

The public has been extremely well served by current EAS flexibility which allows stations to decide whether to carry state and local alerts. Indeed, there is no evidence—nor has the Commission cited any—to suggest that public safety is compromised by the flexible nature

[10] *See In the Matters 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*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007), ¶¶ 55-57, 64.

of the current system. Indeed, as the Commission has recognized, all evidence is to the contrary: "We believe that voluntary participation by cable and broadcast EAS Participants in accommodating state and local level alerting in the existing EAS has been generally successful."[11] And, the Commission has already acknowledged that the problems with deputizing multiple state, local, county, and tribal officials are manifest: "We recognize 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."[12]

While it may be true that "EAS use to date has been overwhelmingly related to weather and state and local alerts,"[13] that bare fact, without more, is insufficient justification to add innumerable tribal, state, and local officials to the ranks of alert initiators. Indeed, the frequency with which local alerts have been aired counsels *against* a rule that would enable state and local officials (beyond state governors) to originate mandatory alerts, not only because the possibility would be high of conflicting, duplicative, or geographically irrelevant EAS alerts, but more importantly because the Commission has rightfully acknowledged that situations justifying a state or local alert are handled adequately by broadcasters on a voluntary basis.

The Associations believe that voluntary broadcast participation has been and will continue to be widespread and effective and that it should remain voluntary. When stations receive state or local EAS alerts, they are in the best position to know whether the alert has been sent in error, whether it is timely and relevant to the local community, and whether the station's own reporting is more detailed and timely than the content contained in the EAS message. Broadcasters spend enormous time and resources in developing local news operations so that they will be in a position to be "first" with local news, particularly urgent matters affecting safety and welfare. If broadcast of specific state or local emergency alerts was mandatory *in spite of*

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[11] *Id.* ¶ 55.

[12] *Id.* ¶ 56.

[13] *Id.* ¶ 55.

sometimes superior news coverage by broadcasters, this would make the system much more cumbersome and less useful to listeners and viewers, and it could compromise some of the very best services that local stations can provide to their communities, especially in times of emergency. Moreover, mandatory transmission of specific messages raises the very difficult question of which messages to make mandatory. Again, local broadcasters are in the best position to assess which messages are relevant to their listeners and viewers.

State plans already provide appropriate and workable mechanisms whereby local emergency managers may trigger an EAS alert, for example by requesting the local National Weather Service office or the state Emergency Operations Center to issue an alert. For example, the North Carolina State Plan unambiguously encourages coordination between and among various authorities to make EAS more effective: "Local and County emergency management officials should contact their local [National Weather Service] office to set up an agreement to clarify and facilitate the [local EAS activation] process."[14] Similarly, the Virginia Plan requires that "[l]ocal activation of the EAS will be done according to the local area plan and in coordination through the Virginia [Emergency Operations Center]."[15] Thus, additional regulation is unnecessary.

State level alerts are most appropriate when there is a sudden, unforeseeable, widespread disaster that has the potential to impact a large area or population, for example a meltdown of or terrorist attack on a nuclear facility. Beyond such use of EAS by state governors, the Associations oppose federal requirements that would authorize other state or local officials to "seize the airwaves" for their own purposes. Control of a station's content must at all times remain with the licensee, except for the mandatory delivery of a national EAS message or a mandatory state message initiated by the governor. Not only do stations in many cases provide more accurate real-time weather emergency information than even the National Weather Service,

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[14] North Carolina Emergency Alert System State Plan, at 17, *available at* http://www.ncbroadcast.com/2005eas.pdf ("NC Plan").

[15] Commonwealth of Virginia Emergency Alert System Plan, at 12, *available at* http://www.vabonline.com/resources/files/2006-va-eas-plan.pdf ("VA Plan").

but also it is a broadcaster's job to know the best way to communicate vital information to the public, and it is a job most stations do very well. The prospect of allowing local emergency managers to take over the station is likely to result in far too many "emergency" alerts, annoying viewers and listeners, which, in turn, would result in the desensitization of the public to "emergency" messages, causing listeners and viewers to "tune out" precisely the material that they most need to "tune in." Furthermore, for those stations whose viewing or listening areas include more than one state, conflicting demands of multiple state or local emergency managers for broadcast facilities could—indeed would—create chaos during an emergency, which is exactly the opposite of what is needed in such circumstances.

Significantly, state plans advert to these very issues. For example, the North Carolina State Plan states: "*It should be noted that the Emergency Alert System should be used only in short duration life-or-death events.*"[16] Similarly, the Ohio State Plan states: "The State of Ohio EAS Plan may be activated on a day-to-day basis in response to such emergencies as: tornadoes, severe storms, flash floods, widespread fires, discharge of toxic chemicals or gases, nuclear incidents, widespread power failures, industrial explosions, civil disturbances, child abductions, or any other occurrence, which poses an immediate threat to health, life, safety, or property."[17] And the Virginia Plan narrowly defines "emergency" as "A situation that poses an extraordinary and imminent threat to the safety of life and property."[18] Broadcasters' exemplary record of providing state and local EAS alerts, combined with state plan language addressing these issues, demonstrates conclusively that additional regulation is not warranted.

Finally, licensees should only be answerable to one governmental authority, and that authority should remain the Commission. Otherwise, the necessary efficiencies and smooth operation of the EAS will be compromised as broadcasters struggle to respond to and comply

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[16] NC Plan, at 6 (emphasis in original).

[17] State of Ohio Emergency Alert System Plan, at 5, *available at* http://www.ema.ohio.gov/PDFs/EAS_Plans/Ohio_EAS_Plan.pdf.

[18] VA Plan, at 10.

with multiple differing requirements and protocols that might be imposed by various state, tribal, county, or local authorities.

D. Assessing EAS Operation

The Commission seeks comment on whether to require (1) additional testing of the EAS, and specifically CAP; (2) station certification of compliance; and (3) assessments of EAS performance after an alert has been triggered. The Associations respectfully urge that the Commission adopt no additional requirements of the nature suggested.

First, there is no indication that additional testing of the EAS is necessary or useful, and it would be contrary to the Commission's previous conclusion that, when it comes to EAS testing, less is more. *See Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order, 10 FCC Rcd 1786 (1994), ¶¶ 107-110 (replacing audible testing requirements with "unobtrusive testing" requirements to enhance the integrity and utilization of EAS); *see also The New Emergency Alert System*, Fact Sheet, 1997 FCC LEXIS 137 (Jan. 1, 1997) (explaining to the public in 1997 that the new EAS system would use "less obtrusive weekly tests and shorter, monthly on-air tests" than the old EBS). In short, the Associations are concerned about the desensitization of viewers and listeners that would come from any additional on-air testing.

Second, there is no indication that a certification of compliance is warranted. Current Commission rules already require stations to log EAS tests and activations, and those logs are subject to Commission inspection. The efficacy of the logging-and-inspection system is apparent: the Enforcement Bureau's website is replete with enforcement actions taken against EAS participants that fail to follow the rules. Neither the EAS system, nor EAS participants, nor the public would derive any additional benefit from the imposition of a compliance certification. Instead, all EAS stakeholders would benefit from greater EAS training and coordination.

Third, the Associations do not support "assessments of EAS performance after an alert has been triggered." Significantly, it is unclear which performance elements or results would be the subject of such assessments. In addition, the goals of such assessments are unclear. To the extent that assessments would be used by the Commission as a further enforcement tool, the

Associations oppose them, as it is clear that the Commission already has adequate enforcement mechanisms available.

In the event the Commission determines that there is an objectively measurable standard by which to assess EAS performance, the Associations respectfully urge the Commission to take into account at least the following four circumstances in making any EAS assessments: (1) in determining whether to air any particular EAS alert, each station uses its own good faith judgment to determine whether the alert is of sufficient interest to its viewers or listeners, and any EAS assessment should account for such judgment; (2) stations often "supersede" EAS alerts with their own independent news reporting—for example, weather conditions often prompt stations to interrupt regular programming to provide "wall-to-wall" weather coverage with far greater detail of the conditions, the relevant geographic locations, and the severity and duration of the event, and such coverage often begins prior to, and continues long after, the issuance of an EAS alert—any EAS assessment should account for such coverage; (3) participation in state EAS plans is voluntary and EAS plans differ from jurisdiction to jurisdiction, and any EAS assessment should account for such differences; and (4) a principal goal of EAS is the distribution of timely information to the public, but members of the public are ultimately responsible for their own choices (e.g., whether to seek shelter during a storm or move to the interior of a building during a tornado warning)—any EAS assessment should account for the (sometimes imprudent) personal choices made by members of the public.

E. Cable EAS Override

Although the Commission has not sought comment in this proceeding on the issue of cable EAS overrides, the Associations respectfully request that the Commission consider this important issue at the appropriate time. Specifically, the Associations urge the Commission to adopt rules to prohibit EAS messages originated by cable companies from "overriding" the broadcast station signals retransmitted by cable companies. Some cable companies transmit their original EAS messages *only* over non-broadcast channels, thus not interrupting the programming, including EAS messages, broadcast by local television stations. Other cable companies, however, do not and, instead, send their originated EAS messages across *all*

channels, thus interrupting and overriding the signals and programming carried from local broadcast stations.

These interruptions are confusing and annoying to viewers of broadcast channels. Cable-originated EAS messages may interrupt and override the EAS messages being broadcast by local stations. Even when not interrupting a specific broadcast EAS message, it is confusing and annoying to viewers to have multiple EAS messages transmitted on the same broadcast station channel—with perhaps conflicting messages—within a matter of seconds. This can only lead to the desensitization of EAS messages, which in turn compromises the valuable public safety benefits of these messages. The Commission should expressly prohibit cable companies, upon request by local stations, from overriding broadcast station channels with cable-originated EAS messages.

III.
Conclusion

For the reasons stated above, the Associations respectfully request the Commission refrain from imposing rules that would (1) allow non-gubernatorial state, tribal, county, or local officials from issuing mandatory EAS alerts, (2) require broadcasters to translate or correct pre-translated non-English EAS messages, (3) conflate the Part 11 EAS rules with the Section 79.2 emergency access rules, or (4) impose any new EAS testing, certification, or assessment requirements on broadcasters.

December 3, 2007

Respectfully submitted,

OHIO ASSOCIATION OF BROADCASTERS

VIRGINIA ASSOCIATION OF BROADCASERS

NORTH CAROLINA ASSOCIATION OF BROADCASTERS

By: /s/ Stephen Hartzell

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
Stephen Hartzell
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wachovia Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Their Attorneys