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

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In the Matter of)

The Commercial Mobile Alert System)

PS Docket No. 07-287

FCC 08-184

THIRD REPORT AND ORDER

Adopted: August 7, 2008

Released: August 7, 2008

By the Commission:

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I. INTRODUCTION

1. This Commercial Mobile Alert System Third Report and Order (CMAS Third Report and Order) represents our next step in establishing a Commercial Mobile Alert System (CMAS), under which Commercial Mobile Service (CMS) providers¹ may elect to transmit emergency alerts to the public. We take this step pursuant to the mandate of Section 602(b) of the WARN Act,² which requires the Commission to adopt rules allowing any CMS provider to transmit emergency alerts to its subscribers; requires CMS providers that elect, in whole or in part, not to transmit emergency alerts to provide clear and conspicuous notice at the point of sale of any CMS devices that they will not transmit such alerts via that device; and requires CMS providers that elect not to transmit emergency alerts to notify their existing subscribers of their election.

2. In this CMAS Third Report and Order, we adopt rules implementing Section 602(b) of the WARN Act. Specifically, we:

- adopt notification requirements for CMS providers that elect not to participate, or to participate only in part, with respect to new and existing subscribers;
- adopt procedures by which CMS providers may elect to transmit emergency alerts and to withdraw such elections;
- adopt a rule governing the provision of alert opt-out capabilities for subscribers;
- allow participating CMS providers to recover costs associated with the development and maintenance of equipment supporting the transmission of emergency alerts; and
- adopt a compliance timeline under which participating CMS providers must begin CMAS deployment.

3. By adopting these rules, we take another significant step towards achieving one of our highest priorities – to ensure that all Americans have the capability to receive timely and accurate alerts, warnings and critical information regarding disasters and other emergencies irrespective of what communications technologies they use. As we have learned from recent disasters, including Hurricane Katrina in 2005 and the recent floods that have impacted our Midwestern and Southern states, it is essential to enable Americans to take appropriate action to protect their families and themselves from loss of life or serious injury. This CMAS Third Report and Order also is consistent with our obligation under Executive Order 13407³ to “adopt rules to ensure that communications systems have the capacity to

¹ For purposes of Section 602 of the Warning, Alert and Response Network (“WARN”) Act, Congress specifically defined “commercial mobile service” as that found in section 332(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 332(d)(1) (the term “commercial mobile service” means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission). Warning, Alert and Response Network (“WARN”) Act, Title VI of the Security and Accountability For Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006).

² WARN Act, § 602(b).

³ Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006) (*Executive Order 13407*). In *Executive Order 13407*, the President stated that it was the “policy of the United States to have an effective, reliable, integrated, flexible and comprehensive system to alert and warn the American people in situations of war, terrorist attack, natural disaster, or other hazards to public safety and well-being . . .” and established certain obligations in this regard for the Department of Homeland Security, the National Oceanic & Atmospheric Administration (NOAA) and the FCC.

transmit alerts and warnings to the public as part of the public alert and warning system,"⁴ and our *mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communication.*⁵

4. This CMAS Third Report and Order is the latest step in the Commission's ongoing effort to enhance the reliability, resiliency, and security of emergency alerts to the public by requiring that alerts be distributed over diverse communications platforms. In the 2005 EAS First Report and Order, we expanded the scope of the Emergency Alert System (EAS) from analog television and radio to include participation by digital television and radio broadcasters, digital cable television providers, Digital Audio Radio Service (DARS), and Direct Broadcast Satellite (DBS) systems.⁶ As we noted in the Further Notice of Proposed Rulemaking that accompanied the EAS First Report and Order, wireless services are becoming equal to television and radio as an avenue to reach the American public quickly and efficiently.⁷ As of June 5, 2008, the wireless industry reports that approximately 260 million Americans subscribed to wireless services.⁸ Wireless service has progressed beyond voice communications and now provides subscribers with access to a wide range of information critical to their personal and business affairs. In times of emergency, Americans increasingly rely on wireless telecommunications services and devices to receive and retrieve critical, time-sensitive information. A comprehensive wireless mobile alerting system would have the ability to alert people on the go in a short timeframe, even where they do not have access to broadcast radio or television or other sources of emergency information. Providing critical alert information via wireless devices will ultimately help the public avoid danger or respond more quickly in the face of crisis, and thereby save lives and property.

II. BACKGROUND

5. On October 13, 2006, the President signed the Security and Accountability For Every Port (SAFE Port) Act into law.⁹ Title VI of the SAFE Port Act, the WARN Act, establishes a process for the creation of the CMAS whereby CMS providers may elect to transmit emergency alerts to their subscribers. The WARN Act requires that we undertake a series of actions to accomplish that goal, including requiring the Commission, by December 12, 2006 (within 60 days of enactment) to establish and convene an advisory committee to recommend technical requirements for the CMAS.¹⁰ Accordingly, we formed the Commercial Mobile Service Alert Advisory Committee (CMSAAC), which had its first meeting on December 12, 2006.¹¹ The WARN Act further required the CMSAAC to submit its recommendations to the Commission by October 12, 2007 (one year after enactment).¹² The CMSAAC submitted its report on that date.

⁴ *Executive Order 13407*, § 3(b)(iii).

⁵ See 47 U.S.C. § 151.

⁶ See Review of the Emergency Alert System, EB Docket No. 04-296, *First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 18625 (2005) (EAS First Report and Order and Further Notice).

⁷ See *id.* at 18653 ¶ 69.

⁸ CTIA The Wireless Association, at <http://www.ctia.org/> (site last visited on June 5, 2008).

⁹ See SAFE Port Act, *supra* note 1.

¹⁰ WARN Act, § 603(a), (d).

¹¹ See Notice of Appointment of Members to the Commercial Mobile Service Alert Advisory Committee, Agenda for December 12, 2006 Meeting, *Public Notice*, 21 FCC Rcd 14175 (PSHSB 2006).

¹² WARN Act, § 603(c).

6. On December 14, 2007, we released a Notice of Proposed Rulemaking requesting comment on issues related to implementation of Section 602 of the WARN Act.¹³ The Commission has received over 60 comments and ex parte filings.¹⁴ On April 9, 2008, we released a First Report and Order,¹⁵ adopting technical standards, protocols, processes and other technical requirements “necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts.”¹⁶ On July 8, 2008, we adopted a Second Report and Order establishing rules requiring noncommercial educational and public broadcast television station licensees and permittees to install necessary equipment and technologies on, or as part of, the broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by CMS providers that have elected to participate in the CMAS.¹⁷ This Third Report and Order implements further WARN Act requirements consistent with the Commission’s goal of establishing an effective and efficient CMAS.

III. DISCUSSION

A. Notification by CMS Providers Electing Not to Transmit Alerts

1. Notification at Point of Sale

7. *Background.* Section 602(b)(1) provides that “within 120 days after the date on which [the Commission] adopts relevant technical standards and other technical requirements pursuant to subsection (a), the Commission shall complete a proceeding to allow any licensee providing commercial mobile service ... to transmit emergency alerts to subscribers to, or users of, the commercial mobile service provided by such licensee.”¹⁸ Pursuant to this section, the Commission must “require any licensee providing commercial mobile service that elects, in whole or in part, under paragraph (2) [Election] not to transmit emergency alerts to provide clear and conspicuous notice at the point of sale of any devices with which its commercial mobile service is included, that it will not transmit such alerts via the service it provides for the device.”¹⁹

8. In its October 12, 2007 report, the CMSAAC recommended that carriers retain the discretion to determine how to provide specific information regarding (1) whether or not they offer wireless emergency alerts, and (2) which devices are or are not capable of receiving wireless emergency alerts, as well as how to tailor additional notice, if necessary, for devices offered at other points of sale.²⁰ Nevertheless, the CMSAAC recommended specific language to be used by carriers that elect, in part or in

¹³ The Commercial Mobile Alert System, PS Docket No. 07-287, *Notice of Proposed Rulemaking*, 22 FCC Rcd 21975 (2007) (*CMAS NPRM*).

¹⁴ A list of the parties commenting on the *CMAS NPRM* is attached at Appendix B.

¹⁵ The Commercial Mobile Alert System, PS Docket No. 07-287, *First Report and Order*, 23 FCC Rcd 6144 (2008) (*“CMAS First Report and Order”*).

¹⁶ WARN Act, § 602(a).

¹⁷ The Commercial Mobile Alert System, PS Docket No. 07-287, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-164 (rel. July 8, 2008) (*“CMAS Second Report and Order”*).

¹⁸ WARN Act, § 602(b)(1).

¹⁹ *Id.* at § 602(b)(1)(B).

²⁰ CMSAAC Recommendations, § 3.4.1.

whole, not to transmit emergency alerts.²¹ With respect to carriers who intend to transmit emergency alerts “in part,” the CMSAAC-recommended language reads as follows:

Notice Regarding Transmission of Wireless Emergency Alerts (Commercial Mobile Alert Service)

[[WIRELESS PROVIDER]] has chosen to offer wireless emergency alerts within portions of its service area, as defined by the terms and conditions of its service agreement, on wireless emergency alert capable devices. There is no additional charge for these wireless emergency alerts.

Wireless emergency alerts may not be available on all devices or in the entire service area, or if a subscriber is outside of the [[WIRELESS PROVIDER’S]] service area. For details on the availability of this service and wireless emergency alert capable devices, please ask a sales representative, or go to [[INSERT WEBSITE URL]].

Notice required by FCC Rule XXXX (Commercial Mobile Alert Service).

The CMSAAC recommended the following language for carriers that “in whole” elect not to transmit emergency alerts:

NOTICE TO NEW AND EXISTING SUBSCRIBERS REGARDING TRANSMISSION OF WIRELESS EMERGENCY ALERTS (Commercial Mobile Alert Service)

[[WIRELESS PROVIDER]] presently does not transmit wireless emergency alerts.

Notice required by FCC Rule XXXX (Commercial Mobile Alert Service).

In the *CMAS NPRM*, we sought comment on the CMSAAC recommendation and whether it sufficiently addressed the requirements of the statute.²² We also sought comment on the CMSAAC’s suggestion that, because the WARN Act does not impose a notice requirement on CMS providers who have elected to participate in full, the Commission should not adopt a notice requirement for those providers.²³ We also sought comment on the definition of “any point of sale,” which we specified as any means – retail, telephone, or Internet-based – by which a service provider facilitates and promotes its services for sale to the public.²⁴ We suggested that third party, separately branded resellers also would be subject to point of sale notification requirements.²⁵

9. We also requested comment on what constitutes clear and conspicuous notice at the point of sale. For example, we asked whether a general notice in the form of a statement attesting to the election not to provide emergency alerts would satisfy the statutory requirement and whether the statutory language requires the posting of a general notice in clear view of subscribers in the service provider’s stores, kiosks, third party reseller locations, web site (proprietary or third party), and any other venue through which the service provider’s devices and services are marketed or sold.²⁶ We also asked what

²¹ *Id.* at § 3.4.2.

²² *CMAS NPRM*, 22 FCC Rod at 21984 ¶¶ 28-29.

²³ *Id.*

²⁴ *Id.* at 21984 ¶ 27.

²⁵ *Id.*

²⁶ *Id.* at 21984 ¶ 28.

form the general notice should take.²⁷ In addition, we asked whether a service provider meets the condition of clear and conspicuous notification if the service provider requires subscribers to read and indicate their understanding that the service provider does not offer emergency alerts.²⁸

10. *Comments.* Many commenters supported the CMSAAC's recommendation that CMS providers be afforded discretion in determining how best to provide notice at the point of sale.²⁹ For example, SouthernLINC argues that "general guidance from the FCC regarding suggested format and procedures for providing notice to subscribers would be sufficient to meet the requirements of the WARN Act," but that we should "refrain from adopting specific requirements for each carrier, regardless of the carrier's size, business model, or customer preferences."³⁰ CTIA agrees, stating that "a single type of notice is not appropriate in all situations," and that different points of sale and business circumstances lend themselves more readily to particular notice solutions.³¹ CTIA further argues that, rather than focusing on the mechanics of the notice, the Commission should encourage wireless providers to "furnish customers with the information they need to make an informed decision."³² CTIA argues that a "combination of business incentive and statutory requirements" will ensure that customers are given adequate notice at the point of sale.³³ This is particularly the case, argues CTIA, where a wireless carrier intends to deploy the CMAS on a market-by-market basis, in which case a standardized message "may lead to confusion and dissatisfaction" among customers.³⁴ MetroPCS argues that any discretion given to carriers with respect to the provision of "clear and conspicuous" notice also should extend to how carriers provide notice through their "indirect distribution channels," and that since indirect distribution is not owned or operated by the carriers, "carriers should not be held responsible for the indirect distribution retail outlet's failure to follow a carrier's directives, provided that the provider has put the distributor on notice and took reasonable steps to ensure prompt compliance."³⁵

11. Other commenters from the wireless industry also expressed support for the CMSAAC's recommended text language.³⁶ MetroPCS supports the adoption of a "safe harbor" under which carriers that use the model text developed by the CMSAAC are deemed to have provided adequate notice.³⁷ Wireless industry commenters also agreed with the CMSAAC that CMS providers electing to participate

²⁷ For example, we asked whether service providers should be required to include a placard of a particular size at the point of sale, whether notification in the service provider's service subscription terms and conditions would provide sufficient notice or whether each device sold by the service provider should include a notice that emergency alerts are not included as a feature of the device or the service provider's service. *CMAS NPRM*, 22 FCC Rcd at 21984 ¶ 28.

²⁸ *Id.*

²⁹ See, e.g., RCA Comments at 5; AAPC Comments at 9; SouthernLINC Comments at 11; AT&T Comments at 11; MetroPCS Comments at 6; Alltel Reply Comments at 5.

³⁰ SouthernLINC Comments at 12.

³¹ CTIA Comments at 11-12.

³² *Id.* at 12.

³³ *Id.* at 11.

³⁴ *Id.* at 12-13.

³⁵ See MetroPCS Comments at 7.

³⁶ See RCA Comments at 5; AT&T Comments at 12.

³⁷ MetroPCS Comments at 7.

in the CMAS should not be required to disclose such participation to subscribers.³⁸ AAPC, for example, argues that such a requirement is unnecessary because participating CMS providers will have every incentive to advertise and promote the fact of their participation.³⁹

12. Other commenters argue that the Commission should adopt specific notice requirements. California Public Utilities Commission (CPUC) recommends that CMS providers be required to provide notice to and receive confirmations from new customers acknowledging their understanding that the service provider does or does not offer emergency alerts.⁴⁰ CPUC also recommends that notices be in large print and placed prominently on placards or their equivalent and that each device sold by service providers should include a notice that emergency alerts are or are not included as a feature of the device or the service provider's service.⁴¹ Wireless Rehabilitation Engineering Research Center argues that such procedures should also include audio and video procedures (e.g., provision of CMAS information in large print, Braille and audio formats) so that persons with disabilities will be fully informed about the CMAS.⁴² It also recommends that CMS providers be required to instruct subscribers that technical limitations might prevent alert message reception even in areas with signal coverage and that such no-alert areas should be detailed in coverage maps.⁴³

13. *Discussion.* As an initial matter, we find that the statute does not require CMS providers to provide notice in the event they elect to transmit alerts to all subscribers. For those carriers that have elected in whole or in part not to transmit emergency alerts, we find that the statute requires that they "provide clear and conspicuous notice at point-of sale" of their non-election or partial election to provide emergency alerts. Additionally, we find that the statute provides specific and limiting guidance. Therefore, we agree with commenters that a one-size-fits-all approach to notification may not adequately address the range of methods by which service providers communicate with their customers.⁴⁴ Nevertheless, the CMSAAC has crafted plain language notifications that we believe are consistent with the intent of the statute and which convey concisely a service provider's non-election or partial election at the point of sale. We find that this language will convey sufficient information and serve as the minimum standard for clear and conspicuous notice under the WARN Act. Our decision allows, but does not require, CMS providers to provide their customers with additional information relating to CMAS. Specifically, CMS providers electing to transmit alerts "in part" shall use the following notification, at a minimum:

Notice Regarding Transmission of Wireless Emergency Alerts (Commercial Mobile Alert Service)

[[CMS PROVIDER]] has chosen to offer wireless emergency alerts within portions of its service area, as defined by the terms and conditions of its service agreement, on wireless emergency alert capable devices. There is no additional charge for these wireless emergency alerts.

³⁸ See, e.g., MetroPCS Comments at 7.

³⁹ AAPC Comments at 9.

⁴⁰ CPUC Comments at 22.

⁴¹ *Id.* at 23.

⁴² Wireless RERC Comments at 13.

⁴³ *Id.* at 13-14.

⁴⁴ See, e.g., SouthernLINC Comments at 12; CTIA Comments at 11-12; MetroPCS Comments at 7.

Wireless emergency alerts may not be available on all devices or in the entire service area, or if a subscriber is outside of the [[CMS PROVIDER's]] service area. For details on the availability of this service and wireless emergency alert capable devices, please ask a sales representative, or go to [[CMS PROVIDER'S URL]].

Notice required by FCC Rule 47 C.F.R. § 10.240 (Commercial Mobile Alert Service).

CMS providers electing in whole not to transmit alerts shall use the following notification language, at a minimum:

NOTICE TO NEW AND EXISTING SUBSCRIBERS REGARDING TRANSMISSION OF WIRELESS EMERGENCY ALERTS (Commercial Mobile Alert Service)

[[CMS PROVIDER]] presently does not transmit wireless emergency alerts.

Notice required by FCC Rule 47 C.F.R. § 10.240 (Commercial Mobile Alert Service).

14. We define the point of sale as the physical and/or virtual environment in which a potential subscriber judges the products and services of the service provider and the point at which the potential subscriber enters into a service agreement with the service provider. Thus, we adopt the CMSAAC recommended language as a minimum standard of necessary information for use by all service providers and their agents in point-of-sale venues, which shall include stores, kiosks, third party reseller locations, web sites (proprietary and third party), and any other venue through which the service provider's devices and services are marketed or sold. Section 601(b)(1)(2) specifically places the responsibility of notification on the CMS provider. Therefore, CMS providers are responsible for ensuring that clear and conspicuous notice is provided to customers at the point-of-sale, regardless of whether third party agents serve as the distribution channel.

15. We expect service providers selling through an indirect distribution channel may meet their statutory requirements through appropriate agency contract terms with their distribution partners or by other reasonable means. However, the statute assigns responsibility for conveying clear and conspicuous notice to CMS providers and, consistent with this statutory language, we decline to shift this burden onto a non-Commission licensed party. Therefore, CMS providers are solely responsible for ensuring that clear and conspicuous notice is provided to customers at the point-of-sale.

16. We decline at this time to adopt specific requirements, such as those put forth by CPUC (*e.g.*, certain sized posters, type-size, brochures) for displaying the notification, preferring instead to allow carriers to create and position notifications that are consistent with the marketing and service notification methodologies in use at any given time by the service provider. Similarly, with respect to Wireless RERC's concerns that procedures be mandated that include audio and video notifications so that persons with disabilities will be fully informed about a service provider's election in part or in whole not to transmit emergency alerts, we believe that service providers will make use of existing facilities and procedures to convey the necessary notification. The statute requires clear and conspicuous notification, which we interpret to include the provision of notification that takes into account the needs of persons with disabilities. Thus, clear and conspicuous notification for persons with disabilities would include enhanced visual, tactile or auditory assistance in conveying the required notification. However, we agree with commenters and the CMSAAC that wireless service providers are in the best position to determine the proper method of providing this notice and leave it to the discretion of providers to provide clear and

conspicuous notice at the point-of-sale.⁴⁵ In addition, our decision allows, but does not require, additional information regarding the technical limitations of CMAS alerts, as requested by Wireless RERC (*i.e.*, that technical limitations might prevent alert message reception even in areas with signal coverage).

17. We disagree with the concerns raised by some commenters that, without a written acknowledgement from a subscriber, notification requirements under the WARN Act are not met.⁴⁶ The statute requires the CMS provider to provide clear and conspicuous notice, but does not require the Commission to mandate an affirmative response from customers. Service agreements usually define the carrier's and subscriber's rights and responsibilities and describe any limitations of the service or products offered. We expect that many CMS providers will provide clear and conspicuous notice in their service agreements. To the extent they do so, subscribers in effect acknowledge such notice by signing the agreement. However, we do not require that this notification be placed into a service agreement, nor do we require that CMS providers otherwise obtain subscriber acknowledgements. We find that by implementing the statutory requirement of clear and conspicuous notice at the point of sale, adopting an acknowledgment requirement would be unnecessary.

2. Notifications to Existing Subscribers

18. *Background.* Section 602(b)(1)(C) states that the Commission shall "require any licensee providing commercial mobile service that elects under paragraph (2) not to transmit emergency alerts to notify its existing subscribers of its election."⁴⁷ In the *CMAS NPRM*, we asked whether CMS providers should be granted the discretion to determine how to provide notice of non-election, including the methods and duration of a service provider's notification to existing subscribers of an election. We also asked about the use of existing marketing and billing practices for purposes of notification, and whether service providers should be required to notify existing subscribers by sending them a separate notice of a change in their terms and conditions of their service.⁴⁸ In addition, we asked how service providers should notify pre-paid customers. We also asked whether service providers should be required to demonstrate to the Commission that they have met this requirement and, if so, how. Finally, we asked whether service providers should be required to maintain a record of subscribers who have acknowledged receipt of the service provider's notification.⁴⁹

19. *Comments.* Wireless service providers generally argue that the Commission should provide CMS providers with flexibility regarding notice to existing subscribers, and oppose any requirement that CMS providers maintain records of subscriber acknowledgements of the notification.⁵⁰ RCA argues, for example, that a requirement to maintain records of subscriber acknowledgement exceeds the authority granted to the Commission by the WARN Act, which only requires the provision of notice.⁵¹

⁴⁵ See SouthernLINC Comments at 12; CTIA Comments at 11-12; MetroPCS Comments at 7.

⁴⁶ See, e.g., CPUC Comments at 9

⁴⁷ WARN Act, § 602(b)(1)(C).

⁴⁸ *CMAS NPRM*, 22 FCC Rcd at 21984-85 ¶ 30. In this regard, we asked commenters to take into account that some service providers are offering their subscribers electronic billing and do not send a paper bill, and some service providers have opt-out programs allowing their subscribers to decline receiving any direct mailings from the service provider. *Id.*

⁴⁹ *Id.*

⁵⁰ See, e.g., RCA Comments at 5-6; AAPC Comments at 9; SouthernLINC Comments at 13; AT&T Comments at 12; CTIA Comments at 12; MetroPCS Comments at 7.

⁵¹ RCA Comments at 5-6.

SouthernLINC opposes “the imposition of any burdensome notice or record keeping requirements on regional and small, rural carriers.”⁵² Further, SouthernLINC argues that it would be “unrealistic to expect every customer to affirmatively respond to notices and that it would be counterproductive for carriers to expend tremendous resources in tracking down customers that choose not to respond.”⁵³ MetroPCS argues that the need for flexibility is particularly necessary in the case of pre-paid carriers, who offer flat-rate service and who may not send written bills to their customers or keep current addresses of their customers on-file.⁵⁴ According to MetroPCS, it corresponds with its customers mainly through short message service (SMS) messages delivered to the handsets of its subscribers.⁵⁵

20. Wireless RERC argues that CMS providers should be required to “fully inform” subscribers about the alert capabilities of the service provider’s network and wireless devices, including pre-paid devices.⁵⁶ Further, it argues that labeling on wireless devices or packages of wireless devices should be available in alternative formats, such as large print to aid those with visual impairments, and the Commission should establish “CMAS standards of performance consistent with the Americans with Disabilities Act and other federal regulations regarding providing services to people with disabilities.”⁵⁷ CPUC urges the Commission to require, at a minimum, notification requirements similar to that required for VoIP providers for E911 service, recommending that any notice requirement be flexible so as to allow for the use of direct mailings, paper bills, emails and website notices.⁵⁸ It argues that CMS providers should also be required to verify that acknowledgment was received from incumbent customers at a time and date designated by the Commission but prior to CMAS implementation, including requiring customers “to indicate their understanding that the service provider does not offer emergency alerts and should be required to sign a document (or otherwise demonstrate, such as through electronic acceptance) indicating that they have read and understood the notice [and] [t]his notice should in no case be combined with other direct mailings containing marketing materials.”⁵⁹ In those cases where subscribers declined to receive direct mailings from service providers, CPUC suggests that carriers be required to demonstrate that they have taken reasonable steps to inform subscribers of the decision not to transmit alert messages.⁶⁰

21. CTIA disagrees with the CPUC’s notification recommendations (modeled after the Commission’s VoIP 9-1-1 notification requirements) arguing that, “such rules cannot serve as a guideline because they were created in response to a specific issue that is inapplicable to CMAS.”⁶¹ CTIA argues that those notice requirements “were tailored to the notion that customers may have faulty assumptions

⁵² SouthernLINC Comments at 13.

⁵³ *Id.*

⁵⁴ MetroPCS Comments at 8.

⁵⁵ *Id.*

⁵⁶ Wireless RERC Comments at 14.

⁵⁷ *Id.*

⁵⁸ CPUC Comments at 24.

⁵⁹ *Id.*

⁶⁰ *Id.* at 26.

⁶¹ CTIA Reply Comments at 10.

about the availability of 911 services on their IP-enabled phones,” whereas that concern is not present for CMAS because clear and conspicuous notice will be given to customers at the point of sale.⁶²

22. *Discussion.* We again base our analysis on the explicit language of section 602(b)(1)(C), which requires any licensee providing commercial mobile service that elects not to transmit emergency alerts “to notify its existing subscribers of its election.” As an initial matter, we find that section 602(b)(1)(C) is not limited to CMS providers that elect not to provide emergency alerts in whole. Rather, we interpret section 602(b)(1)(C) in concert with section 602(b)(1)(B) to also require CMS providers that elect not to transmit emergency alerts in part to notify existing subscribers of their election. Thus, we require CMS providers to notify existing subscribers of their election, in whole or in part, not to transmit emergency alerts. Likewise, we require that this notice be “clear and conspicuous.” Additionally, as in the case of notice at point-of-sale, clear and conspicuous notification for persons with disabilities would include enhanced visual, tactile or auditory assistance in conveying the required notification.

23. Turning next to how CMS providers are to make such notifications, we find that the way CMS providers typically convey changes in terms and conditions to their subscribers to be sufficiently analogous. Thus, while an election not to transmit alerts, in whole or in part, is not necessarily a change in an existing term or condition, we require service providers to notify existing subscribers of their election by means of an announcement amending the existing subscriber’s terms and conditions of service agreement. We agree with commenters who suggest that service providers should be given discretion in determining how to provide such notice to existing subscribers.⁶³ Service providers regularly use various means to announce changes in service to subscribers, including, for instance, direct mailing, bill inserts, and other billing-related notifications. In order to ensure that subscribers receive the necessary notification, we require service providers to use, at a minimum, the notification language recommended by the CMSAAC that we have adopted for use in point of sale notification.

24. At this time, we will not require service providers to obtain a written or verbal acknowledgement from existing subscribers. We conclude that Section 602(b)(1)(C) does not require an affirmative response from subscribers. Rather, it requires only that a provider notifies customers of its election not to participate. We agree with SouthernLINC that it would be unrealistic and unwarranted to require an affirmative response from every subscriber.⁶⁴ While we recognize that some service providers allow their subscribers to opt out of receiving any information from the service provider, this usually applies to additional marketing or advertising communications and not to communications relating to changes in the terms and conditions of service. Finally, we recognize that service providers with pre-paid subscribers generally do not send a monthly billing statement to them and in some cases limit any customer notification to SMS messages. Further, service providers may not maintain customer information that can be used to communicate a change to the terms and conditions of service. Accordingly, in order to ensure that pre-paid customers are notified of the carrier’s election, we require carriers to communicate the election through any reasonable means at their disposal, including, but not limited to, mailings, text messaging, and SMS messaging.

⁶² *Id.* at 10-11.

⁶³ See, e.g., RCA Comments at 5-6; AAPC Comments at 9; SouthernLINC Comments at 13; AT&T Comments at 12; CTIA Comments at 12; MetroPCS Comments at 7.

⁶⁴ See SouthernLINC Comments at 13.

3. Timing of Notification

25. *Background.* Under section 602(b)(2)(A), “within 30 days after the Commission issues its order under paragraph (1), each licensee providing commercial mobile service shall file an election with the Commission with respect to whether or not it intends to transmit emergency alerts.”⁶⁵ As discussed above, carriers electing not to transmit, in part or in whole, are required to notify prospective and existing subscribers of their election, but the statute does not state that this notification shall be concomitant with the carrier’s election on its intent to transmit emergency alerts. The record is silent on the timing of notification. Significantly, on May 30, 2008, the Department of Homeland Security’s Federal Emergency Management Agency (FEMA) announced that it will perform the CMAS Alert Aggregator/Gateway role.⁶⁶ FEMA noted, however, that the Alert Aggregator/Gateway system has not yet been designed or engineered,⁶⁷ and did not indicate when it would make the Government Interface Design specifications available to the other CMAS participants. Further, the CMSAAC estimated that development, testing and deployment would require 18-24 months from standardization of the alerting protocol. Thus, a period of time will pass between the election filings and the commercial availability of CMAS.

26. *Discussion.* Accordingly, we find that it would not be in the public interest to require the commencement of customer notification upon the filing of elections with the Commission and well in advance of the commercial availability of CMAS. A principal goal of the customer notification requirement is to ensure that, upon the commercial availability of CMAS and the expected marketing of this service and supporting handsets by carriers that have elected to provide alerts, prospective and existing subscribers of carriers electing not to transmit alerts are fully informed of the limitations of that carrier’s alerting capabilities and better able to make an informed decision about which carriers can provide critical public safety notifications. We believe the relevance of this decision may be lost if notification is delivered to prospective and existing subscribers too far in advance of CMAS’ commercial availability. Further, by not tying the customer notification requirements to the 30-day election requirement, we provide time for CMS providers that may initially elect not to provide alerting capability to alter such decisions, particularly when the future availability and details of the CMAS Alert Aggregator/Gateway are made known. Because commercial availability of alerts is dependent upon the activation of the Alert Aggregator/Gateway system to support transmission of emergency alerts, we find it reasonable to require customer notification upon the availability of the transmission of emergency alerts. Thus, we will require CMS providers that have elected, in whole or in part, not to provide alerts to provide point of sale and existing subscriber notifications as described *supra* to be made no later than 60 days following an announcement by the Commission that the Alert Aggregator/Gateway system is operational and capable of delivering emergency alerts to participating CMS providers. We find that this policy is consistent with the WARN Act. Although section 602(b)(2)(A) of the WARN Act requires that CMS licensees file an election with the Commission within 30 days after the Commission issues this Third Report and Order, section 602(b)(1)(B) does not otherwise provide a specific deadline by which CMS providers must provide notice to subscribers regarding non-election.

⁶⁵ WARN Act, § 602(b)(2)(A).

⁶⁶ Federal Emergency Management Agency, *FEMA to Assume Aggregator/Gateway Role for Nationwide Cell Phone Alert System* (press release), May 30, 2008.

⁶⁷ *Id.*

B. Election Procedures

27. *Background.* Sections 602(b)(2)(A), (B), and (D) establish certain requirements for CMS providers electing to provide or not to provide emergency alerts to subscribers. In several instances, the statute requires service providers to submit notifications to the Commission indicating their election, non-election, or their withdrawal from providing emergency alerts. Section 602(b)(2)(A) requires that, "within 30 days after the Commission issues its order under [section 602(b)], each licensee providing commercial mobile service shall file an election with the Commission with respect to whether or not it intends to transmit emergency alerts."⁶⁸ Similarly, under section 602(b)(2)(B), a service provider that elects to transmit emergency alerts must "notify the Commission of its election" and "agree to transmit such alerts in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission."⁶⁹ Further, section 602(b)(2)(D) requires the Commission to establish procedures relating to withdrawal of an election and the filing of late election notices with the Commission.⁷⁰ Under section 602(b)(2)(D)(i), "the Commission shall establish a procedure for a commercial mobile service licensee that has elected to transmit emergency alerts to withdraw its election without regulatory penalty or forfeiture upon advance written notification of the withdrawal to its affected subscribers."⁷¹ Finally, section 602(b)(2)(D)(ii) requires "the Commission to establish a procedure for a commercial mobile service licensee to elect to transmit emergency alerts at a date later than provided in subparagraph (A)."⁷²

28. In the *CMAS NPRM*, we sought comment on all of these filing requirements. Specifically, we asked for comment on the most efficient method for accepting, monitoring and maintaining service provider election and withdrawal information.⁷³ With respect to the initial election, we asked what CMS providers should provide in their filing if they indicate an intention to provide emergency alerts. For example, we sought comment on the CMSAAC's recommendation that, at a minimum, a CMS provider should explicitly commit to support the development and deployment of technology for the following: the "C" interface,⁷⁴ the CMS provider Gateway,⁷⁵ the CMS provider infrastructure,⁷⁶ and the mobile device with CMAS functionality. Noting that the CMSAAC suggested

⁶⁸ WARN Act, § 602(b)(2)(A).

⁶⁹ *Id.* at § 602(b)(2)(B).

⁷⁰ *Id.* at § 602(b)(2)(D).

⁷¹ *Id.* at § 602(b)(2)(D)(i).

⁷² *Id.* at § 602(b)(2)(D)(ii).

⁷³ *CMAS NPRM*, 22 FCC Rcd at 21986 ¶ 32.

⁷⁴ The connection between the Alert Gateway and CMS provider Gateway.

⁷⁵ The mechanism(s) that supports the "C" interface and associated protocols between the Alert Gateway and the CMS provider Gateway, and which performs the various functions associated with the authentication, management and dissemination of CMAS Alert Messages received from the Alert Gateway.

⁷⁶ The mechanism(s) that perform functions associated with authentication of interactions with the Mobile Device and distribute received CMAS Alert Messages throughout the CMS provider's network, including cell site/paging transceivers.

that the required technology may not be in place for some time, we asked whether electing CMS providers should specify when they will be able to offer mobile alerting.⁷⁷

29. In addition, we sought comment about how service providers should notify the Commission and attest to their adoption of the Commission's standards, protocols, procedures and other technical requirements. We asked whether we should require electronic filing of the submission and what CMS providers should submit in their report to the Commission if they indicate an intention to provide emergency alerts.⁷⁸ Finally, we sought comment on the proper mechanism for service providers to file a withdrawal of election with the Commission. We identified two scenarios: first, where the service provider has elected to provide emergency alerts, but does not build the infrastructure, and second, where the service provider elects to provide emergency alerts and does so to all or some portion of its coverage area, but later chooses to discontinue the service. With respect to the latter scenario, we asked how much advance notification to subscribers the Commission should require prior to the service provider's withdrawal. We also asked what methods service providers should use to notify all existing subscribers at the service provider's various points of sale as well as whether the Commission should impose the same set of requirements considered under section 602(b)(1)(C) regarding notification to existing subscribers and potential subscribers that a service provider has elected not to provide emergency alerts.⁷⁹

30. *Comments.* Wireless stakeholders agreed with the CMSAAC's recommendation regarding what notice service providers should include in their elections.⁸⁰ For example, MetroPCS argues that the most effective way to provide notice to the Commission of a carrier's election should be through a written election provided at the time the election is required and, thereafter, within a reasonable time after the carrier decides to change its election.⁸¹ For CMS providers commencing service after the initial election deadline, MetroPCS recommends the submission of elections within 90 days after the licensee begins to market service in the licensed area.⁸² MetroPCS suggests that the election notice be on a license-by-license basis, but with the flexibility to consolidate elections over all or a portion of the CMS providers' licenses.⁸³ MetroPCS recommends that service providers deciding to change their elections "should be required to provide written notice to the Commission within 30 days of effectuating the change in election."⁸⁴

31. Some commenters suggest that the Commission maintain a register listing the carriers that elect to participate as well as those that do not.⁸⁵ CPUC argues that it is "essential" that states have access to CMS providers election notices and that such notices should include, at a minimum, the "C" reference point, the CMS provider Gateway, the CMS provider infrastructure, the mobile device with CMAS functionality and any geographic variations in the commitment to provide emergency alerts.⁸⁶

⁷⁷ *CMAS NPRM*, 22 FCC Rcd at 21986 ¶ 32.

⁷⁸ *Id.* at 21986 ¶ 33.

⁷⁹ *Id.* at 21986 ¶ 34.

⁸⁰ *See, e.g.*, RCA Comments 6.

⁸¹ MetroPCS Comments at 8.

⁸² *Id.* at 9.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *See, e.g.*, AAPC Comments at 9.

⁸⁶ CPUC Comments at 26.

CPUC further argues that CMS providers should also be required to file a report attesting to their adoption of the Commission's standards, protocols, procedures, and other technical requirements, and reporting on the CMS providers' arrangements for working with the Alert Aggregator, their technical connections with the Alert Gateway, the links used to provide that connection and a description of their technical capability for providing state, regional and local alerts.⁸⁷ Verizon Wireless opposes any requirement to provide detailed information about its network capabilities, arguing that such information is competitively sensitive and highly confidential.⁸⁸

32. *Discussion.* We find that the most efficient method for accepting, monitoring and maintaining service provider election and withdrawal information is to accept electronic submissions to the Commission. Accordingly, we require CMS providers to file electronically in PS Docket No. 08-146 a letter describing their election. Carriers electing, in part or in whole, to transmit emergency alerts shall attest that they agree to transmit such alerts in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission. Further, we accept the recommendation of the CMSAAC that a CMS provider electing to transmit, in part or in whole, emergency alerts, indicates its commitment to support the development and deployment of technology for the following: the "C" interface, the CMS provider Gateway, the CMS provider infrastructure, and mobile devices with CMAS functionality and support of the CMS provider selected technology. We require CMS providers to submit their letter of election within 30 days after the release of this Order.⁸⁹ Due to the ongoing development of the Alert Aggregator/Gateway system and the Government Interface Design specifications, we do not require CMS providers electing to transmit, in part or in whole, emergency alerts to specify when they will be able to offer mobile alerting. With respect to commenters seeking the submission of detailed information about the links used to provide that connection and a description of their technical capability for providing state, regional and local alerts, we find that the statutory language does not require provision of this information. Further, we find that it would be unduly burdensome for carriers to provide such information and, therefore, reject those suggestions. We agree with Verizon Wireless that requiring such information could force providers to divulge competitively sensitive information.⁹⁰ Additionally, requiring such information imposes substantial administrative and technical burdens on providers that are inconsistent with the voluntary nature of the CMAS program.

33. Section 602(b)(2)(D)(i) requires the Commission to establish a procedure for a commercial mobile service licensee that has elected to transmit emergency alerts to withdraw its election without regulatory penalty or forfeiture upon advance written notification of the withdrawal to its affected subscribers. Thus, we require a CMS provider that withdraws its election to transmit emergency alerts to notify all affected subscribers 60 days prior to the withdrawal of the election. Carriers that withdraw their election to transmit alerts shall be subject to the notification requirements described in Paragraph 37. We also require carriers to notify the Commission of their withdrawal, including information on the scope of their withdrawal, at least 60 days prior to electing to do so. Such a requirement is consistent with the requirement under Section 602(b)(2)(D)(i) that we establish procedures for election withdrawal, and with the WARN Act's provision requiring providers to inform the Commission of their election to participate in the CMAS.

⁸⁷ *Id.* at 26-27.

⁸⁸ *See* Verizon Wireless Reply Comments at 21.

⁸⁹ The Commission received pre-approval from OMB for this requirement. *See* Office of Management and Budget Action, Election Whether to Participate in the Commercial Mobile Alert System, Feb. 4, 2008.

⁹⁰ *See* Verizon Wireless Reply Comments at 21.

34. With respect to section 602(b)(2)(D)(ii), requiring that the Commission “establish a procedure for a commercial mobile service licensee to elect to transmit emergency alerts at a date later than provided in subparagraph (A),” we require such CMS licensees, 30 days prior to offering this service, to file electronically their election to transmit, in part or in whole, or to not transmit emergency alerts in the manner and with the attestations described above. This mirrors the Commission’s rules for providers who elect immediately and provides a sufficient and fair amount of time for providers to elect to participate at a later date.

C. Other Issues

1. Subscriber Termination of Service

35. *Background.* Section 602(b)(2)(D)(iii) requires the Commission to establish a procedure “under which a subscriber may terminate a subscription to service provided by a commercial mobile service licensee that withdraws its election without penalty or early termination fee.”⁹¹ We sought comment on the procedures necessary to implement this provision. Specifically, we asked whether notification in the terms and conditions of service is sufficient to apprise subscribers of their right to discontinue service without penalty or termination fee, whether the Commission should prescribe specific procedures for subscribers and whether service providers should submit to the Commission a description of their procedure for informing subscribers of their right to terminate service.⁹²

36. *Comments.* CTIA argues that the Commission should “regulate sparingly in the area of customer termination of subscriber agreements in the event that a wireless provider withdraws its election to participate in the CMAS.”⁹³ Further, it states that “heavy-handed regulation and oversight both consumes Commission resources and adds cost to the overall provision of service (and, in turn, adds to subscriber cost)” and “adopting a procedure that fits with a company’s other procedures and policies will make the option more user-friendly for the customer familiar with the wireless provider.”⁹⁴ CPUC states that the FCC should prescribe specific procedures for informing customers and accomplishing terminations rather than having providers design their own procedures.⁹⁵ CPUC argues the Commission should design a process that includes notice to customers in clear and explicit language citing the statute and that the notices should facilitate the ability of a customer to automatically respond and immediately discontinue service. CPUC adds that customer acknowledgement of this information should be required by signature and dating or some corresponding affirmative action as done for non-participating providers at the point of initial sale.⁹⁶

37. *Discussion.* We find that because Section 602(b)(2)(D)(iii), on its face, clearly provides rights specifically aimed at subscribers – that they may terminate service without penalty or early termination fee if a provider withdraws its initial election to participate in CMAS – subscribers require individual notice of their rights under the WARN Act. We further find that carriers must notify each affected subscriber individually in clear and conspicuous language, citing the statute, of the subscriber’s right to terminate service without penalty or early termination fee should a carrier withdraw its initial

⁹¹ WARN Act, § 602(b)(2)(D)(iii).

⁹² *CMAS NPRM*, 22 FCC Rcd at 21986-87 ¶ 35.

⁹³ CTIA Comments at 13.

⁹⁴ *Id.*

⁹⁵ See CPUC Comments at 28.

⁹⁶ See *id.*

election.⁹⁷ We do not otherwise adopt any specific methods or procedures for implementing this individualized notice, but rather leave it to CMS providers to determine how best to communicate these statutory rights to their customers.

2. Subscriber Alert Opt-Out

38. *Background.* Section 602(b)(2)(E) provides that “[a]ny commercial mobile service licensee electing to transmit emergency alerts may offer subscribers the capability of preventing the subscriber’s device from receiving such alerts, or classes of such alerts, other than an alert issued by the President.”⁹⁸ The CMSAAC recommended that CMS providers should offer their subscribers a simple opt-out process.⁹⁹ With the exception of Presidential messages, which are always transmitted, the CMSAAC recommended that the process should allow the choice to opt out of “all messages,” “all severe messages,” and AMBER Alerts.¹⁰⁰ The CMSAAC suggested that, because of differences in the way CMS providers and device manufacturers provision their menus and user interfaces, CMS providers and device manufacturers should have flexibility about how to present the opt-out choices to subscribers. In the CMAS First Report and Order, the Commission further defined these three alert classes as: (1) Presidential Alert, (2) Imminent Threat Alert, and (3) Child Abduction Emergency/AMBER Alert.¹⁰¹ We sought comment on the recommendations of the CMSAAC with respect to three choices of message types that a subscriber should be allowed to choose to opt out of receiving.¹⁰² Additionally, we sought comment on the CMSAAC recommendation that CMS providers and device manufacturers should have flexibility or whether the Commission should establish baseline criteria for informing subscribers of this capability and if any uniform standards for conveying that information to subscribers is required.¹⁰³ We also sought comment on whether more classes of alerts should be considered.¹⁰⁴

39. *Comments.* Many commenters who addressed this issue expressed support for the CMSAAC’s recommendations.¹⁰⁵ For example, T-Mobile argues that, given the different types of handsets and the wide array of menu interfaces offered by CMS providers, the Commission should not impose baseline standards or a uniform methodology for disabling alerts on this array of mobile handsets

⁹⁷ *See id.*

⁹⁸ WARN Act, § 602(b)(2)(E).

⁹⁹ *See CMSAAC Recommendations*, § 5.5.3.

¹⁰⁰ *Id.* Under the CMSAAC’s recommendation, when the subscriber chooses to opt out of “all messages,” only “presidential” messages will be received. *Id.* When the subscriber chooses to opt out of “all severe messages,” only “extreme messages, AMBER Alerts and presidential messages will still be received.” *Id.* “Extreme” messages correspond to events of near-catastrophic proportions. *See Federal Communications Commission, Transcript of July 18, 2007 CMSAAC Meeting*, at pp 37-38, available at <http://www.fcc.gov/pshs/docs/advisory/cmsaac/pdf/meeting-transcript071807.pdf> (last viewed on June 24, 2008). In developing the recommendation, the Committee believed that it was important that subscribers who opt out of “severe” alerts should still be able to receive these “extreme” alerts. *See id.* at p. 38. Finally, when the subscriber chooses to opt out of AMBER alerts, all alerts aside from AMBER alerts will still be received. *See CMSAAC Recommendations*, § 5.5.3.

¹⁰¹ *See CMAS First Report and Order*, 23 FCC Rcd at 6155 ¶ 26.

¹⁰² *CMAS NPRM*, 22 FCC Rcd at 21987 ¶ 36.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *See, e.g., T-Mobile Comments at 10-12; AT&T Comments at 13; MetroPCS Comments at 9-10.*

or devices.¹⁰⁶ AAPC states that carriers should be permitted to manage subscriber opt-outs of alerts at the network terminal level and not just at the subscriber device level.¹⁰⁷ Wireless RERC argues that CMS providers should make it clear to the subscriber what opting-out means – that, for example, they will not receive tornado warnings.¹⁰⁸ CPUC agrees, stating that CMS providers should be required to inform subscribers that they have the choice of opting out of alerts.¹⁰⁹

40. One party – PTT -- objected to the provision of any subscriber opt-out mechanism. PTT states that an opt-out capability will defeat the purpose of the program if a large number of potential users opt out due to concerns about battery usage. It states that if such a “requirement” moves forward, it would prefer that subscribers use the SMS filtering features of their own device to filter undesired messages, rather than making this a universal feature of the program.¹¹⁰

41. *Discussion.* We agree with the CMSAAC proposed simple opt-out program. The process should allow the choice to opt out of “Imminent Threat Alert messages” and “Child Abduction Emergency/AMBER Alert messages.” This allows consumers the flexibility to choose what type of message they wish to receive while still ensuring that customers are apprised of the most severe threats as communicated by Presidential Alert messages, which are always transmitted. However, because of the differences in how CMS providers and device manufacturers provision menus and user interfaces, we afford CMS providers flexibility to provide opt-out choices consistent with their own system. While we assume, as proposed by the Wireless RERC, that providers would make clear to consumers what each option means, and provide examples of what types of messages the customer may not receive as a result of opting-out so that consumers can make an informed choice, we do not require providers to include such information because there is no corresponding requirement in the WARN Act.

42. We disagree with PTT’s argument that opt-out capability will defeat the purpose of the program. First, the WARN Act specifically grants providers the option to allow subscribers to opt-out of all but Presidential alerts. It would be inconsistent with the clear intent of Congress for the Commission to disallow this option. Secondly, the Alert Gateway used to transmit CMAS messages will most likely be separate and distinct from the SMS gateway. Therefore, subscribers may be unable to use their SMS filtering feature to filter CMAS messages.

3. Cost Recovery

43. *Background.* Section 602(b)(2)(C) states “[a] commercial mobile service licensee that elects to transmit emergency alerts may not impose a separate or additional charge for such transmission or capability.”¹¹¹ In the *Notice*, we asked whether Section 602(b)(2)(C)’s reference to “transmission or capability” should be read narrowly and sought comment whether this provision precludes a participating CMS provider’s ability to recover costs associated with the provision of alerts.¹¹² Noting, for example, that much of the alert technology will reside in the subscriber’s mobile device, we asked whether CMS

¹⁰⁶ T-Mobile Comments at 11.

¹⁰⁷ AAPC Comments at 10.

¹⁰⁸ Wireless RERC Comments at 16.

¹⁰⁹ CPUC Comments at 28.

¹¹⁰ PTT Comments at 13.

¹¹¹ WARN Act, § 602(b)(2)(C).

¹¹² *CMAS NPRM*, 22 FCC Rcd at 21987-88 ¶ 38.

providers should recover CMAS-related developmental costs from the subscriber through mobile device charges based on a determination that mobile devices lie outside the "transmission or capability" language of the section.¹¹³ We also asked about cost recovery in connection with CMAS-related services and technologies that are not used to deliver CMAS.¹¹⁴

44. *Comments.* Many of those commenting on the issue argue that participating CMS providers should be allowed to recover development, maintenance and manufacturing costs from their subscribers.¹¹⁵ AT&T urges the Commission to declare that costs incurred in the development of CMAS and in the provision of mobile emergency alerts are recoverable under the WARN Act and that cost recovery is consistent with the plain language of the Act.¹¹⁶ AT&T argues that the statutory language concerning separate or additional charges "only addresses the appearance or presentation of charges on a subscriber's bill for the emergency alert mandate," "does not in any way limit a carrier's ability to recover costs associated with CMAS implementation," and "to limit cost recovery in this way would require the imposition of rate regulation and a regulatory accounting regime, which the Commission specifically has rejected for the competitive wireless industry."¹¹⁷ SouthernLINC argues that Section 602(b)(2)(C) should be interpreted to apply only to separate charges associated with the specific costs involved in transmitting each alert and that subscribers should not be charged a per-alert fee. It argues, however, that carriers should be permitted to recover costs associated with the implementation and ongoing system management and any vendor-imposed handset costs. Such an approach, SouthernLINC argues, would encourage greater carrier participation.¹¹⁸ T-Mobile agrees, stating that it is fair to consumers who choose to buy a more sophisticated handset to cover some or all of the costs of the handset's development.¹¹⁹ On the other hand, Wireless RERC argues that CMS providers should be treated no differently than EAS participants who must bear the costs of their EAS participation. It states further that "since CMAS is starting as a voluntary system and CMS providers are not allowed to impose a separate or additional charge for such transmission or capability, the Commission should review its mobile services regulations to implement any incentives that might offset CMS expenses and encourage CMS providers to participate in CMAS."¹²⁰

45. *Discussion.* We agree with those commenters who urge us to find that section 602(b)(2)(C) precludes CMS providers from imposing a "separate or additional charge" for the transmission of CMAS alerts or the capability to transmit such alerts, but that such language does not preclude recovery of CMAS-associated costs,¹²¹ including costs related to the development of customer handsets.¹²² Section 602(b)(2)(C) states that "[a] commercial mobile service licensee that elects to

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See e.g., AAPC Comments at 10; CellCast Technologies Comments at 52-53; SouthernLINC Comments at 9-10; Sprint Nextel Comments at 7-8; Motorola Comments at 8-9; T-Mobile Comments at 7-9.

¹¹⁶ AT&T Comments at 18.

¹¹⁷ *Id.* at 19.

¹¹⁸ SouthernLINC Comments at 9-10. See also Sprint Nextel Comments at 7-8.

¹¹⁹ T-Mobile Comments at 8.

¹²⁰ Wireless RERC Comments at 16-17.

¹²¹ AT&T Comments at 18-20; Sprint Nextel Comments at 7-8; CTIA Comments at 10-11.

¹²² SouthernLINC Comments at 9-10; See also MetroPCS Comments at 11 (supporting cost recovery for handset-related costs and for costs associated with CMAS-related services, such as traffic alerts, if CMS provider elects to (continued....))

transmit emergency alerts may not impose *a separate or additional charge* for such transmission or capability.¹²³ We interpret this language to mean that CMS providers shall not separately or additionally charge customers for provided alerts. But nothing in this statutory language – and nothing in the statute’s legislative history – indicates an intention on the part of Congress to preclude recovery of, for example, CMAS-related development and implementation costs. In this regard, we note that Congress is well aware of this Commission’s Title III regulation of wireless carriers,¹²⁴ which provides for flexible recovery of costs through assessed rates and other means.¹²⁵ We conclude that, if Congress had wanted to preclude cost recovery, as opposed to merely prohibiting separate or additional charges for alert transmission or alert transmission capability, it would have said so. We also find that permitting recoverable costs associated with the provision of CMAS alerts would be consistent with the voluntary nature of the CMAS and our general policy to encourage participation in the CMAS.¹²⁶

46. Although we make clear that section 602(b)(2)(C) does not prevent recovery of CMAS-related costs by CMS providers, we do not mandate any particular method of cost recovery. CMS providers have the discretion to absorb service-related costs or to pass on all or portions of such costs to their customers pursuant to generally-developed service rates. We also find that, because CMS providers operate in a competitive marketplace, market forces will guide decisions by CMS providers in recovering costs. Finally, we find that the language of section 602(b)(2)(C) is, on its face, limited to charges for alert transmissions and the capability to provide such transmissions and, accordingly, does not prohibit cost recovery, as described here, for specially-designed or augmented customer handsets, or in connection with CMAS-related services that share use of common technology but are not themselves CMAS alerts, for example, for provision of traffic alerts.

4. CMAS Deployment Timeline

47. *Background.* In its recommendations, the CMSAAC proposed a timeline for implementation of the CMAS. According to the CMSAAC, it will take twelve months from the date of submission of the CMSAAC’s recommendations to complete an industry standardization process.¹²⁷ Participating CMS providers would then need an additional twenty-four months from the date of completion of the standardization process for CMAS development and testing. Initial CMS provider testing and deployment would occur 18-24 months from the date the industry standardization process is completed.¹²⁸

(Continued from previous page) _____
provide such services). Cf. T-Mobile Comments at 7-8 (supporting cost recovery in connection with handset development but apparently opposing CMAS cost recovery generally). *But see* CellCast Comments at 26-27 (supporting recovery of initial implementation and infrastructure support costs, but opposing cost recovery for development of new CMAS-compatible handsets).

¹²³ WARN Act, § 602(b)(2)(C) (emphasis added).

¹²⁴ 47 U.S.C. §§ 301 *et seq.*

¹²⁵ See Communications Assistance for Law Enforcement Act and Broadband Access and Services, *Second Report and Order and Memorandum Opinion and Order*, 21 FCC Rcd 5360, 5392 (2006) (stating that wireless carriers may recover costs related to CALEA-imposed regulatory mandates by absorbing such costs or, where appropriate, by charging customers).

¹²⁶ See Sprint Nextel Comments at 7-8.

¹²⁷ CMSAAC Recommendations, § 12.2 and Figure 12-1.

¹²⁸ *Id.*

48. The specifics of the timeline recommended by the CMSAAC are indicated in Figure 1 below.

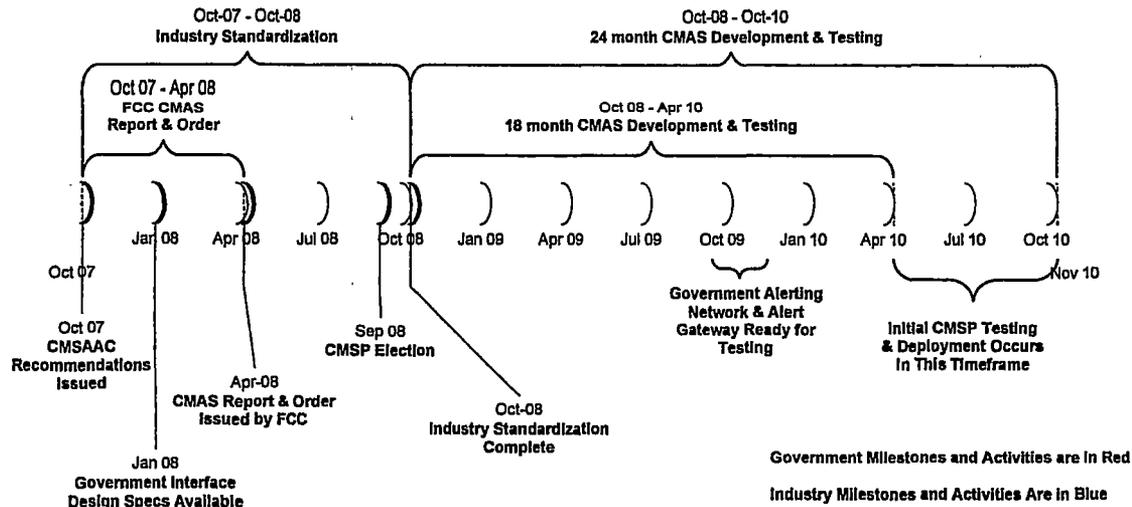


Figure 1¹²⁹

49. The CMSAAC based its proposed deployment timeline upon the assumptions that (1) the CMSAAC recommendations would be accepted without any major technical change and (2) the government documentation and deliverables would be available at the milestone dates indicated on the timeline. As indicated in Figure 1, when creating this timeline, the CMSAAC assumed that the Federal Alert Aggregator and Gateway would provide the Government Interface Design specifications in January 2008.¹³⁰ The CMSAAC also identified other factors it stated were outside of the CMS providers' control that would influence the deployment and availability of the CMAS, such as manufacturer development cycles for equipment in the CMS provider infrastructure, manufacturer commitment to support the delivery technology of choice by the CMS provider, and mobile device manufacturer development of the required CMAS functionality on the mobile devices.¹³¹

50. As discussed above, on May 30, 2008, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) announced that it will perform the CMAS Alert

¹²⁹ CMSAAC Recommendations, § 12.2.1, Figure 12.1.

¹³⁰ The CMSAAC also assumed that the *CMAS First Report and Order* would be issued by the Commission in April 2008, six months from the date of the submission of the CMSAAC's recommendations. The *CMAS First Report and Order* was adopted and released on April 9, 2008. Finally, the CMSAAC assumed that the government alerting network and Alert Gateway would be ready for testing approximately 24 - 27 months from the date the CMSAAC submitted its recommendations to the Commission (*i.e.*, October 2009 - January 2010).

¹³¹ CMSAAC Recommendations, § 12.2. The CMSAAC explained that CMS providers will have equipment from multiple manufacturers deployed in the CMS provider infrastructure. Multi-vendor environments require feature availability and deployment alignment, and require interoperability testing between the different manufacturers equipment. In addition, the CMSAAC stated that if a CMS provider chooses a particular technology to transmit alerts and the vendor with which the CMS provider has a relationship chooses not to develop the same capability, the CMS provider may be forced into not electing to transmit alerts (at least not "in whole").

Aggregator/Gateway role.¹³² FEMA noted that the Alert Aggregator/Gateway system has not yet been designed or engineered,¹³³ and did not indicate when it would make the Government Interface Design specifications available to the other CMAS participants. FEMA did note, however, that it would work with DHS Science and Technology scientists to finalize the technical solutions and with the Federal Communications Commission to make the Alert Aggregator system operational.¹³⁴ We also note that the Alliance for Telecommunications Industry Solutions (ATIS) and the Telecommunications Industry Association (TIA) are currently developing standards related to the CMAS, particularly regarding the development of standards and protocols for the "C" interface.¹³⁵

51. *Comments.* As we indicated in our *CMAS First Report and Order*, a majority of commenters that addressed the issue supported the CMSAAC's proposed deployment timeline.¹³⁶

52. *Discussion.* In our recent *Order on Reconsideration*, we noted our intent that our rules would be implemented in a manner consistent with the CMSAAC recommended timeline.¹³⁷ We agree with commenters who argued that the Alert Aggregator/Gateway must be a centralized, federal entity. As noted above FEMA has only recently indicated that it can serve as the Federal government entity that will provide the Alert Aggregator and Gateway functions, and has not stated when it would be able to provide the Government Interface specifications. However, in order to ensure that all Americans have the capability to receive timely and accurate alerts, warnings, and critical information regarding disasters and other emergencies irrespective of what communications technologies they use, we find that if FEMA has not issued its Government Interface specifications by December 31, 2008, the Commission will reconvene an emergency meeting of the CMSAAC to address the issuance of Government Interface specifications.

53. Because of this ambiguity and the need to ensure timely deployment of the CMAS, regardless of the federal entity serving as the Aggregator/Gateway, the CMAS timeline rules we adopt today do not implement the specific target dates recommended by the CMSAAC. Rather, as stated in our recent *Order on Reconsideration*, participating CMS providers must begin development and testing of the CMAS in a manner consistent with our new part 10 rules no later than ten months from the date that FEMA makes the Government Interface Design specifications available.¹³⁸ As we noted in the *Order on Reconsideration*, this 10-month period corresponds to the interval recommended by the CMSAAC for the completion of industry standards necessary for CMAS development and testing. However, we further require that, at the end of this 10-month period, participating CMS providers shall begin an eighteen month implementation and deployment period before the CMAS can be made available to the public. We recognize that this is an accelerated deployment schedule compared to that recommended by the

¹³² See discussion *supra* ¶ 24.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ ATIS TIA Comments at 4.

¹³⁶ See *CMAS First Report and Order*, 23 FCC Rcd at 6177 ¶ 93. See also T-Mobile Comments at 2; 3G America Comments at 11; CTIA Comments at 19; TIA Comments at 10; AT&T Comments at 20; Ericsson Comments at 6; RCA Comments at 1-2.

¹³⁶ See, e.g., Verizon Wireless Comments at 6; Verizon Wireless Reply Comments at 2-3; RCA Comments at 2-4; Alltel Comments at 2.

¹³⁷ The Commercial Mobile Alert System, PS Docket No. 07-287, *First Order on Reconsideration and Erratum*, FCC 08-166 (rel. July 15, 2008) (*Order on Reconsideration*) at ¶ 4.

¹³⁸ *Order on Reconsideration* at ¶ 6.

CMSAAC. Specifically, following the CMSAAC recommendations, the timeframe would be as long as twenty-four months following the 10-month industry standardization process, as compared to the eighteen months that we order today. Because of the important public safety considerations before us, including the need for the provision of timely and vital emergency information to an increasingly mobile society and our continuing mandate under the Communications Act to promote the safety of life and property through the use of wire and radio communications, we find that this accelerated schedule is in the public interest. Moreover, providing an eighteen month implementation and deployment period still allows more than twenty-four months from the date the Government Interface Design specifications are available for deployment to occur.

54. We also agree with the CMSAAC recommendations that during this development and deployment period, the Alert Gateway and Alert Aggregator should collaborate with participating CMS providers to test the CMAS. In light of what we expect to be a collaborative process, the considerable involvement of the carriers to date in the development of the CMAS system and operational parameters, and the compelling need to provide this capability to the public in a prompt fashion, we believe even this accelerated schedule provides a sufficient amount of time to CMS providers for deployment of the CMAS.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Act Analysis

55. As required by section 604 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this Report and Order on small entities. The Final Regulatory Flexibility Act Analysis is set forth in Appendix A, *infra*. The Commission's Consumer & Government Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Final Paperwork Reduction Act of 1995 Analysis

56. The initial election that CMS providers must make pursuant to section 602(b)(2)(A) of the WARN Act, discussed above, has been granted pre-approval by OMB.¹³⁹ This Report and Order may also contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. If the Commission determines that the Report and Order contains collection subject to the PRA, it will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA at the appropriate time and the Commission will publish a separate notice inviting comment. At that time, OMB, the general public and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we will seek specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

C. Congressional Review Act Analysis

57. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

¹³⁹ The Commission received pre-approval from OMB for this requirement. *See* Office of Management and Budget Action, Election, Whether to Participate in the Commercial Mobile Alert System, Feb. 4, 2008.

D. *Alternative Formats*

58. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418-0530, TTY (202) 418-0432.

E. *Filing Requirements*

59. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, parties shall file their election certifications on or before September 8, 2008. Elections shall be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), which is accessible at the Commission's Web site, <http://www.fcc.gov/cgb/ecfs>, or (2) the Federal Government's eRulemaking Portal. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments shall be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, filers must transmit one electronic copy of their elections to PS Docket No. 08-146. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. PS Docket No. 08-146 is a docket specially created to receive these election letters.

60. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

V. *EFFECTIVE DATE*

61. The rules we adopt today requiring CMS providers to provide us with notice of their election to participate in the CMAS shall be effective upon the release date of this Order. The general rule under the Administrative Procedure Act (APA) is that the effective date of a rule in a Notice and Comment rulemaking must be at least 30 days following the publication of the rule in the Federal Register.¹⁴⁰ However, both the APA and the Commission's rules allow the Commission to adopt a shorter effective date upon a showing of "good cause."¹⁴¹ For the reasons stated below, we conclude that sufficient good cause exists in this case for us to make these rules effective in less than thirty days from their publication in the Federal Register.

62. First, as we explain above, the WARN Act requires that within 30 days after we issue today's order, each CMS provider "shall file an election with the Commission with respect to whether or not it intends to transmit emergency alerts."¹⁴² In order for the Commission to satisfy this statutory mandate, it must have an enforceable order in place within the extremely tight statutory timeframe imposed by the WARN Act, *i.e.*, within thirty days of releasing today's order. This good cause is in no way diminished by any lack of notice to the affected CMS providers. To the contrary, the CMS providers have had sufficient notice that the Commission would be requiring them to elect whether to participate in the CMAS within 30 days of the release of an order implementing section 602(b) of the WARN Act. In the CMAS NPRM, the Commission put the CMS providers on notice of election requirements in section

¹⁴⁰ See 5 U.S.C. § 553(d).

¹⁴¹ See 5 U.S.C. § 553(d)(3), 47 C.F.R. § 1.427(b).

¹⁴² See WARN Act, § 602(b)(2)(A).

602)(b)(2) of the WARN Act in December 2007. This NPRM was subsequently published in the Federal Register on January 3, 2008. Thus all affected parties have been on notice of the short period of time mandated by the WARN Act between the release of today's order and the required election by the CMS providers.

63. There also are no procedural bars to having this rule effective immediately upon release. The rules we adopt under section 602(b) of the WARN Act constitute a "non-major" rulemaking. Although the CMAS First Report and Order constituted a Major Rulemaking, the incremental effects of the actions we take today in this CMAS Third Report and Order will not have a likely effect on the economy of \$100 million or more.¹⁴³ Further, on February 4, 2008, OMB granted our request for pre-approval for the CMS provider election rules, thus obviating our need for us to wait for OMB approval of our CMAS election rules.¹⁴⁴

64. Given the statutory mandate imposed by the WARN Act, the notice that has been previously supplied to the affected CMS providers, and pre-approval of this election procedure by OMB, we conclude that good cause exists to truncate the standard 30 day period for rules to become effective. Accordingly, the rules set forth herein shall take effect immediately upon the release of this order.

VI. ORDERING CLAUSES

65. IT IS ORDERED, that pursuant to sections 1, 4(i), and (o), 201, 303(r), 403 and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r) 403, and 606, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, this Report and Order IS hereby ADOPTED. This rules adopted in this Report and Order shall become effective immediately upon the release of this Order. Election to participate in CMAS must be made no later than 30 days after the release of this order, and must be filed in a manner consistent with the Report and Order and the rules adopted herein.

66. IT IS FURTHER ORDERED that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Council for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹⁴³ In the case of a "Major" rulemaking, the effective date of a substantive rule must be at least 60 days after publication in the Federal Register, or 60 days after Congress's receipt of a Congressional Review Act report, whichever is later.

¹⁴⁴ Those rules that contain information collections under the Paperwork Reduction Act may not become effective until OMB approval.