

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS
AND THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. IN
RESPONSE TO SECOND FURTHER NOTICE OF PROPOSED
RULEMAKING REGARDING EMERGENCY ALERT SYSTEM**

The National Association of Broadcasters (“NAB”)¹ and the Association for Maximum Service Television, Inc. (“MSTV”)² hereby submit these brief reply comments in response to the Commission’s *Second Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned proceeding.³ While NAB and MSTV concur with many commenters that digital, robust, and reliable system for the timely dissemination of emergency information is the common goal for modernizing the Emergency Alert System (“EAS”), some of the proposals may

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, the Courts, and other federal agencies.

² MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

³ *In the Matter of Review of the Emergency Alert System*, EB Docket No. 04-296, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 07-109 (rel. July 12, 2007) (“*Second R&O/Further Notice*”).

have unintended and adverse consequences to public warning and public safety. Calls for mandatory carriage of EAS alerts initiated by all “local and state government entities”⁴ are particularly problematic. Contrary to the assertions of the National Association of Telecommunications Officers and Advisors, concerns about overuse or misuse of EAS are not “illusory.”⁵ Broadcasters remain committed to their role in serving their communities; however, that role currently extends well beyond the EAS architecture. In an era of instantaneous communications, those in the broadcast audience are provided with a wealth of emergency and critical information through regular broadcast programming that dwarfs the information provided through EAS.⁶ For example, during severe thunderstorms and tornadoes, local meteorologists can give block-by-block updates on tracking storms, and provide evacuation or shelter on a hyper-localized basis. If that highly specific, information is interrupted by a generalized local or state-initiated EAS alert, the result could create, at best, confusion and at worst, could preclude the public’s access to necessary life-saving information. This interruption of live broadcast of emergency information is akin to the cable override problem encountered in many local television markets.⁷

⁴ Comments of the California Public Utilities Commission, *et al.*, EB Docket No. 04-296 at 2 (Dec. 3, 2007).

⁵ Comments of the National Association of Telecommunications Officers and Advisors, EB Docket No. 04-296 at 4 (Dec. 3, 2007).

⁶ While we respectfully disagree that open captioning should be required for all emergency situations, NAB and MSTV look forward to working with interested and the Commission to explore means by which modern public warning can ensure access to all persons, including those with disabilities. *See* Comments of Telecommunications for the Deaf, Inc., *et al.*, EB Docket No. 04-296 at 5 (Dec. 3, 2007).

⁷ NAB and MSTV maintain that cable overrides violates federal law. Section 614(b)(3)(B) of the Communications Act *explicitly requires* that cable systems carrying television stations must “carry the entirety of the program schedule” of such stations, unless carriage of specific

Moreover, local and state officials, during emergencies, are unlikely to have the time or resources to properly coordinate with local broadcasters, each other, federal agencies or other cross-border jurisdictions. We share the concerns of TFT, Inc., that many states, due to a “lack of planning and training” are not well positioned to receive and transmit EAS alerts.⁸ And as aptly noted by the Ohio, Virginia, and North Carolina Associations of Broadcasters, the potential for “conflicting, duplicative, or geographically irrelevant EAS alerts” is high if broadcasters are required to carry EAS warnings triggered by state or local officials other than the governor or his or her designee.⁹ Further, we agree that state plans already provide the appropriate mechanism whereby local emergency managers can trigger EAS.¹⁰ But without careful coordination through a state plan, even live coverage of the President or a Governor could be overridden by an automated EAS alert. As the lessons of September 11 demonstrate, the President and other major government leaders have almost instantaneous access to media without the assistance of EAS. Nearly every broadcaster interrupted regular programming to deliver round-the-clock coverage, and the major television networks and their affiliates suspended regular programming for several days following the terrorist attacks.¹¹ A local

programming is prohibited under the Commission’s network nonduplication, syndicated program exclusivity or sports blackout rules; and Section 614(b)(3)(A) requires cable operators to carry “in its entirety . . . the primary video [and] accompanying audio . . . of each of the local commercial television stations are carried on a cable system.” We therefore urge the Commission to revise its EAS rules to mandate only “selective override” of broadcast stations for both the digital and analog cable.

⁸ Comments of TFT, Inc., EB Docket No. 04-296 at 2 (Dec. 3, 2007).

⁹ Comments of Ohio, Virginia, and North Carolina Associations of Broadcasters, EB Docket No. 04-296 at 6 (Dec. 3, 2007);

¹⁰ *Id.* at 7.

¹¹ See Lisa de Moraes, *Wall-to-Wall Coverage Close to Setting A Record*, Washington Post, Sept. 15, 2001, at C7.

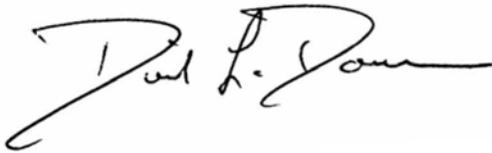
official could inadvertently interrupt live coverage of the President by triggering an EAS message. NAB and MSTV therefore urge join the Association of Public Television Stations¹² and Verizon in urging the Commission to limit the authority to transmit EAS the governor of each state or his or her individual designee. No other state or local officials should have such power, and the power should only be exercised in the highest emergencies, and only after the State's EAS plan has been approved by both the FCC and the Federal Emergency Management Agency ("FEMA"). Moreover, we urge the Commission to work in concert with FEMA, state and local officials to tailor requirements suitable for different areas of the country and different audiences. Such deference to non-federal authorities, properly coordinated by the Commission and FEMA, will result in a more flexible and proactive EAS system.

Finally, as the broadcasting industry has demonstrated on repeated occasions in the past, it and its Associations wholeheartedly support efforts to improve EAS, including means by which persons with disabilities and Spanish and other non-English language speakers can be effectively alerted in times of emergency. NAB and MSTV look forward to continued dialogue

¹² See Comments of the Association of Public Television Stations, EB Docket No. 04-296 at 2-5 (Dec. 3, 2007); comments of Verizon, EB Docket No. 04-296 at 2 (Dec. 3, 2007)

regarding the most effective means to accomplish these goals in a manner consistent with the practicalities and challenges of our diverse nation.¹³

Respectfully submitted,



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¹³ See Comments of Alaska Broadcasters Association and Alaska's State Emergency Communications Committee, EB Docket No. 04-296 at 2-3 (discussing the linguistics challenges of native Alaskans); Comments of Sage Alerting Systems, Inc., EB Docket No. 04-296 at 1 (discussing feasibility of broadcasters to provide real-time or even near real-time translation of messages).