

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

In the Matter of)
)
Travelers' Information Service) PS Docket No. 09-19
Provision of Localized Public Safety and)
Emergency Information Pursuant to)
47 C.F.R. Section 90.242 and 90.407)

To: The Secretary
Attention: Chief, Public Communications and Outreach Division, Public Safety and
Homeland Security Bureau, and Chief, Policy Division

REPLY

The American Association of Information Radio Operators (“AAIRO”),¹ which includes Departments of Transportation, City and County Departments of Public Safety/Emergency Management, Police and Fire, bridge authorities, airports and park districts, through counsel, hereby submits this reply (the “Reply”) to comments made in response to its “Petition for Ruling” (the “Petition”), submitted on September 9, 2008, in the above-referenced proceeding.²

Background

1. In the Petition, AAIRO asked the Public Safety and Homeland Security Bureau (the “Bureau”) to clarify the nature and extent of information that may be transmitted on stations in the Travelers Information Service (“TIS”). Specifically, AAIRO asked for an unambiguous declaration that “any message concerning the safety of life or protection of property that may

¹ A list of AAIRO’s founding board members is noted on page 8 of this Reply.

² This Reply is timely filed pursuant to the public notice released on Feb. 13, 2009, in DA 09-249 (the “Public Notice”), which sought comments, in the same docket, on both AAIRO’s petition seeking only a clarifying declaration on current rules, and an unrelated rulemaking petition seeking to outright change to TIS regulations.

affect any traveler or any individual in transit or soon to be in transit, may be transmitted . . . at the sole discretion of officials authorized to operate such stations.”³

2. AAIRO filed the Petition pursuant to 47 C.F.R. Sec. 0.191(e), which empowers the bureau to issue interpretative rulings. The Petition followed incidents in which public safety agencies were cited by FCC field offices for broadcasting such travel-related information as weather data.⁴ AAIRO noted that such field office enforcement activities were at odds with the plain language and the regulatory history of 47 C.F.R. Sec. 90.242(a)(7) (the “TIS Content Rule”), which governs what information may be transmitted on a station licensed to provide travelers information.

3. AAIRO’s analysis led to the conclusion that common sense dictates that weather reports and forecasts, such as are contained in NOAA Weather Radio retransmissions, are pertinent and, often, crucial to travelers – both hazardous weather information as well as information when weather conditions will be good so that travel may proceed and correct travel routes may be chosen. In fact, the finely detailed geographic and temporal information that the NOAA-All Hazard broadcasts provide, is important to travelers, who cannot normally receive them when in their vehicles, and goes well beyond the abbreviated weather snippets available on most broadcast radio stations. “Likewise, Amber Alerts, issued as they are to aid in location of kidnapped local children, are pertinent, affecting as they do the welfare of citizens. Indeed, those on the road may well be best placed to spot an abductor and child on the run – and alert police.”⁵

4. The Commission issued the Public Notice soliciting comments on the Petition – coupling it, for public notice purposes, with an unrelated Petition for Rule Making filed by Highway

³ Petition at 1.

⁴ *Id.* at 4.

⁵ *Id.* at 3.

Information Systems, Inc. (“HIS PRM”). The *HIS PRM would outright change* TIS regulations rather than simply *interpret and clarify them, as AAIRO’s Petition requests*. AAIRO takes no position on the HIS PRM.

5. The interpretive ruling, which AAIRO seeks, and the substantive rule changes that HIS seeks are two different things with different sets of requirements. *See* Administrative Procedure Act (“APA”), 5 U.S.C. Sec. 553(b)(A) or 5 U.S.C. Sec. 554(e). The Commission must, therefore, treat each on its own merits while honoring the different procedures respectively required. Once the AAIRO Petition is appropriately reviewed and analyzed under its own applicable – and separate – statutory and administrative provisions, the Commission should issue the declaration sought. Indeed, about 95 percent of those filing comments agree that AAIRO seeks only a common sense interpretation of existing regulation to put public safety first and foremost. Absent the kind of interpretive ruling sought in the Petition, a chill will spread over TIS operations, much to the detriment of the public interest in dissemination of potentially life-saving and property-protecting information to travelers.

Discussion

6. More than 60 parties submitted comments in response to the Public Notice. All but three recognized the need for the clear interpretive statement AAIRO seeks: the TIS rules, as already codified allow transmission of “any message concerning the safety of life or protection of property that may affect any traveler or any individual in transit or soon to be in transit, may be transmitted . . . at the sole discretion of officials authorized to operate such stations”⁶ Such an interpretative ruling would be “unobjectionable . . . even necessary.”⁷

⁶ *Petition at 1.*

⁷ *Comments of Hatfield & Dawson Consulting Engineers, LLC*, submitted Mar. 13, 2009, at 1.

7. The very few opponents have commonly, and mistakenly, treated AAIRO's procedurally and substantively distinct Petition for an interpretative declaration as if a proposal for rulemaking. It is not. The American Association of State Highway and Transportation Officials ("AASHTO"), for instance, mischaracterized the Petition as a request for "modification"⁸ of TIS rules, even though interpretation is not modification, but rather a request for greater regulatory clarity. The National Association of Broadcasters ("NAB") outright states, incorrectly, that AAIRO submitted a Petition for Rulemaking.⁹ National Public Radio, Inc. ("NPR") submitted comments pursuant only to 47 C.F.R. Sec. 1.405, a regulation applicable solely to Rule Making proceedings,¹⁰ not to interpretations of existing rules.

8. This analytic error led those opposed to the Petition to rely on false assumptions and eventually, to arrive at untenable conclusions. As stated, AAIRO seeks NO rule change whatsoever. As explained fully in the Petition, AAIRO seeks an interpretative ruling that will eliminate confusion and prevent TIS station operators from being sanctioned when they transmit information that can both save travelers' lives and protect their property. As AAIRO noted, local public safety officials have been mistakenly sanctioned, by local FCC field offices, for providing weather information, even though it is incontrovertible that weather is a major factor in traveler safety and is, therefore, precisely the kind of information allowed by the TIS Content Rule.¹¹

9. AAIRO seeks only to ensure that public safety agencies providing TIS do not withhold crucial information out of fear that they will receive a violation notice from the FCC. TIS is but one of many communications tools available to such agencies. It is not their reason for

⁸ *Comments of the American Association of State Highway and Transportation Officials* ("AASHTO Comments"), filed Mar. 16, 2009 at 1.

⁹ *Comments of the National Association of Broadcasters* ("NAB Comments"), filed Mar. 16, 2009 at 1.

¹⁰ Statement of National Public Radio, Inc. ("NPR Statement"), submitted Mar. 16, 2009 at 1.

¹¹ Petition at 4-8.

existence. Given the threat of distraction and embarrassment when local government is cited for alleged federal violations, the lack of clarity cited in the Petition has cast a chill, limiting the potential extent of valuable, and even crucial, information transmitted on TIS stations. Unless the Commission removes the threat of distraction or embarrassment, the public will be deprived of information that can both save lives and protect property, as public agencies pull back from TIS. In the final analysis, saving lives and protecting property is the paramount public interest underlying TIS. To serve that public interest, the Commission must allow public agencies operating TIS stations a zone of confidence that their reasoned decision to broadcast potentially life-saving information won't result in charges and federal sanctions.

10. In opposition, the NPR Statement¹² and the NAB Comments¹³ both suggest that their broadcaster members could face competition should the Commission grant the relief that AAIRO seeks. NPR even asks: “is there a continuing need for” TIS,¹⁴ insofar as “[e]xisting broadcast services and emerging new technologies are alternative means of disseminating public safety and other travel related information.”¹⁵ NPR is part of the “Broadcast Traffic Consortium”¹⁶ along with 7 major group owners of commercial radio stations. The Broadcast Traffic Consortium, by its own proclamation, seeks to increase “broadcasters' ability to monetize HD bandwidth.”¹⁷

¹² *E.g., NPR Statement at 7*

¹³ *See NAB Comments at 2* (discussing danger of “disguised commercials”).

¹⁴ *NPR Statement at 3.*

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

¹⁷ *Groundbreaking Broadcaster Traffic Consortium to Redefine Radio*, news release, PR Newswire, Mar. 9, 2009, available at <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=109&STORY=/www/story/04-09-2008/0004789729&EDATE=> (visited Mar. 25, 2009).

11. But as the NAB itself acknowledges, “TIS service is a low power service with an extremely limited, highly-targeted reception area.”¹⁸ Thus, as even NPR concedes, TIS fills a “niche of providing specialized information on a highly localized basis.”¹⁹ AAIRO does not seek to change this. There is no competition intended, created or even implied by the Petition. Eventual implementation of the Broadcast Traffic Consortium’s plans, or any similar adaptation of new technology, would be an excellent development, representing a welcome complement in the quiver of existing public safety and security tools available to disseminate crucial and potentially life-saving information. Rather than compete with anyone, AAIRO simply seeks to remove uncertainty that is hindering the distribution of messages that can save lives and protect property. To answer the question “Is there a continuing need for TIS?”, the clear answer is “yes.” There are, in fact, more than 1000 TIS stations from coast to coast which have been publicly funded and implemented by public agencies, solely to inform and protect the public. Ultimately, there is no greater public interest than protecting people from harm. The Commission should issue the interpretative ruling AAIRO seeks to ensure that this paramount public interest is properly served. The public is entitled to receive crucial information without hindrance as much as practicable. And, the ubiquitous standard band broadcast frequencies used by TIS, certainly provide a practical means of such dissemination.

12. This view is also shared by a host of public safety organizations and officials who have filed in support of the Petition. As noted by the International Association of Emergency Managers, in a letter attached to the Petition itself: “Hundreds of emergency management professionals across the country use FCC-license Travelers’ Information Radio Stations (TIS)

¹⁸ *NAB Comments* at 3.

¹⁹ *NPR Statement* at 6.

within multi-modal communications programs.”²⁰ But, as the nation’s oldest and largest public safety communications organization, The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) noted in its comments, the ambiguity identified in the AAIRO Petition “has discouraged some local governments from utilizing TIS to its full potential.” This is happening even though the ability “to broadcast critical information in a timely fashion . . . is imperative for public safety,” noted the City of Battle Creek, Michigan’s Emergency Services Homeland Security department.²¹ This reality explains why even a leading AASHTO member, the California Department of Transportation (“Caltrans”) fully endorses AAIRO’s Petition.²²

Conclusion

13. No logical reason exists to hinder public safety and civil defense functions that were intended to be part of TIS. Therefore, the Commission must unequivocally state that proaction will NOT lead to sanction, citation or forfeiture. The rules need no rewriting – just an interpretive ruling to alleviate confusion among regulatory personnel and reassure them that that public safety comes first. That is all AAIRO seeks through its Petition.

14. Regardless of the merits of the HIS PRN – or any other request, the AAIRO Petition requests separate relief which requires no rules changes. To best serve the public interest in effective dissemination of information that can both save travelers’ lives and protect property, the Commission should, as the overwhelming majority of commenters agree, issue the interpretative ruling that AAIRO seeks.

²⁰ *Petition, ex. B.*

²¹ Filed Mar. 17, 2009

²² *Letter of Robert Copp, Chief, Division of Traffic Operations, Caltrans*, submitted Mar. 16, 2009.

15. As noted in the Petition, failure to clarify this principal, would put the Commission at odds with the Communications Act, which established the FCC, in part, “for the purpose of promoting safety of life and property” through radio communication, 47 U.S.C. Sec. 151. In its 32-year history, TIS has proved to be competition for no one, but has enhanced safety for many, wholly consistent with statute and the public interest.

16. The Commission must, therefore, issue the interpretation requested in the Petition, and in so doing, ensure that the nation’s public safety professionals and first responders are neither shy about nor deprived of the full use of TIS in their efforts to preserve life and protect property.

Respectfully submitted,

/S/

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