

Summary

In response to the Commission's *Second Further NPRM*, the State Associations provided their strong support for the Commission's efforts for annual national testing of the Emergency Alert System ("EAS"). The other parties to this proceeding share this laudable goal. The parties to this proceeding also unanimously support the Commission in seeking ways to effectively develop a next-generation alert and warning system for the nation. However, while all of the parties to this proceeding applaud the Commission for its efforts to establish national EAS testing, not all of the parties agree on the specifics with respect to a number of the proposals provided by the Commission in the *Second Further NPRM*. Based upon their review of the initial Comments filed in this proceeding, the State Associations believe that despite any disagreements, the parties to this proceeding all desire that the process will continue to move forward and therefore offer a number of specific suggestions in these Joint Reply Comments that will assist the Commission in establishing a truly reliable and effective national emergency alerting system, while at the same time not introducing new and overly burdensome regulations on broadcasters.

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

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

To: Office of the Secretary

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

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

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

Introduction

As shown in their Joint Comments,² the State Associations individually, and through their member trade organization, the National Alliance of State Broadcasters Associations (“NASBA”), have exhibited strong leadership in the area of EAS. Continuing that leadership, the State Associations were pleased to file opening Joint Comments in support of the Commission’s rule making proposal to conduct annual national testing of the EAS. As the State Associations stated in their Joint Comments:

“The Commission’s emergency alert system is intended to expand the coverage of individual broadcast stations by coordinating the messaging of literally thousands of broadcast stations on local, statewide, regional and nationwide levels. By harnessing the alerting and informing power of radio and television broadcast stations in this way, lives are saved, the injured are more speedily attended to, and potential for property loss is reduced. To the degree that the present EAS system is not reliable and robust, Americans are less safe. For those reasons, the State Associations applaud the Commission’s proposal to establish a procedure for conducting national EAS testing.”³

¹ *Review of the Emergency Alert System, Second Further Notice of Proposed Rulemaking, FCC 10-11, EB Docket No. 04-296 (rel. Jan. 14, 2010) (“Second Further NPRM”).*

² *See Joint Comments of the Named State Broadcasters Associations (March 15, 2010) (“Joint Comments”).*

³ Joint Comments at 2-3.

The State Associations also emphasized that the ultimate success of the proposed national testing, however, cannot be assured simply by conducting the testing and examining the results; true success will be achieved only if adequate governmental time, attention and resources are brought to bear on the problems, resulting in a significant upgrading of EAS based on input from all stakeholders, including importantly the free, over-the-air radio and television broadcast industries, the FCC, the Department of Homeland Security (“DHS”), Federal Emergency Management Administration (“FEMA”) and the National Oceanic and Atmospheric Administration (“NOAA”). In that spirit, their Joint Comments and these Joint Reply Comments are being submitted to contribute to the Commission’s record on EAS and to assist in moving toward a truly reliable and effective national emergency alert system.

Discussion

A number of companies and organizations filed opening comments and each of them has provided the Commission with some very constructive insights and suggestions. The State Associations highlight many of these proposals below.

A. With Some Concerns, the Decision to Conduct National EAS Testing Is Timely

As among those filing opening comments, including National Association of Broadcasters (“NAB”), Primary Entry Point Advisory Committee (“PEPAC”), National Cable and Telecommunications Association (“NCTA”), Integrated Public Alert and Warning System (“IPAWS”), Cox Media Group, Inc. (“Cox”), Society of Broadcast Engineers (“SBE”), Sage Alerting Systems, Inc. (“Sage”) and Maine State Emergency Communications Committee (“Maine SECC”), all agree with the State Associations that national EAS testing is needed. However, a number of those commenting also agree with the State Associations that the Commission should be concerned that such testing not be initiated too soon. For example, NAB is in agreement with the State Associations that early 2011 may be premature given the fact that

nearly all EAS participants will be required to purchase new equipment in order to accept Common Alerting Protocol (“CAP”) formatted messages which could render much of the current generation equipment testing data irrelevant in relation to Next Generation EAS implementation and testing. For that reason, NAB has urged the Commission to consider waiting until after the 180-day time period for broadcasters to become CAP-compliant expires before performing the national EAS test.⁴ The State Associations agree with NAB that assuming that the required CAP-compliant EAS equipment has passed the FEMA CAP-EAS testing process (including any additional requirements resulting from the FCC’s own regulations for successful implementation of nationwide EAN messages), broadcasters should be in a much better position to properly transmit the EAN messages for a national test. In contrast, Sage has taken a different position and believes that national EAS testing should not await the CAP rollout.⁵ The State Associations respectfully disagree for the reasons mentioned above.

The State Associations and NAB also agree that before the first national test the Commission and FEMA should consider conducting a comprehensive review of the State EAS Plans. PEPAC suggests that the FCC and FEMA undertake a more comprehensive initial assessment of the system before implementing routine national testing.⁶ NCTA urges consideration of simulated tests, focusing on the National Weather Service (“NWS”) or LP1 and LP2 broadcast stations.⁷ Maine SECC has urged the Commission to consider holding close-circuit testing of all EAS encoders/decoders prior to conducting a national EAS test.⁸ In the State Associations’ view, Maine SECC makes a very constructive suggestion.

⁴ NAB Comments at 9.

⁵ Sage Comments at 6.

⁶ PEPAC Comments at 2.

⁷ NCTA Comments at 3.

⁸ Maine SECC Comments at 3.

The State Associations support any pre-testing review that properly balances the following objectives: acknowledging the importance of moving ahead with national EAS testing while taking all necessary and appropriate steps *now* to reduce the risk that the outcome of the first national EAS test might be so deficient that the general public loses confidence in the nation's emergency alert system.

B. The National EAS Testing Should Be Conducted Only Annually

As noted in their Joint Comments, the State Associations believe that as a general rule conducting the national test once and only once a year, with no established set testing date, is the correct approach. Based on the comments filed by other parties in the proceeding, this approach is widely supported. NAB points out that more frequent national testing of the EAS could cause the public to “tune out” the tests, making it more difficult to gather important public feedback, and that overly frequent testing would also unnecessarily burden local stations, especially smaller ones, in light of the effort that will be required of broadcasters to effectuate a national EAS exercise.⁹ SBE makes similar points regarding regulatory and financial burdens on broadcasters.¹⁰ NCTA takes the same position believing that once a year testing is sufficient to evaluate EAS readiness in the event of a national emergency, as well as during state and local emergency situations.¹¹

The State Associations pointed out in their Joint Comments that the Commission can reserve the right to conduct national tests more than once a year if the results of the initial testing so dictate or if circumstances otherwise warrant multiple annual testing.¹² This is the same point that IPAWS made when it observed in its Comments that because the initial national EAS test may yield a number of lessons learned many of which may involve simple, low-cost, rapidly

⁹ NAB Comments at 3.

¹⁰ SBE Comments at 2.

¹¹ NCTA Comments at 2.

¹² Joint Comments at 8.

implementable solutions, it may be appropriate to conduct a second national EAS test without waiting a full year.¹³ In this way, the FCC and FEMA would be able to discover areas of strength and weakness in the national EAS after all parties have had the opportunity to address minor configuration, system programming and installation issues such as may have been revealed by the initial test. PEPAC suggests that the FCC conduct two initial nationwide tests the first year.¹⁴ The State Associations would oppose any decision by the FCC to lock in a two national test scheme now, recognizing that after the first test has occurred and all relevant data have been evaluated the FCC could if needed order a follow-up national EAS test in that first year.

The State Associations support the suggestions of NAB and SBE that national EAS tests occur on different dates each year in order to avoid complacency.

The State Associations also second the insights offered by Cox. Specifically, in determining the times of the national EAS tests, Cox urges the Commission to be mindful of the multiple time zones across which the national EAS test will occur, including in Alaska and Hawaii, as well as to take into account the disruption and confusion that viewers and listeners inevitably experience when testing occurs.¹⁵ For those reasons, Cox stated that it believes the ideal time of day for scheduling a national EAS test is between 5:30 A.M. – 6:00 A.M. Eastern time. The State Associations support the Cox proposal.

C. Longer Notice Should be Given in Advance of National EAS Testing

In their Joint Comments, the State Associations urged the Commission to provide at least four months, rather than two months, advance notice of the national tests, at least during the

¹³ IPAWS Comments at 2.

¹⁴ PEPAC Comments at 2.

¹⁵ Cox Comments at 3.

early years of national testing.¹⁶ As a result, the State Associations respectfully oppose the proposals of those comments in this proceeding that claim two months notice is sufficient. As the Commission is aware, the goal is to promote readiness, which adequate advance notice promotes. Such advance notice will also better insure that the public has been adequately informed of the “test” nature of the national EAS testing, thereby reducing the risk of public panic and the consequences thereof. It will also provide states with sufficient time to modify their EAS testing schedules, which are often established up to a year or more in advance. As the State Associations pointed out in their Joint Comments many states coordinate several RMTs with special events which are planned well in advance.¹⁷ If stations were often required to cancel these special event tests due to a conflict with national tests many of the organizations and agencies which partner with stations for these special event tests might be reluctant to schedule such tests in the future. At a minimum, the Commission should not prohibit an SECC from scheduling a second test during a month that the national test occurs, in order to accommodate that SECC’s commitment to those special, coordinated tests, and as a matter of the Commission’s recognition of the special relationship that an SECC has with its local emergency management agency EAS activators and the local National Weather Service offices. The Commission should keep such state scheduling issues in mind when it is considering when a national test should be conducted and how much advance notice of a national test should be given to stations.

NCTA introduced another reason why the Commission’s proposed 60-day pre-notification was not adequate. Specifically, NCTA stated that more advance notice was necessary to provide cable operations with sufficient time to notify their customers 30 days in

¹⁶ Joint Comments at 8.

¹⁷ *Id.*

advance in their monthly statements.¹⁸ Sage also recognized that a period longer than 60-days may be required for education and coordination.¹⁹ The State Association's four-month pre-notification proposal is thus consistent with the reasoning of both NCTA and Sage which believe that pre-notification should be longer than 60-days.

D. National Tests Should Substitute for Monthly and Weekly EAS Testing for the Month and Week When Such Testing Occurs

In their Joint Comments, the State Associations pointed out that the annual national EAS test would largely serve the same testing purpose that a monthly ("RMT") or weekly ("RWT") EAS test serves, so no overriding purpose would be served to require duplicative testing in the month and within the week when national testing occurs, and that this limited suspension of such testing will help to reduce the burden on participating stations that annual testing will create, thereby allowing such participants to concentrate their efforts on their participation in the national EAS testing process.²⁰

This position is supported by the NAB, NCTA, SBE, Sage and Verizon. The State Associations also agree with NCTA that many of the same elements that are already required in monthly EAS testing, *e.g.*, testing EAS header codes, Attention Signal, Test Script and EOM code, it makes sense to replace the required monthly test with the annual national test for the month in which it occurs, just as the RMT is now used to replace the RWT for that week.²¹

¹⁸ NCTA Comments at 3-4.

¹⁹ Sage Comments at 7.

²⁰ Joint Comments at 9.

²¹ NCTA Comments at 3.

E. The Post-Testing Data Generation and Distribution Should be Circumscribed

In their Joint Comments, the State Associations urged the Commission to narrow the scope of data that it would require participating stations to provide, as well as limit public access to such information.²²

As relates to the scope of testing data to be provided, the State Associations pointed out that because the current Part 11 rules already require EAS participants to record and log data from their RWT and RMT which includes logging the dates/times that Emergency Action Notification (EAN) and Emergency Action Termination (EAT) messages are received, and to determine and log the cause of any failures in the reception of the tests, the State Associations do not take issue with the Commission's proposal that EAS participants submit essentially the same data in connection with the national tests.²³ However, mandating that broadcasters supply additional data, above and beyond what is already required of them, will result in an additional and unnecessary regulatory burden on stations with already limited manpower and budgets. Moreover, as shown in the Joint Comments, collection of some of the information the Commission is seeking is simply not workable in the real world.²⁴ In any case, the current data stations have been required to log has been more than adequate in determining whether individual station EAS equipment and the daisy-chain structure are working properly and there is no reason the Commission should mandate that significant additional information be generated by individual stations in connection with national EAS testing.

²² Joint Comments at 9-12.

²³ *Id.* at 10.

²⁴ *Id.* For instance, as the Illinois and Wisconsin Broadcasters Associations point out, the FCC's proposal to require data regarding the "date/time of receipt of the EAN message by all stations" will simply not be possible as many decoders are incapable of receiving EAN messages from more than a single source so there would be no way to supply the requested data. In addition, as permitted by the Commission's rules, various stations use automated equipment to receive, retransmit, and to log EAS alerts and tests, so for these stations it would not be possible to provide most of the additional data proposed by the Commission.

Broadcast EAS participants obviously have every intention of conducting national tests to the best of their abilities and the State Associations are merely urging the Commission to keep in mind the costs and regulatory burdens the proposed new regulations will have on broadcasters. NAB and SBE make a number of the same points. Furthermore, the State Associations support NAB's and SBE's position that as long as an EAS participant is using FCC-certified EAS equipment, there is no need for the participant to reveal which brand of equipment it is using.

The State Associations also fully understand that the Commission needs to collect and analyze data in order to draw conclusions regarding the national tests and to ensure proper EAS functionality and support the Commission's proposal to collect data within 30 days after a national test occurs. To further this goal, the Commission should permit licensees to *voluntarily* provide comments that will necessarily include some of the new information the Commission is proposing to collect beyond the traditional log data. Given the long history of broadcasters' tireless efforts to voluntarily improve EAS functionality, there can be little doubt that the Commission will receive useful information on a voluntary basis.

Consistent with the State Associations' own general approach, Verizon, NCTA, SBE and Sage collectively essentially urge the FCC to (i) design a simple and straightforward national test form that provides an easy way for broadcasters and cable operators to enter the appropriate data for mandatory reporting purposes; (ii) refrain from adopting overly-burdensome reporting requirements and to ensure that reporting requirements are sufficiently flexible to give EAS participants latitude in providing information to the FCC; (iii) allow test results to be submitted to the FCC in a cost-effective, non-burdensome manner such as by email; and (iv) provide EAS participants with 45-60 days to submit their test data given the unpredictable operational and technical demands on the ground. The State Associations believe that these recommendations deserve favorable consideration by the Commission.

Regarding the Commission’s proposal to make all reported data on the national EAS test publicly available, the State Associations note that there is widespread opposition to placing the data in the “public record.” In addition to the State Associations, NAB, Verizon, IPAWS, Cox, SBE and Sage cite national security concerns with the Commission’s proposal. IPAWS makes the important point that the purpose in conducting national level tests of the EAS is not to “embarrass or bring pressure upon any regulated entity, but rather to discover what portions of the system work, what portions need improvement and to establish a plan to execute such improvements as may be necessary.”²⁵ Making too much detailed information publicly available may have negative influence on critical elements of the national EAS testing. Sage states that failure data and analysis are more likely to be complete if the station knows that the data will not be made public, and urges that any raw data be made available only to emergency planners and other authorities with the understanding that such data are confidential and will not be made public, and that only aggregated data be available to the public.²⁶ NAB makes the excellent point that the Commission “can perform its analysis of the annual national EAS tests just as well if only national or statewide trend data, and not EAS participant specific data, is publicly released.”²⁷ Cox urges the Commission to take into account security issues when weighing the benefits of publicizing EAS operational details.²⁸

As the State Associations emphasized in their Joint Comments, it must be remembered that the Commission is proposing the testing of a nationwide emergency alert system. That system exists to enhance our homeland security. The government has gone to great lengths to “harden” certain broadcast stations against terrorist attacks. It would not serve our country well if data revealing the vulnerabilities of the EAS system got into the wrong hands or were

²⁵ IPAWS Comments at 2.

²⁶ Sage Comments at 10.

²⁷ NAB Comments at 7.

²⁸ Cox Comments at 4.

misinterpreted in a way that led to public panic. The Commission can decide at a later time whether matters of homeland security remain paramount, but there should be no decision now to make the data public. Accordingly, the Commission should limit the availability of the data to other authorized governmental agencies and State Emergency Communications Committees, on a confidential basis, in order to allow them to assist in addressing any issues and problems.

F. Prior to Commencing the National Testing, the FCC Should Require All Encoder/Decoder Manufacturers to Officially Certify that Their Equipment Performs Each of the Required Steps to Receive, Record, and Rebroadcast an EAS Message and More Specifically, an EAN

The final issue the *Second Further NPRM* raises is the fact that different encoder/decoder manufacturers may program their devices to receive and transmit emergency alert notices differently, which could impact the proper relay of an emergency message.²⁹ The FCC is correct in noting its concerns regarding how EANs are interpreted by encoder/decoder equipment. This is particularly true given that broadcasters currently use EAS equipment purchased from a variety of different manufacturers that have programmed their devices to receive and transmit EANs in different ways and which therefore may impact the ability of some devices to relay an EAN properly. Consequently, the State Associations reiterate that the FCC should require all encoder/decoder manufacturers to officially certify that their equipment performs each of the required steps to receive, record, and rebroadcast an EAS message and more specifically, an EAN. If there is any indication that one or more of the manufacturers have designed or built their equipment in a way that would not operate as required, the FCC should require the manufacturer to correct the problem. As noted by the State Associations in their Joint Comments, NAB urges the Commission to require encoder/decoder manufacturers to make any such equipment issues public well prior to the first national test in order to give broadcasters sufficient time to make any modifications necessary to fully participate in the national test.

²⁹ *Second Further NPRM* at ¶ 32.

G. The Commission Should Suspend EAS Enforcement In Connection with the National EAS Testing

Following the practice of the Commission in connection with the EAS testing conducted in Alaska, the State Associations in their Joint Comments urged the Commission to suspend EAS enforcement for any shortcomings by EAS participants relating to national testing. In its Comments, SBE makes the very good points that the Commission should encourage strong participation in the national EAS testing as public-private partnership of companies and organizations in a program for the common good, and thus should remove the deterrent threat of sanctions for relatively minor errors or omissions by participants acting in good faith.³⁰ Sage urges the FCC to publish a waiver on enforcement action prior to at least the first test in order to encourage the broadest participation possible.³¹ Given the uniqueness and national importance of the testing, the State Associations urge the Commission to remove any enforcement-related disincentives to robust and candid participation by all EAS participants in the testing process, including the free flow of test data which is the critical to understanding completely why the system worked in some areas but may not have in other areas. EAS participants should be able to supply testing data to the Commission without the fear of governmental reprisal or regulatory penalties. The State Associations renew their request that this suggestion be adopted prior to the Commission and FEMA conducting the first national test, and note that none of those filing comments opposed this suggestion.

³⁰ SBE Comments at 3.

³¹ Sage Comments at 4.

