

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

In the Matter of	)	
	)	
Petition for Rulemaking of the American	)	RM-11531
Association of State Highway and Transportation	)	RM-11514
Officials to Modify Section 90.242(b)(7) of the	)	PS Docket No. 09-19
FCC's Rules	)	

**REPLY COMMENTS OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY  
AND TRANSPORTATION OFFICIALS**

The American Association of State Highway and Transportation Officials (“AASHTO”), by its attorneys and pursuant to the invitation extended by the Federal Communications Commission (“FCC” or “Commission”) in its April 23, 2009 Public Notice<sup>1/</sup> hereby submits its Reply Comments in response to the initial comments of others on AASHTO’s Petition for Rulemaking (the “Petition”). The Petition asks the FCC to modify Section 90.242(b)(7) so that Travelers’ Information Station (“TIS”) facilities may be used to: (1) broadcast advisories regarding missing children, known as America’s Missing: Broadcast Emergency Response Alerts (“AMBER Alerts”); and (2) transmit information regarding the availability of 511 services.

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<sup>1/</sup> *Public Safety and Homeland Security Bureau Seeks Comment on the Petition for Rulemaking of the American Association of State Highway and Transportation Officials*, Public Notice, 24 FCC Rcd 4870 (2009).

Most of the parties submitting comments supported the Petition without qualification.<sup>2/</sup> However, several entities suggest that the FCC expand further the purposes for which the TIS service may be used. The Contra Costa County, California Sheriff's Department argues that the scope of the rule making should be expanded "to enable the use of Travelers' Information System transmitters for dissemination of any warning regarding an imminent threat to human life or health."<sup>3/</sup> The Association of Public-Safety Communications Officials-International, Inc. ("APCO") cites to its comments in a related proceeding asserting that there is a "wide range of public safety-related information that should be permitted for broadcast on TIS stations . . ."<sup>4/</sup>

AASHTO disagrees with this approach. AASHTO has asked the FCC to modify its rules to include AMBER Alerts in the information that may be transmitted over TIS stations because standard procedures exist governing the issuance of AMBER Alerts. Local governments do not have discretion to determine when an AMBER Alert is issued. Similarly, and as AASHTO has noted elsewhere, extreme weather alerts are issued by the National Oceanic and Atmospheric Administration ("NOAA"). The criteria for issuing an NOAA weather alert or an AMBER Alert

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<sup>2/</sup> See Statement of National Public Radio, Inc., RM-11531, at 1 (filed May 26, 2009) (stating unequivocally that "NPR supports the AASHTO Petition"); Comments of the State of Wisconsin Department of Transportation, RM-11531 (filed May 7, 2009) (stating support for AASHTO's Petition); Comments of the Virginia Department of Transportation, RM-11531 (filed May 15, 2009) (expressing its belief that AASHTO's proposal "is consistent with the intent of the [TIS] service and will better allow the various states' transportation departments to serve the public"); Comments of the Maryland State Highway Administration, RM-11531 (filed May 21, 2009) (supporting adoption of AASHTO's Petition); Comments of the New Hampshire Department of Transportation, RM-11531 (filed May 26, 2009) (finding that "both aspects of this proposed rule change would improve the services we provide to the traveling public"); Comments of the Iowa Department of Transportation, RM-11531 (filed May 26, 2009) (agreeing with the Petition that the TIS service should be used to transmit AMBER Alerts and information regarding the availability of 511 services).

<sup>3/</sup> Comments of the Office of the Sheriff, Contra Costa County, California, RM-11531 (filed Apr. 28, 2009).

<sup>4/</sup> Comments of APCO, RM-11531 (filed May 26, 2009) (quoting Comments of APCO regarding the Travelers Information Service, RM-11514, PS Docket No. 09-19 (filed March 16, 2009)).

does not vary from jurisdiction to jurisdiction. Therefore, while AASHTO does not object to an expansion of the type of information that may be transmitted over TIS stations beyond the current uses of the TIS system and the transmission of 511 information, the expansion should be limited to specifically designated, Federally-based emergency information. Alternatively, the FCC should modify its rules to provide generally for the transmission of Federally-based emergency information (without designating specific Federal programs), reserving to the Public Safety and Homeland Security Bureau (or any successor bureau) the ability to issue Public Notices designating such additional emergency information for which Federally-based standards are available.

As AASHTO noted in its comments in a related proceeding, “If the FCC permits a broad expansion in the content permitted over TIS stations, it will dilute the value of the TIS service. Citizens tuning to TIS stations should anticipate hearing timely, important and localized information.”<sup>5/</sup> As AASHTO expressed previously, it does not wish to unreasonably restrict government entities from transmitting information. However, without clear, rule-based limitations on the type of information that may be transmitted, there will be no meaningful restrictions on the use of TIS facilities, a result that is contrary to the public interest. Moreover, as NPR’s participation in this and related proceedings highlight, TIS licensees must protect AM broadcast stations. The Commission must balance the important functions of the TIS system against the increased potential for interference to broadcast facilities caused by the proliferation of TIS transmissions that may result from lifting meaningful restrictions on the content of TIS transmissions.

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<sup>5/</sup> Comments of the American Association of State Highway and Transportation Officials, RM-11514, PS Docket No. 09-19, at 9 (filed March 16, 2009).

AASHTO has recognized that the rule changes it proposes are not the only ones that would make the TIS rules more useful and up-to-date.<sup>6/</sup> Accordingly, it agrees with the City of Wilmington, Delaware and the County of Hanover, Virginia (“Local Government Licensees”) that it would be productive for the FCC to initiate a rule making proceeding designed to modify the rules in the manner that the Petition suggests and as otherwise recommended by AASHTO and others in related proceedings.<sup>7/</sup> Such a rule making proceeding would permit the FCC to better describe the purpose of TIS stations, consistent with today’s environment, without either diluting those purposes to make the service meaningless or creating an unnecessary threat to AM broadcast operations.

The American Association of Information Radio Operators (“AAIRO”) complains that “nowhere does AASHTO explain why the relief sought requires the rule making”<sup>8/</sup> and asserts that the FCC has the authority merely to clarify its rules in the manner that AAIRO suggests.<sup>9/</sup> AASHTO certainly agrees that there should be no further delay in permitting TIS licensees to broadcast AMBER Alerts and information regarding 511 services and it does not object to the FCC, for example, issuing a Public Notice temporarily waiving its rules that would otherwise restrict such broadcasts. However, the Commission should not “clarify” the TIS rules in the

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<sup>6/</sup> See *id.* at 7-8 (recognizing that the TIS service should be able to be used to transmit information regarding adverse, non-routine weather conditions and emergency information).

<sup>7/</sup> For example, and as AASHTO has stated elsewhere, the FCC should consider modifying Section 90.242(b)(5) and (6) to permit “network” or “ribbon” systems, allow the operation of TIS stations on a temporary basis in disaster settings, and reasonably expand the geographic areas over which TIS transmissions may occur. *Id.* at 10-12.

<sup>8/</sup> Comments of the American Association of Information Radio Operators, RM-11531, at 2 (filed May 26, 2009).

<sup>9/</sup> AAIRO places undue reliance on AASHTO’s use of the phrase “clarify” in the Petition. AASHTO plainly requested that the FCC *modify* its rules and it submitted a Petition for Rule Making, a vehicle used to seek modification of the FCC’s rules. To the extent not otherwise apparent, AASHTO reaffirms its request that the FCC modify its rules to *specify* that AMBER Alerts and announcements regarding the ability of 511 services may be transmitted on TIS stations.

manner that AAIRO suggests. First, AASHTO is not sanguine that the FCC may clarify rules that do not appear vague. For example, Section 90.242(a)(7) limits the content of TIS transmissions to “noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations and descriptions of local interest.”<sup>10/</sup> It is not clear how that wording could be clarified to include -- as AASHTO has proposed -- AMBER Alerts and 511 information, let alone the considerably broader interpretation that AAIRO suggests.

Second, as AASHTO notes above and as the Local Government Licensees recognize, even if the content restrictions of 90.242(a)(7) could be expanded through clarification, there are other elements of the TIS rules that should be updated and changed. The initiation of a rule making proceeding will permit the FCC to address all of the changes necessary to the TIS rules.

Finally, there is no reason to believe that the issues presented by AASHTO and others would be resolved more quickly in the context of a request for declaratory ruling or clarification than they would in the context of a rule making proceeding. Requests for clarification or declaratory ruling may take years to resolve.<sup>11/</sup> Conversely, on matters of particular importance, the FCC can and does initiate and conclude rule making proceedings on an expedited schedule.<sup>12/</sup>

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<sup>10/</sup> 47 C.F.R. § 90.242(a)(7).

<sup>11/</sup> Indeed, AASHTO requested, in December 2007, that the FCC clarify its rules to permit the broadcast of AMBER Alerts over TIS facilities. *See* Letter from John Horsley, Executive Director, American Association of State Highway and Transportation Officials, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (Dec. 20, 2007). It is precisely because, nearly 18 months later, AASHTO has not received the desired clarification that it has elected to request modification of the FCC’s rules.

<sup>12/</sup> *See, e.g., Implementation of Short-Term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, Report and Order, FCC 09-2, ¶ 3 (rel. Jan. 15, 2009) (describing that the Commission issued a notice of proposed rule making in its digital television analog nightlight proceeding on December 24, 2008 and adopted subsequent rules shortly thereafter on January 15, 2009); *Implementation of the DTV Delay Act*, Third Report and Order and Order on Reconsideration, 24 FCC Rcd 3399, ¶ 1 (2009) (stating that the notice of proposed rule making seeking comment on the procedures for early analog termination

There is no reason that the FCC cannot act quickly on this important matter and adopt rules that would conform the TIS service to current needs.

Respectfully submitted,

AMERICAN ASSOCIATION OF STATE  
HIGHWAY AND TRANSPORTATION  
OFFICIALS

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and other issues relating to the delayed digital television transition deadline was released on February 20, 2009 and the new rules were issued on March 13, 2009).

## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2009, a true copy of the foregoing Reply

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