

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

In re:)	
)	
Petition for Rulemaking of)	RM-11525
First Alert System Text Corporation)	
)	

COMMENTS OF USA MOBILITY, INC.

USA Mobility, Inc. hereby submits these comments in response to the petition for rulemaking (“Petition”) submitted by First Alert System Text Corporation (“FAST”) on March 6, 2009,¹ which the Commission placed on public notice on March 30, 2009.² USA Mobility, Inc. agrees with FAST that wireless messaging solutions that provide emergency alerts may warrant governmental support, whether through the universal service programs or some other means. But FAST’s specific proposal is fatally flawed, both as a legal matter and because its technology is inferior to technologies such as paging systems.

As an initial matter, FAST fails to establish any statutory basis for its proposal. In particular, FAST does not address how the Commission could: (i) use Lifeline funds for emergency alert purposes; (ii) implement the FAST proposal in a manner consistent with the WARN Act; or (iii) fund FAST’s proprietary service offering without entertaining competing bids and proposals. FAST also fails to provide sufficiently detailed information regarding the

¹ The “Petition” submitted by FAST is better characterized as a letter, and in any event fails to comply with the requirements for a petition for rulemaking set forth in Section 1.401 of the Commission’s rules. 47 C.F.R. § 1.401.

² See Public Notice, Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, Report No. 2885 (Mar. 30, 2009).

particulars of its proposal. As a result, the FAST proposal is fundamentally incomplete and should be dismissed.³

If the Commission nevertheless were to consider providing Lifeline support for wireless alerts, it should recognize that paging technologies offer a far superior platform for providing the emergency alert services discussed in the Petition. Among other benefits, paging systems: are exceptionally reliable; are optimized for broadcasting notifications on a “one to many” basis; use dedicated networks in which emergency alert messages would not need to compete with voice traffic; facilitate “urgency awareness”; provide superior coverage; incorporate end-user devices that are better-suited to receive emergency alert messages; and provide superior value at low cost. Accordingly, any publicly-funded solution should take advantage of these inherent benefits.

DISCUSSION

I. THE STATUTORY BASIS FOR THE FAST PROPOSAL IS UNCLEAR

As an initial matter, the FAST proposal is legally deficient. FAST does not provide detailed information regarding the particulars of its proposal, as required by Section 1.401(c) of the Commission’s rules.⁴ Critically, FAST does not explain the statutory basis upon which the Commission might adopt the FAST proposal. For example, FAST fails to ground in any statutory authority its proposal to use Lifeline funds for emergency alert purposes. Those funds are intended to reduce the cost of basic telephone services for low-income consumers, and

³ See 47 C.F.R. § 1.401(e) (“Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.”).

⁴ 47 C.F.R. § 1.401(c).

the proprietary product that FAST seeks to subsidize does not fall into this category.⁵ FAST also fails to provide any rationale for limiting its proposal to Lifeline subscribers when the Commission’s public safety mandates extend to all Americans.⁶

FAST also fails to reconcile its proposal with the WARN Act, which directs the Commission to establish rules for the voluntary transmission of emergency alert messages by commercial mobile service licensees.⁷ The Commission has established a comprehensive set of rules implementing the WARN Act.⁸ Yet, FAST fails to acknowledge the existence of the commercial mobile alert system or to explain how its proposal would impact that system. FAST also fails to reconcile its proposal—in which FAST would charge end users a fee for the transmission of emergency alert messages on behalf of licensees, which would be subsidized through the Lifeline program—with the WARN Act’s prohibition against licensees’ imposing “a separate fee or additional charge for [emergency alert messaging] transmission or capability.”⁹

Further, FAST fails to provide any basis upon which the Commission could fund FAST’s service without first entertaining competing bids and proposals from other service providers. Indeed, such action would appear inconsistent with government procurement law and,

⁵ See 54 C.F.R. §§ 54.101 and 54.401.

⁶ See 47 U.S.C. § 151 (establishing the Commission “to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of promoting safety of life and property through the use of wire and radio communications . . .”) (emphasis supplied).

⁷ See Security and Accountability For Every Port Act, Title VI, Pub. L. No. 109-347, 120 Stat 1936-1943 (2006) (“WARN Act”).

⁸ See *The Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144 (2008); *The Commercial Mobile Alert System*, Second Report and Order, 23 FCC Rcd 10765 (2008); *The Commercial Mobile Alert System*, Order on Reconsideration, 23 FCC Rcd 11669 (2008); *The Commercial Mobile Alert System*, Third Report and Order, 23 FCC Rcd 12561 (2008).

⁹ WARN Act § 602(b)(2)(C).

more generally, the principles of due process and efficiency underlying that body of law. Such action also would appear inconsistent with the principles underlying Section 254 of the Communications Act, as amended,¹⁰ and the Commission’s prior determination, with respect to the schools and libraries mechanism, “that fiscal responsibility compels us to require schools and libraries to seek competitive bids for all services eligible” for support.¹¹

In short, the FAST Petition leaves much to be desired, and further consideration of FAST’s specific proposal would waste the Commission’s limited resources. Accordingly, the Commission should dismiss the Petition pursuant to Section 1.401(e) of its rules,¹² even though it may wish to consider the broader concepts in other contexts.

II. PAGING TECHNOLOGIES OFFER A FAR BETTER EMERGENCY ALERT SOLUTION THAN THE APPROACH CHAMPIONED BY FAST

Notwithstanding the issues noted above, if the Commission were interested in pursuing proposals to fund the transmission of emergency alert messages to Lifeline subscribers or other groups, paging technologies would offer an alternative that is demonstrably superior to the broadband CMRS technologies that FAST proposes to employ. Indeed, paging technology should be a component of any solution the Commission might adopt or recommend to Congress relating to the transmission of emergency alerts.

Paging Systems Are Exceptionally Reliable. Paging systems are exceptionally reliable, particularly when compared to broadband CMRS systems. Notably, paging systems (i) transmit messages using satellite transmission, rather than the PSTN, making them more robust in emergency situations; (ii) simulcast messages, reducing vulnerability to service outages and

¹⁰ 47 U.S.C. § 254.

¹¹ See *Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 30 (1997).

¹² 47 C.F.R. § 1.401(e).

providing inherent redundancy; (iii) use dedicated narrowband channels, easing congestion and facilitating widespread distribution in times of emergency; and (iv) use simple devices that are less vulnerable to both hardware and software failures and virtually immune to viruses and other forms of malicious attack. In contrast, broadband CMRS networks rely on ground-based infrastructure that is easily crippled, compromised, or congested during emergency situations—as was illustrated in the aftermath of Hurricane Katrina—making those networks a less reliable means of distributing emergency messages.

Paging Technologies Are Optimized for Broadcasting Notifications on a “One to Many” Basis. Paging systems are optimized for the rapid transmission of short text messages to multiple parties. Notably, pages require narrow bands of spectrum for short periods of time, maximizing the ability of paging systems to transmit quickly to multiple users on a simultaneous or near-simultaneous basis. In contrast, the mobile voice systems championed by FAST are designed for the economical transmission of voice communications on a point-to-point basis, as opposed to time-critical, broadcast-type transmissions. Further, paging systems can incorporate value-added features, facilitating distribution to limited geographic areas and defined user groups, or permitting the prioritization of emergency versus routine traffic.

Paging Systems Use Dedicated Networks in which Emergency Alert Messages Would Not Need to Compete with Voice Traffic. As noted above, paging systems use dedicated channels to transmit short text messages. Unlike many broadband CMRS systems, these channels are not used for multiple purposes, and the transmission of text messages need not compete with the transmission of voice communications. Consequently, paging systems always afford text messages priority, and do not suffer from the congestion that typically afflicts broadband CMRS networks during emergency situations, when call volumes often increase

dramatically. Rather, paging systems are available for the transmission of emergency alert messages on a continuous basis. Moreover, the transmission of emergency alert messages through paging systems avoids exacerbating the congestion already faced by voice networks.

Paging Systems Facilitate “Urgency Awareness.” Because paging systems are targeted to specific functions, the use of pagers facilitates “urgency awareness.” For this reason, a paging device is more likely to receive only truly important messages. Because the recipient is fully aware of this fact, emergency alert messages sent to paging devices are more likely to be received and accorded proper attention. In contrast, emergency text messages to CMRS devices would risk drowning in a sea of non-emergency calls, e-mails, instant messages, and other text messages—all of which could be ignored for an indefinite period by the recipient, defeating the purpose of the emergency alert message.

Paging Systems Provide Superior Coverage. Paging transmitters emit more powerful signals than broadband CMRS transmitters, improving range and in-building penetration. Coverage extends to the inside of buildings, underground garages, cellars, and similar locations. As a result, paging systems would allow a greater percentage of the population to receive emergency alert messages—including individuals isolated in otherwise unreachable locations in the aftermath of an emergency. In contrast, broadband CMRS systems would not reach these individuals, limiting their value as a supplemental means of distributing emergency alert messages.

Paging Systems Incorporate End-User Devices that Are Better-Suited to Receive Emergency Alert Messages. Paging devices are designed in a manner that makes them ideal for the receipt of emergency alert messages by a wide user base. Paging devices are small, light, robust, portable, and user-friendly, making them accessible to the general population—

including relatively unsophisticated users who may not be able to access text messages on cell phones or similar devices. Moreover, paging devices have long service lives and do not require routine maintenance. Notably, paging devices use AA or AAA batteries, which avoid the need for constant re-charging; in contrast, most mobile voice handsets must be recharged on a regular basis, which limits their usefulness during prolonged power outages. Further, paging devices already enjoy widespread use by many critical customer segments, including hospitals and health care professionals as well as police departments, fire departments, and other emergency responders.

Paging Systems Provide Superior Value at Low Cost. Due to their relative simplicity, paging systems operate at relatively low operating costs. Coupled with the benefits noted above, this means that paging systems provide a high value, cost-effective means of providing emergency alert services without burdening federal and state funding sources. Simply put, to the extent the Commission funds the transmission of emergency alert messages to Lifeline subscribers or other groups, paging technologies would provide the Commission with more bang for the buck. In contrast, the FAST proposal would provide limited benefits while imposing a greater burden on federal and state funding sources—a burden likely to be greater than that indicated by FAST’s suggestion that it would need only \$0.05 per month in funding to provide its service at no cost to end-users. Notably, FAST currently charges users \$0.99 per month for its emergency alert service, a rate which would appear indicative of the company’s true underlying costs.¹³

¹³ See FAQ’s at http://www.firstalerttext.com/index.php?option=com_content&task=view&id=21&Itemid=46 (last visited Apr. 20, 2009) (“Q Is there a cost for being a subscriber on the FirstAlertText network? A Yes. There is a user cost of \$.99 cents per month which is indicated on their cell phone bill.”).

CONCLUSION

For these and similar reasons, the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks recommended that the Commission promote more widespread use of paging devices by first responders, and the Commission agreed and directed its staff to implement that recommendation.¹⁴ To the extent that the Commission considers providing funding for the transmission of emergency alert messages, it should act in a manner consistent with its earlier findings, recognizing the virtues of paging technologies with respect to the distribution of emergency alert messages to the general public, and leveraging those virtues in the public interest.

Respectfully submitted,

USA MOBILITY, INC.

By: /s/ Matthew A. Brill
Matthew A. Brill
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004

Its Attorneys

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¹⁴ See *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541, 10544-45 (2007); see also *Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the FCC*, at 10, 24, 32, 37-38, 40 (2006).