

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

Ex Parte Comments of the Broadcast Warning Working Group

I. Preface

1. The Broadcast Warning Working Group (BWWG) core membership consists of hands-on Emergency Alert System (EAS) subject experts from the fields of broadcast association management, broadcast radio and television engineering management and support, radio and television news, industry technical publication, and state EAS Committee leadership. The BWWG hosts a website, the **EAS Forum** at:

[<http://eas.radiolists.net/>]

2. On the **EAS Forum's** email list server, industry stakeholders share knowledge and experience that is factored in to the BWWG's Emergency Alert System's (EAS) articles, resources and Comments addressed to the Commission such as this. Significant recent resource contributions of the BWWG to EAS development and improvement have been a comprehensive and detailed comparison of features of new EAS devices, postings to summarize and explain EAS industry news for all stakeholders, and active participation as presenters in recent DHS/FEMA IPAWS EAS Roundtables. The BWWG has also been a partner with other key stakeholders in EAS educational and other projects sponsored by FEMA, the National Alliance of Broadcast Associations (NASBA) and the National Association of Broadcasters (NAB).

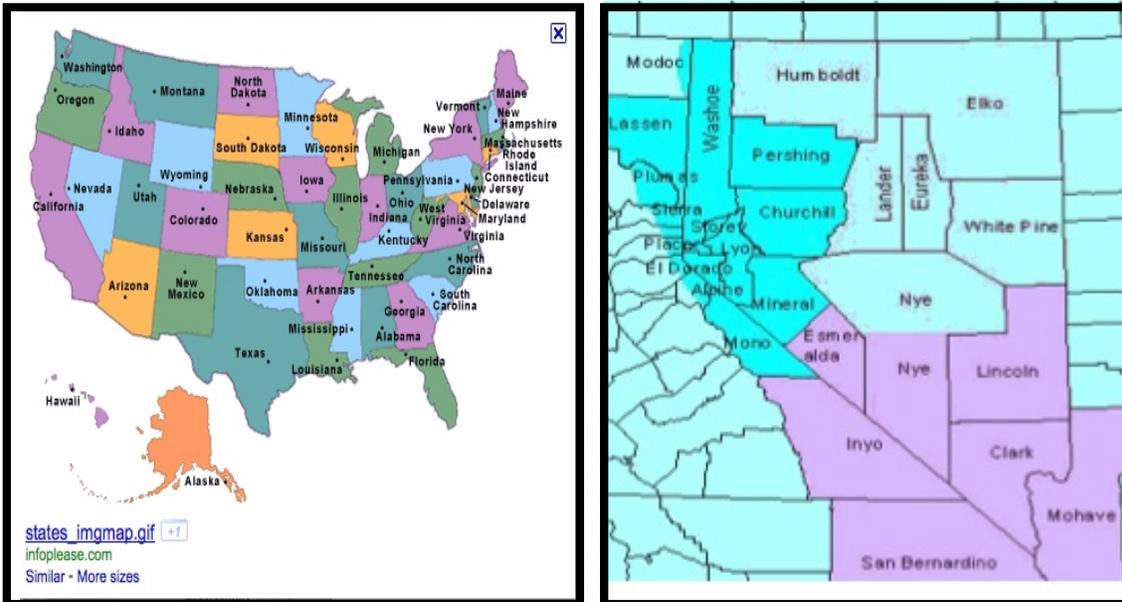
3. Recent online discussions on the **EAS Forum** have led the BWWG to file this document that contains additional opinions and suggestions on an ex-parte basis to ask the Commission to not use a "governor mandatory must carry" solution to assure that local and state emergency warnings reach the public through the EAS, and instead implement an "event-driven must carry" solution.

II. Why Are We Asking for This?

1. Using the EAS TOR (Tornado Warning) as an example, it is generally accepted by all warning stakeholders that this vital message should be disseminated immediately on a must-carry by all available means, without any concern that a governor or their designated party might in any way delay or otherwise thwart local dissemination by the National Weather Service. Our premise here: Life saving warning messages, both weather and civil, must be delivered immediately by all possible means, without political or economic considerations that might be introduced by a "governor mandatory" solution. Properly crafted, vetted, and issued timely local, state and regional life safety warnings should be "must carry" without involving any vestige of politics to get in the way.

2. The EAS replaced the Emergency Broadcast System (EBS) so broadcasters and cable systems could issue better warnings of all types. Although the original intent for a national warning system was for major national emergencies, it seems to the BWVG that everyone should now be able to agree (after events like Hurricane Katrina) that properly issued warnings when life and property is in jeopardy should be “must carry.” While the BWVG realizes that legal and political issues most likely led to the “governor mandatory” concept being put forth by the Commission, we now believe that we must find a way to issue mandatory warnings with absolutely no political strings attached. We think that this agreement could and should be achieved by getting all warning stakeholders together to work on this issue, not by implementing a “governor mandatory” solution. This stakeholder partnership must include broadcasters, cable systems, and all other public and private owners and custodians of public warning entry points.

3. The maps of the U.S. and the Nevada EAS regions below are reasons enough to implement an “event-driven must carry” solution. The BWVG believes that mutual aid agreements already in place that are managed by professional emergency managers avoid many jurisdictional issues that would arise out of a “governor mandatory” solution. To state the very obvious, we have 48 states that need to integrate their border warning policies with tangent states to improve EAS.¹



III. How Should This Be Done?

¹ The Nevada SECC and the California SECC, along with their respective state’s emergency management agencies, have out of necessity cooperated closely to make sure as many residents of both states as possible are covered by at least one viable radio signal. While the situation in other border regions has the challenge of overlapping coverage from multiple radio signals from different states, both cases argue strongly for an “event-drive must carry” solution and against a “governor must carry” solution.

1. **Event specificity:** the mandatory alert capability should be linked to an existing event code. The CAP-EAS Implementation Guidelines adopted by FEMA make a provision for "tagging" an existing event code with the mandatory carry override.

2. **Usage threshold:** Emergency Managers should help us define what circumstances would justify use of an "event-driven must carry" capability. Emergency managers and other EAS stakeholders can define safeguards can be put into place to prevent over-use or abuse and suggest sanctions that can be put in place in case of abuse.

3. **Designated authority:** While this could certainly use further definition, many infer that the designated civil authority would be a qualified, professional emergency manager determined the same way that governors now designate normal emergency management functions. It should also recognize the National Weather Service as a valid warning partner within the overall framework of professional emergency management. While this is implicitly understood by all states, it could and should be made explicit, either in the revised FCC regulations, or as part of a standardized practice all stakeholders would agree to.

4. **Need for standardized operational practice:** EAS stakeholders must work in concert on an ongoing basis to forge best practices, monitor their deployment, and make adjustments when warranted. We suggest that these best practices should be introduced into state EAS plans to maintain consistency from state to state in use of any mandatory alert capability. Recommending a Standard Operating Practice (SOP) for "event-driven must carry" should be an immediate goal of the proposed DHS National Advisory Council that could come into being as a result of Congressional actions in progress.

5. **Need for standardized training:** Standardized training and testing and exercise design for the warning components of local and state emergency management beyond FEMA's new IS-247 should be encouraged. Such training should reinforce how an "event-driven must carry" capability should be (and not be) used. FEMA and the Commission both need to find a way to work with these systems (and vendors) in a public-private partnership role as part of a new and badly needed overall EAS stakeholder partnership.²

IV. Basis For the BWWG Ex-Parte Comment

1. The BWWG hereby submits our ex-parte Comment related to the Commission's request for input on how to implement so-called governor mandatory EAS events in its 04-296 Third Report and Order based on the Commission's own request. In that document is the following statement: ***We seek comment on any rule revisions needed to fully implement the obligation to process CAP-formatted messages initiated by state governors...***³

² Please see testimony of BWWG core member Suzanne Goucher before the U.S. House Committee on Transportation & Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management who advocated for a formal warning stakeholder effort. < <http://eas.radiolists.net/bwwg-core-member-goucher-testifies-before-congress/> >

³ From the Commission's Third Report and Order, Section I, Introduction and Summary: *We tentatively conclude that the obligation of EAS Participants to receive and transmit CAP formatted messages initiated by state governors only applies to the extent that state governors have formatted such CAP messages using FEMA's standards for federal CAP messages. We seek comment on any rule revisions needed to fully implement the obligation to process*

2. While the BWVG filed timely Comments covering its suggestions on this issue to the Commission, we recently published an editorial on the subject on our website, the **EAS Forum**. In that editorial, we made a case for an “event-driven must carry” approach, rather than one structured on mandatory warnings based on authorization by elected officials. That editorial sparked additional input and suggestions from not only our core members, but also other EAS stakeholders who subscribe to the **EAS Forum**.

3. One very specific concern brought up has to do with areas like New York/Connecticut, Kansas City, Portland/Vancouver, border areas of California, Nevada and Arizona and more where it would be dangerously counter-productive to have two or more different state procedures for EAS entities to follow under a “governor mandatory” situation. This would result in radio, TV and cable entities serving multiple states issuing potentially confusing and conflicting information. Such instances are best left to the already established and largely excellent mutual aid agreements already in place in such areas administered by trained emergency management professionals, not politicians. The number of common state borders that already have excellent mutual aid agreements administered by FEMA should be a convincing argument for an “event-driven must carry” solution.⁴

4. We strongly recommend that the Commission supports "event-driven must carry" in its re-write of Part 11 in place of its original “governor mandatory” approach.

V. The FCC Needs to Implement an Event-driven Must Carry Approach

1. The BWVG is not advocating for no “must carry” rule. On the contrary, we advocate a sensible "event-driven must carry" approach integrated within existing emergency management. This is a better way to accomplish the goal of better assurance that warnings will be issued without involving elected officials or their potentially untrained designees in being ready 24/7 for the legal duty, mission, and mechanics of "must carry" EAS warnings to better preserve lives and property for a public at risk.

VI. The BWVG Editorial on the EAS Forum

*The FCC’s Position on “Governor Mandatory” is Still an Unknown
January 5, 2012*

It was the week after Christmas, and all through the house.... EAS stakeholders were still waiting for the FCC to issue their Part 11 Report and Order....

It doesn’t rhyme, but it does sum up how we feel about waiting-for-this shoe-about-to-dropped event that will tell us a lot about the future of the EAS.

CAP-formatted messages initiated by state governors, including whether the Commission must adopt a new origination and/or event code and whether the obligation should extend to governors of any adjacent states in which the EAS Participant provides service.

⁴ Please see FEMA’s **Mutual Aid Agreements for Public Assistance and Fire Management Assistance** website page at http://www.fema.gov/government/grant/pa/9523_6.shtml

In the EAS Notice of Inquiry (NOI) regarding proposed Rules changes for EAS is the FCC's proposal for a so-called Governor Mandatory" provision. This proposal came out of after action assessments of the Hurricane Katrina event where the perception was that warnings did not get out in time and to as broad an audience as possible, and that local and state EAS events were not under existing Part 11 Rules considered "mandatory."

The "Governor-Mandatory" fix for Katrina-like warning issues is still, in the opinion of the BWWG, deeply flawed. There is a better way.

Katrina warnings failed because the warning process has not yet been integrated fully into the emergency management process and stakeholder partnerships were not built with broadcast and cable entry points, not because governor or governor-designee messages were not carried as mandatory events on broadcast and cable outlets.

During the Comment period on the FCC's NOI, the Broadcast Warning Working Group and the National Alliance of State Broadcast Associations both called for a more rational, "event-driven must carry" approach tied into overall emergency response management.

Our premise was simply that emergencies are event driven. It seems to make more sense to trigger public emergency warnings based on threat assessments by qualified emergency management people. This would of course include local offices of the National Weather Service as well as state and local government warning centers.

Basing mandatory warnings based on a governor or a designee calling the shots appears to us to contradict the best practices of emergency management. It makes far more sense to have local and state committees call out specific EAS warnings as "mandatory" in their plans in consultation with qualified emergency manager and weather officials.

So, we are all waiting for the FCC to issue their Report and Order that will contain the changes to the EAS Rules they want to make. We hope they listened to those who told them that their Governor Mandatory idea should be replaced with a mandatory" event-driven must carry" strategy. Couple with NIMS training so local and state warning centers can easily originate warnings that should do the trick. If the FCC did not listen, there will be a short but defined period of time where EAS stakeholders could ask for reconsideration.