

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

To: Office of the Secretary

**JOINT REPLY COMMENTS OF THE
NAMED STATE BROADCASTERS ASSOCIATIONS**

Alabama Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Georgia Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Dakota Broadcasters Association, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, South Carolina Broadcasters Association, South Dakota Broadcasters Association,

Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Washington State Association of Broadcasters, and Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters (collectively, the “State Associations”), by their attorneys in this matter, hereby submit their Joint Reply Comments in response to the *Further Notice of Proposed Rule Making* in the above-captioned proceeding pertaining to the Commission’s Emergency Alert System (“EAS”).¹

Introduction

In response to the Commission’s *Further NPRM*, the State Associations reiterated their strong support for the Commission’s ongoing efforts to ensure that *all* Americans have reasonable access to emergency information. The comments filed in this proceeding share this laudable goal. However, the majority of comments in this proceeding, including those filed by the State Associations, urge the Commission to proceed cautiously. Proceeding in this way recognizes (i) the need to coordinate with, and assess the impact of any changes on, the numerous governmental and private stakeholders (a number of whom have not filed comments in this stage of the proceeding) who play a critical role in protecting the lives and property of everyone, and (ii) the legitimate concern that any changes be reasonable and workable and actually facilitate, rather than impede, the timely flow of relevant emergency information to affected members of the public.

Extending EAS Authority to Local, County, Tribal and other State Governmental Entities

The Commission’s *Further NPRM* asks whether the EAS rules should be amended to require EAS participants to transmit messages issued by “local, county, tribal, or other state

¹ *Review of the Emergency Alert System*, Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007) (“*Further NPRM*”).

governmental entities.”² The bulk of the comments in this proceeding overwhelmingly oppose such a proposal. The State Associations agree with NAB, MSTV, the Ohio, Virginia, and North Carolina Associations of Broadcasters (“Ohio, Virginia, North Carolina Broadcasters”), and the Alaska Broadcasters Association, among others, that have urged the Commission not to grant EAS authority beyond the authority that the President of the United States and the Governor of the various states and their individual designees already enjoy, and in no event should broadcast stations be mandated to air EAS messages originated by state or local authorities.

It was only recently that the FCC granted Governors and their designees the Federal right to mandate broadcast disseminate of EAS alerts to the general public. Therefore, it is unlikely that the Governors across the country have completed their evaluation and planning on how best to use this new Federal authority. That process is complicated because of the thorny issues involved. Under what circumstances will each Governor want to use such authority? Who will his or her “designee” be? Will the “designees” be different depending upon the nature of the emergency event or the location of the event? Will their “designees” include representatives of “local, county, tribal, or other state governmental organizations?” At the present time, each Governor has only the President of the United States to “compete” against for access to the EAS system in their state. Under the recently granted authority, each Governor has broad discretion and control on how best to implement that new authority. However, if the Commission were to grant EAS authority to virtually every local, county, tribal and other state governmental agency, the authority newly granted to the various Governors will become unworkable and thus virtually meaningless because each Governor will have to “compete” with hundreds, if not thousands, of governmental entities for access to the “EAS microphone.” The wiser course is to allow each

² *Further NPRM* at ¶ 74.

Governor to chart the EAS course for his or her state and then to evaluate whether granting such authority to other authorities in each state is necessary or prudent. But now is not the time.

Given the facts (i) that it is not yet known how each of the Governors and their designees intend to use this new Federal authority, and (ii) the absence of any evidence that state and local authorities have had problems accessing the current EAS system, no change should be made in the flexible, voluntary nature of the EAS system architecture at the state and local levels. As the Ohio, Virginia, North Carolina Broadcasters persuasively state, “the public has been extremely well served by current EAS flexibility which allows stations to decide whether to carry state or local alerts” and there is no evidence in the record to suggest that “public safety is compromised by the flexible nature of the current system.”³ Similarly, the Alaska Broadcasters Association demonstrates that because “the current structure for initiating mandatory alerts provides such confidence ... no reason exists to change it.”⁴ Other commenters in this proceeding similarly urge the Commission not to undermine the voluntary state and local EAS approach that is working so effectively.⁵

Moreover, there are real downside risks if EAS is made mandatory at the state and local levels, particular when it is not known how each Governor and designee intends to use their newly granted Federal authority over EAS. The State Associations, like NAB, MSTV, and the Association of Public Television Stations, are concerned that requiring the airing of a significant number of EAS alerts from multiple sources “would lead to public confusion and desensitization to the importance of real emergencies, in a ‘sky is falling’ scenario that would impede the key

³ Comments of Ohio, Virginia, North Carolina Broadcasters at 5-6.

⁴ Comments of Alaska Broadcasters Association at 5.

⁵ *See, e.g.*, Comments of National Association of Broadcasters (“NAB”) and the Association of Maximum Service Television, Inc. (“MSTV”) at 5-7; Comments of The Association of Public Television Stations at 4.

goals of EAS.”⁶ If every local emergency manager were suddenly given direct control over a station’s airwaves through a mandatory EAS system, it can be expected that use of the system will skyrocket and stations will lose control over whether the EAS messages are timely or even relevant to their audience. The combination of these problems will cause the public to become inured to alert messages and to “tune out,” thus rendering the system ineffective for times when it is truly needed. As the Commission itself recognized in the *Further NPRM*, “requiring EAS participants to receive emergency alerts directly from state and 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.”⁷ Given the potential for a limitless number of activations, and the risk that overexposure could dilute the effectiveness of EAS alerts issued during major emergencies, the Commission should not expand mandatory EAS alerts to include state and local officials beyond state governors and their designees.

Requiring EAS activation below the Presidential and gubernatorial level would also raise a number of practical problems that would be very difficult to resolve satisfactorily, such as determining which local authorities have the ability to demand access, how long the local authorities should be able to control access, and what system would be used to ensure that local authorities do not abuse the process. The NAB and MSTV point out that such complex issues will be particularly difficult to resolve for “local, tribal and lesser state and municipal officials, who may not have the training, expertise of equipment to receive and transmit EAS alerts....”⁸ For all of these reasons, stations should not be required to air the state and local EAS alerts below the gubernatorial level. The voluntary system works well today. A mandatory

⁶ Comments of the NAB/MSTV at 6.

⁷ *Further NPRM* at ¶56.

⁸ Comments of NAB/MSTV at 6.

requirement is thus unnecessary and, for the reasons mentioned above, will be counterproductive.

Provision of Emergency Information to Non-English Speakers

The *Further Notice* also seeks comment on the provision of emergency information to persons who do not speak English. As the record in the proceeding makes abundantly clear, broadcasters strongly support the Commission's goal of developing solutions to ensure that non-English speaking citizens have timely access to emergency information in the appropriate language. But, as the State Associations and others have demonstrated in comments in this proceeding, the mandatory provision of multilingual EAS messages poses a number of technical and logistical challenges which are compounded by the many geographic and demographic differences that exist in the United States, and the unique differences in needs and resources which vary from state to state and locality to locality. In light of these challenges, the State Associations fully support the joint efforts of the Independent Spanish Broadcasters Association, the Office of Communications of the United Church of Christ, Inc., the Minority Media and Telecommunications Counsel, the NAB and the Florida Association of Broadcasters to drill down on the problem and to see if they can come up with constructive approaches to overcoming each of the challenges that the Commission's goal involves.⁹ The various stakeholders are currently engaged in active discussions seeking to develop a consensus plan to determine the best way to provide emergency alerts to those who are unable to understand English. The State Associations continue their commitment to work with the Commission, emergency management authorities around the country, the NAB, citizen and public interest groups, and others, on this

⁹ See Comments of NAB/MSTV at 7.

very important matter and urge the Commission to encourage continued discussions among the various stakeholders. During the period of those meetings, the Commission should not adopt any new rules or policies that would prejudice or conflict with the outcome of those important meetings.

Respectfully submitted,

**NAMED STATE BROADCASTERS
ASSOCIATIONS**

By: _____/s/_____
Richard R. Zaragoza
Paul A. Cicelski

PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Their Attorneys in this Matter

Dated: December 17, 2007