

guidelines. Thus, CAP-capable EAS equipment is, by definition, capable of delivering any text that an alert originator may provide.

140. To be clear, we will continue to use the EAS header codes as the baseline requirement for the visual display.⁴²⁶ We acknowledge that these codes take up some portion of the 1800 characters available for scrolling and that the EAS header codes may not always sufficiently describe the alert.⁴²⁷ We nonetheless believe that some measure of uniformity and consistency in how alert messages are processed over the EAS is necessary.⁴²⁸ In this regard, we observe that the ECIG Implementation Guide does not specify minimum descriptive information if the baseline requirement to include the EAS header codes were eliminated.⁴²⁹ Without such a requirement, there is no guarantee that such basic information would be included by the CAP message originator, and thus the descriptive information could vary greatly from state to state and locality to locality. In addition, ensuring that the EAS header codes are included in CAP messages is critical because stations responsible for regenerating (via the AFSK encoding process) a CAP alert message that has been converted into a SAME-compliant message for the benefit of downstream monitoring stations can only encode the EAS header codes. Accordingly, EAS Participants must continue to display the information available in the EAS header code and, to the extent that an alert initiator has supplied the CAP-based enhanced text, EAS Participants must display that as well.

141. *Section 11.54.* Section 11.54 specifies the operational requirements that apply to EAS Participants during a national level emergency.⁴³⁰ Section 11.54(b) lists the actions an EAS Participant must take upon receipt of an EAN.⁴³¹ In the *Third FNPRM*, we explained that CSRIC had recommended that we add a new subparagraph to section 11.54(b) specifying that “EAS Messages will be broadcast only if the scope of CAP alert is ‘Public.’”⁴³² We observed that the ECIG Implementation Guide already specifies that EAS Participants must ignore CAP-formatted messages with a value in the “scope” field other than “Public.”⁴³³ Therefore, if compliance with the ECIG Implementation Guide were required, any restrictions against processing CAP-formatted messages without the “Public” value in the scope field would be satisfied. We sought comment on whether to adopt CSRIC’s recommendation.⁴³⁴ Monroe and

⁴²⁶ We also will not permit EAS Participants to meet the video crawl requirements via speech-to-text software configured in their EAS devices. There is insufficient support in the record for allowing use of speech-to-text software. The ECIG Implementation Guide, for example, observed, “ECIG feels there is no reliable software at this time that can produce text from an audio message at the level of accuracy required for emergency messages.” ECIG Implementation Guide, §2.2 (*footnote omitted*). See also Timm Comments at 13.

⁴²⁷ See, e.g., ECIG Implementation Guide, § 3.6.4.4.

⁴²⁸ See Trilithic Comments at 9; Timm Comments at 4.

⁴²⁹ The ECIG Implementation Guide provides that “[t]he FCC Required Text may be dropped as a requirement in the future. At that time the same kind of information would be presumably included within the other CAP fields.” ECIG Implementation Guide, § 3.6.4.1. The ECIG Implementation Guide also states that if the required baseline text “is dropped in the future, then CAP messages SHOULD be constructed to include these relevant details.” *Id.*, § 3.6.3.

⁴³⁰ See 47 C.F.R. § 11.54.

⁴³¹ See *id.* § 11.54(b).

⁴³² See *Third FNPRM*, 26 FCC Rcd 8149, 8184, para. 87 (*citing CSRIC Final Report*, § 5.1).

⁴³³ See *id.* (*citing* ECIG Implementation Guide, § 6.7, CAP to EAS Validation Table, entry for Alert Block <scope>).

⁴³⁴ See *id.*

BWWG supported CSRIC's recommendation.⁴³⁵

142. We also explained in the *Third FNPRM* that CSRIC had recommended that we revise section 11.54(b)(1) to include IPAWS monitoring.⁴³⁶ Section 11.54(b)(1) requires that, immediately upon receipt of an EAN, EAS Participants monitor the two sources identified in the State EAS Plan.⁴³⁷ We observed that we had proposed elsewhere in the *Third FNPRM* to delete section 11.54(b)(1), which would obviate this issue.⁴³⁸ To the extent that we elected to retain section 11.54(b)(1), however, we sought comment regarding whether we should revise the language to reflect federal CAP monitoring obligations by adding a cross-reference to the monitoring requirements in section 11.52.⁴³⁹ BWWG supported CSRIC's recommendation.⁴⁴⁰

143. *Decision.* We decline to adopt CSRIC's recommendations. First, we are only requiring EAS equipment to produce a SAME-compliant output, and there is no requirement in the EAS Protocol, or more broadly, in the Part 11 rules, to broadcast only "Public" EAS messages. In any event, the ECIG Implementation Guide, with which we are requiring conformance, already specifies that EAS Participants must ignore CAP-formatted messages with a value in the "scope" field other than "Public."⁴⁴¹ Accordingly, the restrictions against processing CAP-formatted messages without the "Public" value in the scope field that CSRIC sought are satisfied. With respect to CSRIC's proposal to revise section 11.54(b)(1) to include IPAWS monitoring, we observe that, as detailed in section IV.E of this order, we are deleting section 11.54(b)(1), and therefore this issue is moot.

6. Waivers

144. In the *Third FNPRM*, we asked, in the context of setting a new CAP-compliance deadline, whether we should take into account whether EAS Participants located in rural or underserved areas had access to broadband Internet access or whether such situations should be addressed on a case-by-case basis through the standard waiver process.⁴⁴²

145. Several commenters recommended that we should grant waivers from the CAP-related obligations to EAS Participants that lack Internet access or for whom the cost for such access would be relatively high. Prometheus, for example, observed that "some broadcasters do not have IP connectivity at the location where the EAS unit operates," and "[i]n some rural locations, obtaining connectivity will be costly and require building new infrastructure."⁴⁴³ Accordingly, Prometheus recommended with respect to the CAP compliance deadline that "the Commission consider granting additional waivers on a

⁴³⁵ See Monroe Comments at 5; BWWG Comments at 36-37.

⁴³⁶ See *Third FNPRM*, 26 FCC Rcd 8149, 8184, para. 88 (citing *CSRIC Final Report*, § 5.1).

⁴³⁷ See 47 C.F.R. § 11.54(b)(1).

⁴³⁸ See *Third FNPRM*, 26 FCC Rcd 8149, 8184, para. 88.

⁴³⁹ See *id.*

⁴⁴⁰ See BWWG Comments at 37.

⁴⁴¹ See, e.g., ECIG Implementation Guide, § 6.7, CAP to EAS Validation Table (entry for Alert Block <scope>). According to the ECIG Implementation Guide, the requirement to broadcast only "Public" messages was derived from CAP v1.2 Committee Draft OASIS Emergency Management Technical Committee, March 2010. See *id.*

⁴⁴² See *Third FNPRM*, 26 FCC Rcd 8149, 8191, para. 111.

⁴⁴³ Prometheus Comments at 3.

case-by-case basis for participants who face obstacles to obtaining IP connectivity.”⁴⁴⁴ TFT observed that “[b]ecause there are some areas in which connection to the Internet is unavailable or extremely expensive, the Commission could institute a waiver program with an expiration/renewal date to permit EAS Participants temporary relief.”⁴⁴⁵ One Ministries, Inc., observed that “remote LPTV stations and even satellite NCE FM stations often do not have [I]nternet readily available.”⁴⁴⁶ Accordingly, One Ministries, Inc., commented that “there should be an exemption for broadcast LPTV stations that don’t have a main studio location other than a remote transmitter site to have to implement CAP, since they will most of the time not have [I]nternet service,”⁴⁴⁷ and “that satellite NCE FM stations should not be required to have CAP receivers for the satellite stations but should be able to rely on just the CAP systems for their main station.”⁴⁴⁸

146. NAB commented that, in the context of monitoring the RSS feeds proposed in the *Third FNPRM* and as an alternative to the waiver process, “[t]he Commission should also consider establishing a simplified notification process for EAS Participants without reliable Internet access.”⁴⁴⁹ NAB explained, for example, that “[o]ne possible approach may be to revise the Part 11 rules to include a ‘Notice’ or ‘Self-Certification’ process in which stations can certify to the Commission that they cannot reliably monitor an RSS feed for CAP-formatted messages due to service availability.”⁴⁵⁰ NSBA made an identical proposal.⁴⁵¹

147. Monroe maintained that waivers of the CAP obligations may be justified “in selected cases, such as for genuine economic hardship, or the physical unavailability of IP connectivity.”⁴⁵² Monroe added, however, that “[r]egardless[] of the availability of IP connectivity, all EAS [P]articipants should be encouraged to implement the required CAP EAS equipment by the established deadline, to put [such EAS Participants] in a state of readiness for when IP connectivity becomes available.”⁴⁵³

148. NCTA stated that “small cable systems, owned by both large and small cable operators, that have no Internet capability . . . should be exempt from new CAP requirements, regardless of the size of the operator owner.”⁴⁵⁴ In this regard, NCTA observed that “[c]able customers [of such exempt systems] will still receive EAS alerts issued in the existing EAS protocol and via broadcast stations carried on their systems.”⁴⁵⁵ NCTA also stated that “the Commission should adopt a waiver process for small systems that demonstrate financial or other hardships with compliance with CAP requirements.”⁴⁵⁶

⁴⁴⁴ *Id.*

⁴⁴⁵ TFT Comments at 4.

⁴⁴⁶ One Ministries, Inc., Comments, EB Docket 04-296 (filed June 30, 2011) at 1 (One Ministries Comments).

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ NAB Comments at 16.

⁴⁵⁰ *Id.*

⁴⁵¹ *See* NSBA Comments at 16.

⁴⁵² Monroe Comments at 18.

⁴⁵³ *Id.* at 19.

⁴⁵⁴ NCTA Comments at 10.

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

149. The American Cable Association (“ACA”) asserted that “the Commission should no longer require systems of 500 subscribers or less to be EAS compliant.”⁴⁵⁷ In this regard, ACA stated that “[u]nfortunately for these systems, any significant financial investment that is needed to these systems in the future, including replacing EAS equipment, whether CAP-compliant or not, would likely cause many of these systems to shut down entirely.”⁴⁵⁸ ACA observed that “these systems carry broadcast channels that will be CAP-compliant, thus the impact on the efficacy of EAS in exempting such small systems from compliance in the future will be minimal” and stated that “[t]he people in the[] small towns [served by these systems] will be better off having a cable system that carries broadcast stations that offer CAP-compliant messages, than having no cable service at all.”⁴⁵⁹

150. ACA further asserted that “[s]ome small cable systems however are simply too small and/or too rural to support the upgrades necessary to deploy Internet service at their headends.”⁴⁶⁰ ACA argued, “A small system that cannot support wired Internet service should not be required to pay additional costs for constant wireless [I]nternet access solely for [CAP-compliance] purposes.”⁴⁶¹ Accordingly, ACA recommended that “a CAP compliance exemption should be provided to systems lacking wired Internet connections.”⁴⁶² Finally, ACA recommended that “[t]he Commission should entertain hardship waivers for CAP-compliance similar to the hardship waiver process used for the initial deployment of EAS.”⁴⁶³

151. Houston Christian Broadcasters, Inc.; The Moody Bible Institute of Chicago; Augusta Radio Fellowship Institute, Inc.; Big River Public Broadcasting Corporation; Life on The Way Communications, Inc.; and The Sister Sherry Lynn Foundation Inc. (the “NEBS Stations”), jointly requested that “the Commission confirm that in the case of noncommercial educational broadcast satellite stations operated pursuant to a ‘main studio waiver’ the CAP-based alert messaging equipment must only be located at the parent station site with the capability of ensuring that CAP-formatted alert messages entered into the EAS are converted into and processed in the same way as messages formatted in the EAS Protocol at the satellite stations via equipment at the parent station.”⁴⁶⁴

152. *Decision.* As a starting point, we do not believe it would be appropriate to adopt any form of blanket exemption from the basic obligations of monitoring for, receiving, and processing CAP-formatted messages. Waivers or exemptions from these requirements are best suited to a case-by-case analysis under the waiver standard, where the facts and circumstances of each individual case can be determined on its own merits.⁴⁶⁵ We observe, however, that the primary method of distributing CAP

⁴⁵⁷ American Cable Association Comments, EB Docket 04-296 (filed July 20, 2011) at 10 (ACA Comments).

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.* at 11.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.* at 12.

⁴⁶⁴ Houston Christian Broadcasters, Inc., The Moody Bible Institute of Chicago, Augusta Radio Fellowship Institute, Inc., Big River Public Broadcasting Corporation, Life on The Way Communications, Inc., and The Sister Sherry Lynn Foundation Inc., Comments, EB Docket 04-296 (filed July 20, 2011) at 4.

⁴⁶⁵ The Commission may, on its own motion, waive its rules for good cause shown. 47 C.F.R. § 1.3. *See, also* *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“FCC has authority to waive its rules if there is “good cause” to do so.”). The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not (continued....)

messages will be via a broadband Internet connection. As a result, the physical availability of broadband Internet access would be a physical predicate for compliance with the requirement that EAS Participants be able to receive CAP-based alerts. We also observe that the EAS Participants most likely to lack physical access to broadband Internet access are smaller EAS Participants, for which obtaining CAP capable EAS equipment would be a relatively larger financial commitment than for a larger provider. Because it is important that any of our regulatory requirements, particularly where costs are involved, provide the benefits for which they are designed, we do not believe that it would be appropriate to require EAS Participants to purchase and install equipment that they could not use. Accordingly, we conclude that the physical unavailability of broadband Internet service offers a presumption in favor of a waiver. We also observe, however, that broadband Internet access may become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, may also become available, thus obviating the basis for granting the waiver. For this reason, we believe that any waiver based on the physical unavailability of broadband Internet access likely would not exceed six months, with the option of renewal if circumstances have not changed. As for whether the cost of broadband Internet access in a given geographic area (or other potential substitute CAP alert distribution mechanisms) would constitute grounds for a waiver of the basic CAP-related obligations, any such determination would be relative to the facts and circumstances of an individual case. In all events, to the extent a waiver applies, the affected party would be required to continue to operate its legacy EAS equipment.

153. We reject ACA's request that we exempt cable systems of 500 subscribers or less from the Part 11 rules.⁴⁶⁶ While it is true that meeting the CAP-related obligations generally will require replacement of legacy EAS equipment, as well as broadband Internet access (or some other CAP alert distribution method), there is no evidence that the costs associated with these actions would jeopardize any class of entities subject to the Part 11 rules or are otherwise unreasonable. The primary purpose of the CAP rules, and more fundamentally, the EAS, is to enable the distribution of Presidential alerts to the public. The Commission has never exempted any class of licensees or regulatees from that basic obligation – even stations classified as NN, a status that we eliminate in this order, were required to at least deploy a decoder under our previous rules. Meeting the CAP-related requirements we adopt in this order will in most cases require EAS Participants to replace their existing legacy EAS equipment. Even so, much of this equipment is more than 15 years old, is past its anticipated life cycle, and long ago depreciated, and therefore likely subject to replacement in the near future even in the absence of the CAP-related requirements adopted herein. We also observe that the obligation to deploy CAP-enabled EAS equipment was adopted in 2007, thus, all EAS Participants have had ample time to prepare for equipment acquisition. In any event, any small cable system or other EAS Participant can request a waiver of the Part 11 requirements.

154. Finally, in response to the NEBS Stations' comments, we clarify that noncommercial educational broadcast satellite stations operating pursuant to a "main studio waiver" need not deploy CAP-capable EAS equipment, provided that the EAS equipment deployed at the parent (hub) station site meets all CAP-related and other requirements set forth in this order. Because all of the programming broadcast by these stations originates at the parent (or hub) station, including all EAS messages, requiring such stations to deploy CAP-capable EAS equipment would represent an unjustified departure from established policy, and an unnecessary cost to smaller broadcasters.

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undermine the policy served by the rule. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁴⁶⁶ ACA Comments at 10.

C. EAS Equipment Certification

155. Section 11.34 of the Part 11 rules requires EAS encoders and decoders to be certified in accordance with the equipment authorization procedures set forth in Part 2, subpart J, of the Commission's rules.⁴⁶⁷ Among other things, certification under Part 2 requires device testing to demonstrate compliance with the applicable specifications set forth in the Part 11 rules.⁴⁶⁸

156. As we explained in the *Third FNPRM*, unrelated to the Commission's certification program, FEMA implemented an IPAWS Conformity Assessment (CA) Program for CAP products intended to interoperate with the IPAWS system.⁴⁶⁹ Under this program, manufacturers submitted software or hardware to FEMA's designated test laboratory for testing to ensure compliance with CAP v1.2 USA IPAWS Profile v1.0 and the ECIG Implementation Guide.⁴⁷⁰ If the equipment passed, the test laboratory provided a final test report and template Supplier's Declaration of Conformity (SDoC) to the manufacturer, who would then post final versions of these documents on a designated web site for public inspection.⁴⁷¹ FEMA discontinued the IPAWS CA program in August 2011.⁴⁷²

157. In the *Third FNPRM*, we sought comment on whether and how we should incorporate compliance with respect to CAP functionality into the Commission's existing certification scheme.⁴⁷³ We observed that the primary users of the CAP v1.2 USA IPAWS Profile v1.0 standard appear to be CAP-based alert message originators, as opposed to EAS Participants, and therefore tentatively concluded that it would be inappropriate to incorporate conformance with the CAP v1.2 USA IPAWS Profile v1.0 into the Commission's certification process.⁴⁷⁴ We sought comment on this tentative conclusion.⁴⁷⁵

158. With respect to the ECIG Implementation Guide, we asked whether we should certify conformance with this document, and if so, whether and how we should implement conformance testing for it.⁴⁷⁶ If conformance testing is desirable, and assuming that uniform test procedures could be established, we asked what entity or entities, such as third-party test laboratories, should perform such tests.⁴⁷⁷ We asked how, if we were to accept or require IPAWS CA program certification as a prerequisite to obtaining FCC certification for a CAP-decoding EAS device, manufacturers should demonstrate IPAWS CA program certification compliance (such as by requiring the inclusion of an

⁴⁶⁷ See 47 C.F.R. § 11.34.

⁴⁶⁸ See *id.* § 11.34(a) ("The data and information submitted must show the capability of the equipment to meet the requirements of this part as well as the requirements contained in part 15 of this chapter for digital devices.").

⁴⁶⁹ See *Third FNPRM*, 26 FCC Rcd 8149, 8185, para. 90 (citing <https://www.nimssc.org/ipawsconform/default.asp>).

⁴⁷⁰ See *id.* Specifically, under FEMA's IPAWS CA, manufacturers submitted software and hardware to the SAIC Incident Management Test and Evaluation Laboratory (IMTEL), located in Somerset, Kentucky. See <https://www.nimssc.org/ipawsconform/faq.asp>.

⁴⁷¹ The final reports for products that passed IPAWS CA testing were eligible for posting on a Responder Knowledge Base (RKB) website (<https://www.rkb.us/>), which provides government officials and other end-users with access to product test results. See *id.*

⁴⁷² See <https://www.nimssc.org/ipawsconform/>.

⁴⁷³ See *Third FNPRM*, 26 FCC Rcd 8149, 8186, para. 94.

⁴⁷⁴ See *id.*

⁴⁷⁵ See *id.*

⁴⁷⁶ See *id.* at 8187, para. 97.

⁴⁷⁷ See *id.*, para. 98.

IPAWS CA program SDoC – and possibly the IPAWS CA program test report – along with the other FCC certification application materials).⁴⁷⁸

159. The majority of commenters addressing this issue supported incorporation of ECIG Implementation Guide certification into the FCC certification process. Sage, for example, stated that “the most expeditious course of action is for the FCC to permit third party accredited labs to use FEMA’s existing test requirements and procedures for future CAP/EAS certification, and that those labs accept the test report and SDOC from the 2011 FEMA conformity assessment as sufficient for the current CAP/EAS devices.”⁴⁷⁹ Sage also asserted, “If a device has been part 11 certified and FEMA conformance tested, that should be sufficient,” adding that “[a] number of EAS /CAP devices with Part 11 certification and a passing grade on the FEMA CAP compliance test are now on the market.”⁴⁸⁰ Sage further noted that “[u]nderstanding how to render CAP messages as EAS requires portions of all three documents, the CAP 1.2 Protocol, the IPAWS Profile, and the ECIG Implementation Guide, and therefore, all three documents should be referenced, and tested for, in any FCC certification efforts.”⁴⁸¹

160. Monroe recommended that we “extend existing Part 11 certification requirements to any equipment that creates EAS protocol tones from a CAP-formatted message, and that this requirement should apply to both EAS encoder/decoders, as well as intermediary devices” and that we “incorporate the IPAWS CAP conformance testing of EAS encoder/decoders, as a complete testing of CAP conformity.”⁴⁸² According to Monroe, “conformance by EAS encoder/decoders with the ECIG Implementation guide can be demonstrated via the successful completion for the IPAWS Conformity Assessment process, insofar as valid Test Results and a Suppliers Declaration of Conformity (SDOC) can be furnished by the equipment manufacturer” and that the “SDOC and Test Results document could be submitted directly to the FCC as evidence of ECIG Implementation Guide conformance.”⁴⁸³ Monroe added that “the current FCC certification process is sufficient for the EAS protocol (SAME) encoding/decoding functions” and that “[i]n conjunction with the test results described . . . for EAS encoder/decoders, the Commission should be able to have a definitive assurance of EAS and CAP compliance.”⁴⁸⁴

161. Trilithic asserted that “ultimately, CAP conformance testing should be fully integrated into the existing part 11 certification scheme, however, in the interim the Commission should allow units qualified under the FEMA Conformity Assessment program to be deployed.”⁴⁸⁵ Similarly, TFT supported incorporation of ECIG Implementation Guide certification into the FCC certification process, stating “conformance testing to the ECIG Implementation Guide should be governed by a certification program in accordance with the procedures in Part 2, Subpart J of Title 47 C.F.R.”⁴⁸⁶ Timm commented, “The FCC needs to closely examine the FEMA testing to determine if it meets the Commission’s needs[,] [and if it does], the FCC should then simply require presentation of the Suppliers Declaration of

⁴⁷⁸ See *id.* at 8188, para. 99.

⁴⁷⁹ Sage Comments at 16.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² Monroe Comments at 10.

⁴⁸³ *Id.* at 12.

⁴⁸⁴ *Id.*

⁴⁸⁵ Trilithic Comments at 3.

⁴⁸⁶ TFT Comments at 6.

Conformity (SDoC) to obtain FCC certification, as alluded to in para. 99 [of the Third FNPRM].”⁴⁸⁷

162. BWWG also supported incorporation of ECIG Implementation Guide certification into the FCC certification process, suggesting that “the FCC partner with FEMA to set up an FCC conformance testing procedure that the BWWG believes should be spelled out clearly in Part 11 language.”⁴⁸⁸ BWWG further noted, “This strategy will have the benefit of assuring that any subsequent changes in EAS CAP equipment, or problems uncovered during the FCC phase of conformance testing, are fully coordinated between the two agencies that have, like it or not, joint responsibility for various aspects of conformance and compliance.”⁴⁸⁹ With respect to the IPAWS CA program, BWWG asserted that “the SdoC procedure has so far not proven to be terribly informative, easy to use or helpful to buyers of EAS CAP equipment,”⁴⁹⁰ and that “the FCC phase of testing should be conducted to simulate the widest possible range of wired and wireless CAP and SAME relay methods, conditions, and messages.”⁴⁹¹ In this regard, BWWG asserted that “[f]or SAME, all current authorized warning codes should be tested,” as well as “[e]lements such as assuring that two-minute internal recorders for messages works properly.”⁴⁹²

163. NAB asserted that “there does not seem to be a need for the Commission to separately certify compliance with CAP or the ECIG Guide” and that “the Commission should largely rely on FEMA’s conformance testing for determining whether EAS equipment complies with CAP.”⁴⁹³ In this regard, NAB suggested that “the Commission should merely require that EAS equipment manufacturers file their Supplier’s Declaration of Conformity from the FEMA testing lab as a prerequisite of obtaining Commission certification for a CAP-decoding EAS device.”⁴⁹⁴ In all events, NAB maintained that “the Commission should not disrupt the already installed universe of FEMA-certified, CAP-compliance EAS equipment in revising the Part 11 rules.”⁴⁹⁵

164. *Decision.* We are incorporating conformance with the ECIG Implementation Guide into our existing certification process.⁴⁹⁶ We conclude that EAS equipment must be certified as CAP

⁴⁸⁷ Timm Comments at 4-5.

⁴⁸⁸ BWWG Comments at 39.

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.* at 40.

⁴⁹¹ *Id.* at 39.

⁴⁹² *Id.*

⁴⁹³ NAB Comments at 24. *See also* NSBA Comments at 16-17.

⁴⁹⁴ NAB Comments at 24.

⁴⁹⁵ *Id.* at 25.

⁴⁹⁶ As detailed in other sections of this order, we will not allow EAS Participants to use text-to-speech software configured in their EAS equipment to generate the audio portion of an EAS message, and we are eliminating the mandate to receive and process CAP-formatted messages initiated by state governors. *See supra* paras. 36-40 and 191-193. Accordingly, the provisions in the ECIG Implementation Guide that affect these actions are inapplicable and will not be incorporated into the certification requirements we adopt here. In addition, we observe that the ECIG Implementation Guide specifies that a location code consisting of all zeros (“000000”) indicates that the message is intended for the entire United States and U.S. territories. *See, e.g.*, ECIG Implementation Guide, § 3.4.1.3. There is no corresponding national code in the location coding scheme used by the EAS Protocol. *See* 47 C.F.R. § 11.31(f). We do note, however, that the Commission sought comment on whether to formally adopt “000000” as the six-digit location code covering the entire United States and its territories in the record of the EAS Test Order in this docket and received comments in that proceeding that supported our adoption of the 6 zero code. The Commission did not resolve the question in that proceeding, noting that the EAS equipment that would be in (continued....)

compliant because we are amending Part 11 to require CAP-to-SAME conversion in conformance with the ECIG Implementation Guide, and thus, as part of the required Part 11 functions, it necessarily falls under Part 11's certification requirements.⁴⁹⁷ While we agree with commenters that FEMA's IPAWS CA program has served as a useful mechanism for determining EAS device conformance with the ECIG Implementation Guide, this program cannot by itself serve as a substitute for the Commission's certification procedures. Accordingly, we will require that any EAS device that performs the functions of converting CAP-formatted messages into a SAME-compliant message, including integrated CAP-capable EAS devices and, as detailed below, intermediary devices, be certified under our Part 11 rules.

165. In terms of implementation, we agree with commenters that the test procedures developed and utilized in FEMA's IPAWS CA program constitute the most logical basis for demonstrating compliance with the CAP compliance requirement we adopt today.⁴⁹⁸ As a preliminary matter, therefore, we conclude that any integrated CAP-capable EAS devices that have passed the conformance testing performed under FEMA's IPAWS CA program may use the SDoC issued under that program to demonstrate CAP-to-SAME conversion in conformance with the ECIG Implementation Guide. For integrated CAP-capable EAS devices that have already obtained FCC certification, we will require that the grantee for such certified devices update its existing FCC certification file (via a Class II Permissive Change filing)⁴⁹⁹ to include the SDoC authorized under the IPAWS CA program. For integrated CAP-capable EAS devices that have not obtained FCC certification, we will require that the FCC certification application materials include a copy of the IPAWS CA program SDoC. In either case, if the device is already being marketed, the filing must be submitted prior to June 30, 2012, the effective deadline for overall CAP compliance. We believe that this streamlined approach will allow EAS equipment manufacturers to comply with our equipment certification rules in a manner that will impose minimal costs.

166. Integrated CAP-capable EAS devices that have not already passed the conformance testing performed under FEMA's IPAWS CA program, and thus do not have an IPAWS CA program-authorized SDoC, must independently show conformance with the ECIG Implementation Guide to update their existing FCC certification or obtain FCC certification, as applicable. There are two methods for demonstrating such conformance. First, we observe that the National Incident Management System (NIMS) Support Center – Supporting Technology Evaluation Project (STEP) has assumed the role of testing for CAP and IPAWS profile compliance for EAS devices from the IPAWS CA program, which is no longer in service.⁵⁰⁰ The test procedures are overall the same as those employed by the IPAWS CA

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place for the test would not be able to program the 6 zero national code. We are currently in the process of reviewing test data from the November 9, 2011 Nationwide EAS Test, which may provide insight on this matter. Accordingly, it would be premature to take any actions with respect to adding a new national EAS location code until after we have reviewed and processed the test data from the November 9, 2011 Nationwide EAS Test. Accordingly, we defer taking any action on this matter at this time.

⁴⁹⁷ See, e.g., section 11.34(a) and (b) (specifying that equipment performing encoding and decoding functions “must be Certified in accordance with the procedures in part 2, subpart J, of this chapter” and that “[t]he data and information submitted must show the capability of the equipment to meet the requirements of this part as well as the requirements contained in part 15 of this chapter for digital devices”).

⁴⁹⁸ To the extent that FEMA's IPAWS CA test procedures did not test for conformance with the ECIG Implementation Guide's provisions related to processing CAP-formatted messages initiated by state governors, any such omission is irrelevant because we are eliminating the mandate to receive and process such messages from the Part 11 rules. See *infra* para. 191.

⁴⁹⁹ See, e.g., 47 C.F.R. § 2.1043(b)(2).

⁵⁰⁰ The program description, application, and other procedures for the STEP testing program are available at: <http://www.ptacccenter.org/step/index>.

program, and will be made publicly available on the STEP web site on or by the effective date of the rule amendments adopted in this order. Manufacturers whose EAS devices pass the NIMS testing will be authorized to issue an SDoC that demonstrates CAP-to-SAME conversion in conformance with the ECIG Implementation Guide.⁵⁰¹ The SDoC issued under the NIMS CAP testing program can be used to update an existing FCC certification or obtain a new FCC certification, as described above for SDoCs issued under the IPAWS CA program.

167. The second method for demonstrating compliance with the ECIG Implementation Guide involves the manufacturer arranging for testing and submitting a copy of the test report in lieu of the SDoC to complete the process discussed above.⁵⁰² We again observe that the test procedures developed and utilized in FEMA's IPAWS CA program constitute the most logical basis for demonstrating compliance.⁵⁰³ As detailed below, manufacturers can demonstrate CAP-to-SAME conversion in conformance with the ECIG Implementation Guide based upon successful completion of such tests. The procedures and time periods for all cases described above are summarized as follows:

- For integrated CAP-capable EAS devices that already have FCC certification, the grantee must submit a Class II Permissive Change filing⁵⁰⁴ that includes: (i) a cover letter explaining that the purpose of the filing is to apprise the Commission that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order and that the filing is being made to update the device's existing certification file; (ii) a statement signed by the grantee of the device's underlying FCC equipment authorization⁵⁰⁵ confirming compliance with section 11.56 of the Commission's rules; and (iii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's program; (b) the NIMS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements.⁵⁰⁶ If the integrated CAP-capable EAS device has already been marketed, the Class II Permissive Change filing must be submitted by June 30, 2012, the effective deadline for overall CAP compliance.
- For integrated CAP-capable EAS devices that do not already have FCC certification, the grantee must include with the FCC certification application materials: (i) a cover letter explaining that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order; (ii) a statement signed by the grantee confirming compliance with section 11.56 of the Commission's rules; and (iii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program, (b) the NIMS SDoC, if tested under the NIMS CAP testing program, or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements.

168. We believe that the streamlined process outlined above will place minimal regulatory and

⁵⁰¹ See *id.*

⁵⁰² There are no restrictions or requirements as to what entity can perform the device testing.

⁵⁰³ As indicated, these test procedures will be made publicly available on the STEP web site at: <https://www.ptaccenter.org/step/index>.

⁵⁰⁴ A Class II Permissive Change filing involves the submission of the FCC Form 731, a cover letter explaining that the purpose of the filing, and any required exhibits. See 47 C.F.R. § 2.1043(c). Currently, the filing fee for Class II Permissive Change applications is \$60. See 47 C.F.R. § 2.1033.

⁵⁰⁵ See 47 C.F.R. §§ 2.931, 2.909(a).

⁵⁰⁶ The equipment authorization rules generally require all test reports to be signed by the person who performed or supervised the tests. See 47 C.F.R. §§ 2.911(d) and (e). The party responsible for equipment compliance must retain a copy of the ECIG Implementation Guide test results, as specified in section 2.938. See 47 C.F.R. § 2.938

financial burdens on manufacturers with both previously certified and uncertified devices. In this regard, we observe that these procedures are generally consistent with other instances in which the Commission has incorporated into its rules requirements for compliance with device standards unrelated to interference and with other agency's certification programs.⁵⁰⁷ Further, we find that our approach will not cause disruption to the existing market for and prior purchasers of integrated CAP-capable EAS devices.

169. *Intermediary Devices.* In the *Third FNPRM*, we sought comment on whether we should classify intermediary devices as stand-alone devices as opposed to modifications to existing equipment, such as software or firmware upgrades.⁵⁰⁸ Such classification would make them subject to the same certification requirements that apply to stand-alone decoders and encoders (*i.e.*, equipment that carries out all the functions required for an EAS Participant to meet its EAS obligations, including compliance with any applicable portions of the Part 11 (and Part 15) rules (including compliance with ECIG Implementation Guide, if required)).⁵⁰⁹ More broadly, we asked whether intermediary devices should be subject to certification.⁵¹⁰

170. *Decision.* As a preliminary matter, we agree with commenters that intermediary devices are stand-alone devices that are subject to certification under our current rules. Specifically, intermediate devices are stand-alone devices that carry out the functions of monitoring for, receiving, and decoding CAP-formatted messages and converting such messages into a format that can be inputted into a separate, stand-alone legacy EAS device to produce an output that complies with the Part 11 rules. As discussed above, based on the record, there appear to be two types of intermediary devices, which we are conceptually categorizing as "universal" intermediary devices and "component" intermediary devices.⁵¹¹ These devices perform encoder or decoder functions and as such, clearly are subject to certification under section 11.34 of our rules.⁵¹² Specifically, universal intermediary devices monitor, acquire, and decode CAP messages, using the relevant CAP data to generate (*i.e.*, encode) the EAS codes (FSK audio tones) and if present, an audio message, which can be received by the audio input of a legacy EAS device just as it would receive any other over-the-air SAME-formatted message. Accordingly, universal intermediary devices are subject to certification both as decoders and encoders under sections 11.34(a) and (b) of our rules, respectively.⁵¹³

171. Component intermediary devices also monitor for, acquire, and decode CAP messages, but because they are configured to interface with a specific legacy EAS device model, they may be capable of communicating the extracted data to the companion legacy EAS device model in a non-AFSK format and

⁵⁰⁷ See, e.g., 47 C.F.R. §§ 2.1091(c) and 2.1093(c) (requiring that certification applications for mobile and portable devices, respectively, associated with various services to include with their certification applications a statement confirming compliance with applicable radiofrequency radiation exposure limits); 47 C.F.R. § 80.231(e) (requiring that certification applications for maritime Class B Automatic Identification System equipment include a letter from the U.S. Coast Guard stating that the device meets certain internationally standardized requirements).

⁵⁰⁸ See *Third FNPRM*, 26 FCC Rcd 8149, 8188-89, para. 104 (citing 47 C.F.R. § 2.1043).

⁵⁰⁹ See *id.* (citing 47 C.F.R. § 2.1043).

⁵¹⁰ See *id.*

⁵¹¹ See *supra* paras. 70-71.

⁵¹² See 47 C.F.R. § 11.34(a) ("An EAS Encoder used for generating the EAS codes and the Attention Signal must be Certified in accordance with the procedures in part 2, subpart J, of this chapter."); 47 C.F.R. § 11.34(b) ("Decoders used for the detection of the EAS codes and receiving the Attention Signal must be Certified in accordance with the procedures in part 2, subpart J, of this chapter.").

⁵¹³ See *id.*

thus may not themselves be encoding the SAME data.⁵¹⁴ Under these circumstances, a component intermediary device would not be subject to certification as an encoder under section 11.34(a) in its capacity as a stand-alone device. However, component intermediary devices are designed for and intended to be operated with specific legacy EAS device models. Accordingly, we find that the output of the combined system configuration of these devices performs encoding functions which subjects such configuration to certification under section 11.34(a). In addition, component intermediary devices perform decoding functions in their capacity as stand-alone devices that subject them to certification under section 11.34(b).

172. We next turn to incorporating conformance with the ECIG Implementation Guide for intermediary devices into our existing certification process. Although FEMA's IPAWS CA program tested intermediary devices for conformance with the ECIG Implementation Guide, both Monroe and Sage maintained that such testing was not as extensive as that for integrated CAP-capable EAS devices and thus was inadequate as a basis for our updated Part 11 certification. Specifically, Monroe asserted that "the IPAWS Conformity Assessment process contains a number of omissions in regards to the evaluation of intermediary devices (CAP converters) that severely impair the usefulness of the conformity assessments of those devices."⁵¹⁵ Monroe added, "Specifically, the test cases used in the conformity assessment process omitted evaluation of the ability to process a CAP formatted governors must carry message in intermediary devices, while EAS encoder-decoders were tested in regards to that functionality."⁵¹⁶

173. Sage asserted, "The FEMA tests allowed Intermediary Devices to use a subset of those tests for their conformity assessment," which according to Sage, "did show that the Intermediary device could ingest CAP messages, [but] may not have shown that a system made up of an Intermediary Device and a legacy EAS system meets all the requirements of part 11."⁵¹⁷ In particular, according to Sage, "Intermediary Devices were not pass/fail tested for invalid, expired, or duplicate messages, or for local area recognition."⁵¹⁸ Accordingly, Sage argued, "[i]f the intent is to use an Intermediary Device and a legacy device as a pair to meet Part 11 requirements, then the Intermediary Devices should be retested to the full Part 11 output specifications, and the full CAP processing requirements."⁵¹⁹

174. In response to Monroe's and Sage's objections, we observe that while the ECIG Implementation Guide was designed for integrated CAP-capable EAS devices – and thus assumed that all of the functions required under sections 11.32 and 11.33 be performed within a single, self-contained unit – intermediary devices do not function in that manner. Intermediary devices are not designed or intended to perform all of the functions of decoders or encoders set forth in sections 11.31 and 11.33. For example, one would not necessarily expect to find an audio input on a universal intermediary device that is designed solely to receive and decode CAP-formatted messages. Nor would we expect a universal intermediary device to perform the check for invalid, expired, or duplicate messages or for local area recognition duplicate message requirements in section 11.32. These functions would be handled by the FCC-certified legacy EAS device that actually places the message on the air (and, if applicable, encodes such message for the benefit of downstream monitoring stations). With respect to universal intermediary

⁵¹⁴ See Trilithic Comments at 2.

⁵¹⁵ Monroe Comments at 11.

⁵¹⁶ *Id.*

⁵¹⁷ Sage Comments at 16.

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

devices, we would only expect these devices to output a SAME-compliant message. With respect to component intermediary devices, it is more difficult to pinpoint a demarcation line between functionalities handled by the component intermediary device and the legacy EAS device model it is designed to be configured with, due to the close integration of the two units.

175. Given the nature of the two types of intermediary devices, we conclude that the test procedures developed and utilized in FEMA's IPAWS CA program for testing intermediary devices constitute a sufficient basis for demonstrating compliance with the ECIG Implementation Guide in a way that would impose minimal costs on the affected parties. We conclude, therefore, that any universal intermediary devices or component intermediary devices that have passed the conformance testing performed under FEMA's IPAWS CA program may use the SDoC issued under that program to demonstrate CAP-to-SAME conversion in conformance with the ECIG Implementation Guide. We further conclude that the streamlined certification processes outlined above for integrated CAP-capable EAS devices are equally suitable for intermediary devices, and as summarized below, we will apply these same procedures to intermediary devices. This includes testing under the NIMS CAP testing program and alternative test arrangements made by the manufacturer. However, with respect to certification testing for ECIG Implementation Guide compliance and Part 11 compliance, because component intermediary devices are designed and intended to be operated with specific legacy EAS device models, we will require certification testing for ECIG Implementation Guide compliance and Part 11 compliance to be performed on the combined system – *i.e.*, the component intermediary device as configured with the specific legacy EAS device model(s) with which it is marketed and intended to be used. Universal type intermediary devices can be tested as stand-alone devices.

176. Accordingly, for all cases outlined above, manufacturers will demonstrate compliance as follows:

- For intermediary devices that already have FCC certification, the grantee must submit a Class II Permissive Change filing that includes: (i) a cover letter explaining that the purpose of the filing is to apprise the Commission that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order and that the filing is being made to update the device's existing certification file; and (ii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program; (b) the NIMS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements. If the intermediary device has already been marketed, the Class II Permissive Change filing must be submitted by June 30, 2012, the effective deadline for overall CAP compliance.
- For intermediary devices that do not already have FCC certification, the grantee must include with the FCC certification application materials: (i) a cover letter explaining that the device has been tested for compliance with the ECIG Implementation Guide pursuant to the procedures adopted in this order; and (ii) a copy of either (a) the IPAWS CA program SDoC, if tested under FEMA's IPAWS CA program; (b) the NIMS SDoC, if tested under the NIMS CAP testing program; or (c) for devices tested outside these programs, a copy of the test report showing that the device passed the test elements.

177. *Modified Equipment.* Section 2.1043 of the Commission's rules delineates the types of modifications (or permissive changes) that manufacturers can make to previously certified equipment that do not require equipment recertification.⁵²⁰ In general, under these rules, manufacturers can permissively

⁵²⁰ See *id.*

make changes that do not degrade radiofrequency characteristics and performance.⁵²¹ As with all certified devices, these rules apply to EAS equipment generally. In addition, section 11.34(f) specifies that modifications to existing authorized EAS equipment that are necessary to implement revisions to the EAS codes (set forth in section 11.31) or to implement the selective displaying and logging feature for state and local events are Class I permissive changes.⁵²²

178. In the *Third FNPRM*, we sought comment on the certification requirements that should apply to modified EAS equipment.⁵²³ Specifically, we asked whether the existing rules governing modifications to certified EAS equipment are sufficient to permit periodic updates to EAS equipment without overburdening manufacturers or the certification process or whether additions to these rules would be desirable for EAS equipment.⁵²⁴ We also asked whether there is any point at which changes to the general CAP standard, CAP v1.2 USA IPAWS Profile v1.0, or the ECIG Implementation Guide would necessitate recertification of previously certified CAP-enabled equipment.⁵²⁵

179. BWVG, the only commenter addressing this issue directly, observed that “modifications and improvements to all technology, including CAP EAS devices, are both inevitable and desirable” and asserted that “[t]he Part 11 rewrite should be flexible enough to allow for future developments.”⁵²⁶ With respect to whether modifications to the CAP-related standards might necessitate recertification, however, BWVG noted that “the only way to make sure a future modification will not ‘break’ IPAWS CA program or IPAWS conformance is to run said equipment through both processes again.”⁵²⁷

180. *Decision.* We conclude that our existing rules governing modifications to certified equipment are sufficient to cover CAP-enabled equipment. We cannot anticipate every nuance of modification that might arise or how it might impact the performance of the EAS device, but in general, we expect that routine changes to the EAS codes would not constitute major modifications. Accordingly, we clarify here that modifications to authorized EAS equipment that are necessary to implement revisions to the EAS event codes, originator codes, or location codes set forth in section 11.31 may be implemented as Class I permissive changes. With respect to revisions to the CAP-related standards, we are incorporating by reference the versions of the standards adopted by FEMA. Thus, any future revisions that may be made to these standards could not become effective in the Part 11 rules absent a rulemaking proceeding. We believe that this is a cost-effective approach that will allow us to address such instances if and when they arise.

⁵²¹ See, e.g., 47 C.F.R. § 2.1043(b)(1); see also *id.* at § 2.1043(a) (specifying that changes to the software installed in a transmitter that do not affect the radio frequency emissions do not require a filing with the Commission).

⁵²² See 47 C.F.R. § 11.34(f). This provision was added to Part 11 in the *2002 Report and Order* to make clear that certain new EAS codes and selective display and logging capabilities adopted therein could be implemented as modifications to existing equipment as Class 1 permissive changes. See Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, *Report and Order*, 17 FCC Rcd 4055, 4074, para. 46 (2002) (*2002 Report and Order*). All new EAS equipment models manufactured after August 1, 2003, were required to be capable of transmitting and receiving such codes and selectively displaying and logging messages with state and local event codes. See *id.* at para. 47.

⁵²³ See *Third FNPRM*, 26 FCC Rcd 8149, 8190, para. 107.

⁵²⁴ See *id.*

⁵²⁵ See *id.*

⁵²⁶ BWVG Comments at 43.

⁵²⁷ *Id.* TFT also suggested with respect to certification generally, that certification should be tied to the CAP-related standards “in effect at the time of the date of submission for certification.” TFT Comments at 6.

D. CAP Messages Originated by State Governors

181. In the *Second Report and Order*, the Commission mandated that all EAS Participants within a state (other than SDARS and DBS providers) be able to receive and transmit state-level and geographically targeted CAP-formatted EAS messages when certain conditions are met. These conditions are (1) that such alerts are aggregated and delivered by the state governor or his/her designee or by FEMA on behalf of such state governor, within 180 days from the date FEMA adopts CAP, and (2) that the methodology for such delivery is explicitly described in the State EAS Plan that is submitted to and approved by the Commission.⁵²⁸ This obligation is codified in sections 11.21(a) and 11.55(a) of Part 11.⁵²⁹

182. As we explained in the *Third FNPRM*, CSRIC and parties responding to the *Part 11 Public Notice* sought clarification with respect to how EAS Participants will compile and process state CAP messages, how state CAP messages will be implemented within the EAS Protocol coding scheme, what constitutes a “geographically targeted area EAS message,” who can serve as the governor’s “designee,” and other related issues.⁵³⁰ We addressed these issues in the *Third FNPRM*. We tentatively concluded that the basic obligation to process gubernatorial CAP-formatted messages should apply only where messages comply with the standards adopted by FEMA for federal CAP messages.⁵³¹ We sought comment as to whether we would need to adopt a new origination or event code to implement the obligation within the existing EAS architecture.⁵³²

183. We also sought comment on whether and how the obligation to process gubernatorial CAP-formatted messages should apply with respect to CAP-formatted messages delivered by the governor of a state adjacent to the state in which the EAS Participant provides service.⁵³³ We tentatively concluded that the geo-targeting requirement associated with mandatory state gubernatorial alerts be defined by the location provisions in the EAS Protocol.⁵³⁴ We invited comment on what entities should be allowed to serve as designees for purposes of initiating gubernatorial CAP-formatted messages,⁵³⁵ how the obligation to process gubernatorial CAP-formatted messages should apply to NN stations;⁵³⁶ whether we should revise the automatic reset requirements in section 11.39(a)(9) to accommodate gubernatorial CAP-formatted messages;⁵³⁷ and whether prioritizing gubernatorial CAP-formatted messages over local EAS messages is either practical or technically feasible.⁵³⁸ We also asked how we might revise the minimum EAS transmission requirements in section 11.51(m) to incorporate the obligation to process CAP-formatted messages initiated by state governors.⁵³⁹

⁵²⁸ *Second Report and Order*, 22 FCC Rcd 13275, 13300-01, paras. 55-56. See also 47 C.F.R. § 11.55.

⁵²⁹ 47 C.F.R. §§ 11.21(a), 11.55(a).

⁵³⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8192, para. 113.

⁵³¹ See *id.* at 8192-92, para. 116.

⁵³² See *id.* at 8194, para. 120.

⁵³³ See *id.* at 8195, para. 124.

⁵³⁴ See *id.* at 8196, para. 126.

⁵³⁵ See *id.* at 8197, para. 129.

⁵³⁶ See *id.* at 8198, para. 132.

⁵³⁷ See *id.*, at 8198-99, para. 134.

⁵³⁸ See *id.* at 8199-8200, para. 136.

⁵³⁹ See *id.* at 8200, para. 138.

184. Commenters raised several concerns with implementing the mandate to carry gubernatorial CAP messages, and there was considerable support for eliminating the mandate. Sage commented that the “major issue with the Governors Must Carry is with EAS relay, and it exposes the major problem with Intermediary Devices.”⁵⁴⁰ Specifically, Sage pointed out that its legacy EAS devices “have no way to be told that the EAS message is from the governor, and therefore no way to effectively interface with the Intermediary Device for the Governors Must Carry function,” unless a new originator code is adopted and added as a ROM update.⁵⁴¹ Sage noted three difficulties with the mandatory gubernatorial alert: First, if the gubernatorial CAP mandate is limited to only the EAS Participant that receives the CAP message,⁵⁴² then “[universal] [i]ntermediary Devices would not meet the Part 11 requirements in states where must carry is in the state plan”; second, if “the FCC wants Intermediary Devices to be used[,] ... a new event or originator code MUST be added to the EAS specification, and legacy devices must implement it”; third, if “the FCC wants the [gubernatorial CAP] must carry rules to include relay of alerts through the legacy EAS system[,] . . . a new event or originator code MUST be added to the EAS specification, and all EAS devices, CAP/EAS and legacy EAS must be updated.”⁵⁴³

185. Sage also stated that adding a new originator code for the mandatory gubernatorial alert is “far more preferable to adding a new Event code.”⁵⁴⁴ Sage pointed out that “some stations specializing in children’s programming do not carry Amber Alerts due to the nature of the alerts and their audience” and accordingly suggested that “[a] limited opt-out for some types of must carry should be considered by the Commission.”⁵⁴⁵ According to Sage, implementing priority status for a mandatory gubernatorial CAP message would be problematic, observing that “many legacy devices, and new devices derived from them, still use a two minute audio buffer for incoming EAS alerts, and the only way to handle a higher priority EAS message is to abort an outgoing, lower priority message.”⁵⁴⁶ Presumably, the messages subject to being aborted would be non-gubernatorial state, local, and NWS messages.

186. TFT stated, “Adoption of new Originator or Event codes will only complicate the availability of equipment, unduly require legacy EAS equipment to be modified at considerable expense to the EAS Participant and to manufacturers, and unnecessarily complicate the process for emergency managers to distribute emergency messages.”⁵⁴⁷ TFT argued generally, “If the system is so complicated that it cannot be used quickly and efficiently to alert the public to emergencies, then the system will ultimately fail.”⁵⁴⁸ On that basis, TFT recommended that “[t]he ‘Governor’s Must Carry’ aspect should be eliminated entirely and rules relating thereto deleted.”⁵⁴⁹

187. Monroe recommended that the requirement to receive and process gubernatorial CAP-

⁵⁴⁰ Sage Comments at 17.

⁵⁴¹ *Id.* at 17-18.

⁵⁴² In this case, the CAP message would not be converted into and broadcast in the EAS Protocol for the benefit of downstream monitoring stations but rather the EAS Participant would create a video display based upon the CAP text and broadcast any audio message that might be included.

⁵⁴³ Sage Comments at 18.

⁵⁴⁴ *Id.*

⁵⁴⁵ Sage Reply Comments at 5.

⁵⁴⁶ Sage Comments at 20.

⁵⁴⁷ TFT Comments at 8.

⁵⁴⁸ *Id.* at 7.

⁵⁴⁹ *Id.* (internal footnote omitted). See also TFT Reply Comments at 3.

formatted messages should be limited to the EAS Participant that receives the gubernatorial CAP message, as specified in the ECIG Implementation Guide.⁵⁵⁰ Monroe argued, “Issuance of an alert using a new gubernatorial code for legacy EAS alongside a CAP-conformant gubernatorial alert will inevitably lead to confusion over multiple messages with differing audio and textual information, not only between the two alerts, but even within each alert itself.”⁵⁵¹ In this regard, Monroe also observed, “[a]dding a new event or origination code [to make it possible to relay the gubernatorial message in the EAS domain] would add ambiguity, as the textual display of such a message would (1) contain little if any effective information about the actual event, and (2) the audio would likely substantially differ from the textual portion, particularly in the case where legacy EAS equipment may somehow still be supported.”⁵⁵²

188. Timm stated that “it is unclear whether the FCC would intend to replace the CAP EAS-Must-Carry indication [utilized in the ECIG Implementation Guide to facilitate the mandatory carriage of a gubernatorial CAP message] with a legacy EAS code or add the EAS code in addition to the CAP indication.”⁵⁵³ Timm asked, “If the legacy EAS Governor code is added, must both that code and the CAP indication be used together, or either one alone indicates the Governor?”⁵⁵⁴ Timm observed, “In any event, adding a legacy EAS Governor code would require a revision of the ECIG Implementation Guide, which could create issues on FEMA’s end having already adopted it as is.”⁵⁵⁵ Timm also pointed out problems in defining which state governors’ alerts an EAS Participant must carry and problems in defining which geo-targeted area designations would encompass an EAS Participant, triggering the must-carry mandate.⁵⁵⁶ Timm further observed that these issues cannot be resolved by the states in the state EAS plans because these would constitute mandatory requirements, whereas SECCs “have no real authority to impose carriage determinations.”⁵⁵⁷

189. NSBA recommended that “The Commission should delete the gubernatorial preemptive override requirement.”⁵⁵⁸ According to NSBA, “Notably absent from the record is any demonstrated basis for a gubernatorial preemptive override right.”⁵⁵⁹ In this regard, NSBA asserted that “the willingness of broadcasters to respond when called upon by state and local emergency managers has never been an issue,” adding that “[n]o one has ever suggested that broadcaster cooperation turns on who is issuing an alert about an emergency situation.”⁵⁶⁰ NSBA also observed that “of the many ways that local broadcasters serve the public interest, nothing is more important to them than preserving the safety of their viewers and listeners.”⁵⁶¹ NSBA also observed that state governors “already work[] through the state emergency management and public safety authorities . . . [and] [a]ll of those authorities work very

⁵⁵⁰ Monroe Comments at 19-20.

⁵⁵¹ *Id.* at 20.

⁵⁵² *Id.* Monroe added, “This also raises the difficulty of making emergency communication information equally available for those who rely on textual displays rather than audio.” *Id.*

⁵⁵³ Timm Comments at 5.

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.* at 6-7.

⁵⁵⁷ *Id.* at 6.

⁵⁵⁸ NSBA Comments at ii.

⁵⁵⁹ *Id.* at 10.

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

cooperatively with broadcast stations, cable systems and others.”⁵⁶² NSBA complimented the Commission “for its desire to involve the Offices of Governor around the country” but argued that “giving them a right for which there is no emergency-based need and which complicates and confuses an already difficult emergency-focused coordination situation is simply not in the public interest.”⁵⁶³

190. BWWG stated that “emergencies are ‘event driven’ and that imposing a mandatory requirement that broadcasters carry a governor’s message makes no sense.”⁵⁶⁴ BWWG argued, “[s]trictly speaking, governor mandatory CAP is NOT a warning in the strict definition of what warnings really are and should not be made a part of Part 11 by the Commission.”⁵⁶⁵

191. *Decision.* We conclude that the mandate to receive and transmit CAP-formatted messages initiated by state governors is not necessary at this time and is potentially detrimental to effective deployment of CAP-based alerts. Accordingly, we eliminate the mandate from Part 11. We base this determination on several factors. First, as commenters pointed out, there are a number of practical problems associated with implementing the mandate within the existing EAS system architecture, and overcoming these problems would likely impose significant costs on and disruption to our transitional approach for accommodating CAP within the EAS. Perhaps the most significant of these is whether and how the gubernatorial CAP-formatted message could be converted into an EAS Protocol-formatted message for the benefit of downstream monitoring stations. While the ECIG Implementation Guide provides a procedure for identifying a CAP message as being from a governor – thus ensuring that its audio message (if any) will be broadcast along with the creation of a video crawl – this only works for an EAS Participant that receives the CAP message, as the CAP-formatted gubernatorial alert cannot be converted and encoded as an existing EAS Protocol-formatted message. Further, as Timm observed, adopting a new originator code for the legacy EAS Protocol so that the gubernatorial CAP message could be converted into an EAS Protocol-formatted message would run afoul of the ECIG Implementation Guide procedures, thus requiring a revision of the ECIG Implementation Guide to harmonize it with whatever was adopted for the EAS Protocol.⁵⁶⁶

192. Adding a new originator code to make the gubernatorial CAP mandate operational within the legacy EAS domain presents other problems.⁵⁶⁷ As Sage pointed out, such a revision to the EAS Protocol would require updates to every integrated CAP-capable EAS device, intermediary device, and legacy EAS device.⁵⁶⁸ In the case of legacy EAS devices, some of these may not be capable of being updated and would have to be replaced – along with any intermediary device with which they might be configured. Commenters note that implementing the mandatory gubernatorial alert as part of our revised EAS rules would present other equally troubling issues for which there are no ready or obvious technical solutions. These problems include implementing priority status within CAP for a gubernatorial alert⁵⁶⁹ and mandating broadcast of a category of messages that do not specify an actual emergency. Such an

⁵⁶² *Id.* at 12.

⁵⁶³ *Id.*

⁵⁶⁴ BWWG Comments at 4.

⁵⁶⁵ *Id.*

⁵⁶⁶ *See* Timm Comments at 5.

⁵⁶⁷ We agree with commenters that event codes are inappropriate for designating a message being from a governor, and the existing CIV originator code is not appropriate because it is currently used for state and local EAS alerts. *See, e.g.,* Sage Comments at 18-19; Timm Comments at 5-6; TFT Comments at 8; Monroe Comments at 20.

⁵⁶⁸ *See, e.g.,* Sage Comments at 18.

⁵⁶⁹ *See, e.g., id.* at 20.

open ended mandate might, in some cases, allow the issuance of a mandatory message that may be inappropriate for an alert.⁵⁷⁰ We presumably could avoid some of these problems by limiting the applicability of the gubernatorial CAP mandate to the EAS Participant that receives the CAP message (*i.e.*, the gubernatorial CAP message would not be encoded in the EAS Protocol and broadcast for the benefit of downstream monitoring stations). However, even if we applied such a limitation, only integrated CAP-capable EAS devices and some component intermediary device and legacy EAS device configurations would be capable of implementing the gubernatorial CAP mandate. Legacy EAS devices not capable of being configured with a component intermediary device would have to be replaced (as would any universal intermediary device with which they might be configured).⁵⁷¹ We do not believe such a result is warranted nor, as explained below, is such a result necessary.

193. While implementing the mandate to receive and process gubernatorial CAP messages would impose the technical difficulties discussed above, it is not clear whether it would provide any tangible benefit. The Commission adopted the mandatory gubernatorial alert requirement in 2007 as an incentive to encourage and facilitate state use of the EAS network.⁵⁷² The Commission also concluded that states would be “more inclined to deploy the necessary resources to upgrade to Next Generation EAS, including the ability to simultaneously transmit multiple and differentiated CAP-formatted messages, if the states have a particular – and FCC enforceable – stake in the EAS during state and local emergencies.”⁵⁷³ It does not appear that this rationale applies today. First, approximately twenty-four states (including one territory) have either deployed CAP systems or are in the planning stages of deploying CAP systems.⁵⁷⁴ Second, given the current economic climate, it seems unlikely that states that have not already deployed or begun plans to deploy CAP systems will do so simply because of an enforceable mandate to carry CAP-formatted gubernatorial messages. Moreover, as NSBA points out, there is near universal voluntary participation by EAS Participants in carrying state and local EAS messages.⁵⁷⁵ Thus, having an enforceable means to guarantee such carriage seems unnecessary. We also observe that use of the enhanced CAP text to generate the video crawl will provide a significant incentive for states and localities to utilize both CAP and the EAS to disseminate more effective alert warnings to their populations. Finally, we note that FEMA’s IPAWS will provide a means for a State governor, or the governor’s authorized representative, to issue targeted CAP-based alerts, not only over the EAS, but over mobile devices as well. The mandatory gubernatorial alerts we are discarding today duplicate features offered by the IPAWS and could interfere with its effective deployment. Eliminating the mandatory gubernatorial alert will also have the salutary effect of eliminating any costs associated with upgrading EAS equipment to comply with this requirement.

E. Revising the Procedures for Processing EANs

194. As we detailed in the *Third FNPRM*, the Part 11 rules specify that the Emergency Action Termination (EAT) message is used to terminate an EAN. More specifically, as set out in section 11.13, the EAN is the notice to EAS Participants that the EAS has been activated for a national emergency,

⁵⁷⁰ See, *e.g.*, Sage Reply Comments at 5.

⁵⁷¹ We recognize that replacement of intermediary devices will have to occur by June 30, 2015, as we are requiring that EAS Participants using intermediary devices must be capable of using the enhanced CAP text to meet the visual display requirements in sections 11.51(d), (g)(3), (h)(3), and (j)(2), in conformance with section 3.6 of the ECIG Implementation Guide by that date. See *supra* paras. 138-140.

⁵⁷² See *Second Report and Order*, 22 FCC Rcd 13275, 13299-13300, para. 54.

⁵⁷³ *Id.* at 13300, para. 55.

⁵⁷⁴ See *CSRIC Final Report*, § 4.1.2.

⁵⁷⁵ See NSBA Comments at 10-12.

while the EAT is the notice to EAS Participants that the EAN has terminated.⁵⁷⁶ This process is described in section 11.54, which specifies the actions an EAS Participant must take upon receiving an EAN.⁵⁷⁷ Under these provisions, the EAN commences a “National Level emergency” condition, during which EAS Participants must discontinue regular programming, make certain announcements set forth in the EAS Operating Handbook, and broadcast a “common emergency message,” as prioritized under section 11.44.⁵⁷⁸ EAS Participants are required to follow this process until receipt of the EAT.⁵⁷⁹

195. In the *Third FNPRM*, we sought comment on whether the procedures set forth in section 11.54 for processing EATs and EANs are problematic and technically impractical for automated operation.⁵⁸⁰ We explained that the framework for manually processing EANs described in section 11.54 was derived from the former EBS rules, under which EAS Participants processed all EAS alerts manually and EANs were distributed to broadcast and cable entities via a separate, dedicated network.⁵⁸¹ We also explained that such a manual approach for processing of EANs does not translate well into an automated system, which anticipates that EAS equipment will automatically preempt programming upon receipt of an EAN, and automatically allow programming to resume upon receipt of an End of Message (EOM) code.⁵⁸²

196. As explained in the *Third FNPRM*, while the EAS rules permit manual operation of EAS equipment, which theoretically would allow EAS Participants to better follow the procedures in section 11.54(b), there is no indication that EAS Participants actually operate EAS equipment manually.⁵⁸³ As we observed from comments in the *Third FNPRM*, the record indicated that “[t]he EAT was implemented with the vision that most broadcast stations are manned, which is no longer the case.”⁵⁸⁴ We also observed that whereas section 11.54 establishes an indeterminate time period during which EAS Participant facilities are reserved for airing various EAS messages, whether in automated or manual mode, EANs can simply terminate with the EOM, which would allow for resumption of regular programming until another EAS message arrives.⁵⁸⁵ We also observed that the obsolescence of the EAT, and by extension, the framework for processing EANs in section 11.54, was confirmed by the January 2010 Alaska EAN test, during which EAS equipment returned to normal operating status despite the fact that no EAT was sent.⁵⁸⁶

197. We therefore sought comment regarding whether we should substantially simplify the procedures for processing EANs set forth in section 11.54 and related Part 11 rule sections so that EAS

⁵⁷⁶ See *Third FNPRM*, 26 FCC Rcd 8149, 8200-01, para. 139 (citing 47 C.F.R. § 11.13).

⁵⁷⁷ See 47 C.F.R. § 11.54.

⁵⁷⁸ See *id.* § 11.54(b)(3). The EAS Participants display standby script when not airing “common emergency messages.” See *id.* § 11.54(b)(4).

⁵⁷⁹ See *id.* § 11.54(b)(3).

⁵⁸⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8202-03, para. 143.

⁵⁸¹ See *id.*

⁵⁸² See *id.* at 8203-04, para. 144.

⁵⁸³ See *id.*

⁵⁸⁴ See *id.* (citing Gary E. Timm Reply Comments, EB Docket 04-296 (filed June 7, 2010) at 8).

⁵⁸⁵ See *id.*

⁵⁸⁶ See *id.*

Participants process EANs like any other EAS message, only on a mandatory and priority basis.⁵⁸⁷ We explained that under this streamlined EAN processing approach, whether EAS Participants operate their EAS equipment in automated or manual mode, receipt of an EAN would effectively open an audio channel between the originating source and the EAS Participant's facilities until the EAS Participant receives an EOM.⁵⁸⁸ After the EAS Participant receives the EOM, the EAS equipment would return to regular programming until receipt of the next EAS message. If that message is another EAN, then the process would repeat; if that message is a state or local EAS message, then that message would be aired in accordance with the specifications in the State or Local Area EAS Plan.⁵⁸⁹ We also invited comment on whether we should eliminate the option for EAS Participants to manually process EANs (but not state or local EAS messages).⁵⁹⁰ Finally, because the EAT would serve no purpose under our streamlined, message-by-message processing approach for EANs, we sought comment on whether we should eliminate the EAT and replace it where necessary with the EOM in the Part 11 rules.⁵⁹¹

198. The majority of commenters addressing these issues supported message-by-message processing of EANs and elimination of the EAT. Timm, for example, observed that the "only current purpose the EAT code serves is for use by NN stations, which ... should also be eliminated."⁵⁹² Sage asserted, "In our modern times, especially in radio, many stations are unattended by staff capable of manual EAN operation for some portion of the day."⁵⁹³ As a result, according to Sage, "EAN procedures that refer to actions that require human assistance are not practical."⁵⁹⁴ Accordingly, Sage recommended that "The EAN rules should be rewritten (and greatly simplified) to more closely match what is possible in the normal case, unattended operation," adding that "[t]he FCC's concept of 'message by message EAN processing' is the correct approach."⁵⁹⁵ BWWG, Trilithic, and Monroe similarly supported simplifying the rules governing EANs and eliminating the EAT.⁵⁹⁶ BWWG also stated that "that there is a definite public warning benefit to eliminating the manual mode for EAN to eliminate possible intentional or accidental local use."⁵⁹⁷

199. On the other hand, TFT stated that the EAT should be retained "as a failsafe to unlock the EAS distribution system if an EAS message with event code EAN were sent without a subsequent End-of-Message code."⁵⁹⁸ TFT also argued that EAS Participants should have the option of manual processing of EANs, on grounds that "[i]f a better, clearer audio source is available, an operator would be able to switch to that source so that the public could more easily understand the message transmitted" and [m]andating automatic processing of EAN messages will burden EAS Participants and manufacturers to

⁵⁸⁷ See *id.* at 8204, para. 145.

⁵⁸⁸ See *id.*

⁵⁸⁹ See *id.*

⁵⁹⁰ See *id.*, para. 146.

⁵⁹¹ See *id.* at 8204-05, para. 147.

⁵⁹² Timm Comments at 9.

⁵⁹³ Sage Comments at 20.

⁵⁹⁴ *Id.*

⁵⁹⁵ *Id.* at 21.

⁵⁹⁶ See BWWG Comments at 56-57; Trilithic Comments at 10; Monroe Comments at 22.

⁵⁹⁷ BWWG Comments at 57.

⁵⁹⁸ TFT Reply Comments at 4. See also Brancato Comment at 1.

replace firmware/software or install new equipment.”⁵⁹⁹

200. Walker stated that eliminating the EAT would force “equipment to not only play the attached message audio associated with the alert ... but also continuously analyze it to look for the AFSK EOM tones.”⁶⁰⁰ Walker added, “This would add another level of complexity to equipment that is downloading and playing the audio over the [I]nternet.”⁶⁰¹

201. *Decision.* We are amending the rules so that EANs will be processed on a message-by-message basis, like any other EAS message, only on a mandatory and priority basis. As part of this rule simplification, we are eliminating the EAT. As we explained in the *Third FNPRM*, receipt of an EAN will effectively open an audio channel between the originating source and the EAS Participant’s facilities until the EAS Participant receives an EOM.⁶⁰² After the EAS Participant receives the EOM, the EAS equipment would return to regular programming until receipt of the next EAS message. If that message is another EAN, then the process would repeat; if that message is a state or local EAS message, then that message would be aired in accordance with the specifications in the State or Local Area EAS Plan. We conclude that revising the rules governing EAN processing is necessary because they were designed to accommodate the EAN Network, which was phased out in 1995, and purely manual operation.⁶⁰³ As we explained in the *Third FNPRM*, these rules do not translate well for automated operation, are confusing, and in some cases, inconsistent with other Part 11 rules.⁶⁰⁴ While we appreciate the concept of retaining the EAT as a failsafe, we doubt there would ever be a need for that function. In any event, as we observed in the *Third FNPRM*, in both 2010 and 2011 we performed statewide tests of the EAN in Alaska without using an EAT, and no problems with the EAN were reported in those tests.⁶⁰⁵ While the EAT is used to alert NN stations that an EAN condition has terminated, the EOM can serve that purpose and, in any event, as explained below, we are eliminating NN status.⁶⁰⁶ Because CAP-compliant EAS equipment may be programmed to operate without the EAT, we do not expect that complying with this requirement will have any significant cost impact on EAS Participants.

202. With respect to the question of whether to eliminate the option for EAS Participants to manually process EANs (but not state or local EAS messages), we observe that we are in the process of reviewing test data from the November 9, 2011, Nationwide EAS Test, which may provide insight on this matter. It would be premature to take any actions with respect to eliminating the option to manually process EANs until after we have reviewed and processed the test data from the November 9, 2011, Nationwide EAS Test. Accordingly, we defer taking any action on this matter at this time.

203. *Revising Section 11.54.* With respect to the procedures in section 11.54, we observed in the *Third FNPRM* that adopting message-by-message processing of EANs would render sections 11.54(b)(1), (3), (4), (10), and 11.54(c) superfluous.⁶⁰⁷ Specifically, section 11.54(b)(1) sets forth

⁵⁹⁹ TFT Comments at 9.

⁶⁰⁰ Walker Comments at 5.

⁶⁰¹ *Id.*

⁶⁰² See *Third FNPRM*, 26 FCC Rcd 8149, 8204, para. 145 (*citing, e.g., 47 C.F.R. § 11.52(e)*).

⁶⁰³ See *id.* at 8202-03, para. 143, note 337.

⁶⁰⁴ See *id.* at 8203-04, para. 144.

⁶⁰⁵ See *id.*, at 8152-53, para. 3, note 22; 8203-04, para. 144, note 340.

⁶⁰⁶ See *infra* para. 215.

⁶⁰⁷ See *Third FNPRM*, 26 FCC Rcd 8149, 8205, para. 148.

monitoring requirements which are already spelled out in section 11.52(d) and the State EAS Plan.⁶⁰⁸ Section 11.54(b)(3) and (10) establishes “common emergency message” procedures that we are eliminating by adopting message-by-message EAN processing.⁶⁰⁹ Section 11.54(b)(4) requires airing of certain standby scripts in between airing common emergency messages, which has no relevance if section 11.54(b)(3) is eliminated.⁶¹⁰ And Section 11.54(b)(c) requires adherence to the termination procedures in the EAS Operating Handbook upon receipt of an EAT, which we are eliminating.⁶¹¹ Accordingly, we sought comment on whether these sections should be deleted.⁶¹² We asked whether, if we were to delete sections 11.54(b)(1), (3), (4), (10), and 11.54(c), we would need to make any additional revisions to the Part 11 rules to facilitate manual processing of EANs on a message-by-message basis.⁶¹³ We also asked whether deletion of these provisions would have any impact on CAP-to-SAME translation or legacy EAS devices.⁶¹⁴ Only one commenter, Trilithic, addressed this issue directly, stating its “‘full[] support’ for deletion of these provision[s].”⁶¹⁵

204. *Decision.* We are deleting sections 11.54(b)(1), (3), (4), (10), and 11.54(c) from the Part 11 rules. As we observed in the *Third FNPRM*, these provisions are superfluous in the context of message-by-message processing we are adopting for the EAN.⁶¹⁶ Because our removal of these unnecessary code sections does not affect the obligations of EAS Participants, it should have no cost impact on EAS Participants.

205. *Deleting Section 11.42.* Section 11.42(b) specifies that the EAT is used to apprise “communications common carriers” that they must disconnect certain temporary connections between EAS Participants and selected “Test Centers.”⁶¹⁷ In the *Third FNPRM*, we explained that the provisions in section 11.42 were carried over from the former EBS rules and were designed to facilitate the transmission of EANs via landlines.⁶¹⁸ We also observed that the EAS Participants no longer use test provisions and transmission paths facilitated by section 11.42.⁶¹⁹ We therefore sought comment on

⁶⁰⁸ See 47 C.F.R. §§ 11.54(b)(1), 11.52(d), 11.21(a).

⁶⁰⁹ See *id.* § 11.54(b)(3), (10).

⁶¹⁰ See *id.* § 11.54(b)(4).

⁶¹¹ See *id.* § 11.54(c).

⁶¹² See *Third FNPRM*, 26 FCC Rcd 8149, 8205, para. 149.

⁶¹³ See *id.*

⁶¹⁴ See *id.*

⁶¹⁵ Trilithic Comments at 3.

⁶¹⁶ See *Third FNPRM*, 26 FCC Rcd 8149, 8205, para. 148 (observing that section 11.54(b)(1) sets forth monitoring requirements which are already spelled out in section 11.52(d) and the State EAS Plan; Section 11.54(b)(3) and (10) establishes “common emergency message” procedures that we are eliminating in favor of message-by-message EAN processing; Section 11.54(b)(4) requires airing of certain standby scripts in between airing common emergency messages, which has no relevance if section 11.54(b)(3) is eliminated; and Section 11.54(b)(c) requires adherence to the termination procedures in the EAS Operating Handbook upon receipt of an EAT, which we are eliminating).

⁶¹⁷ See 47 C.F.R. § 11.43(b).

⁶¹⁸ See *Third FNPRM*, 26 FCC Rcd 8149, 8205-06, para. 151.

⁶¹⁹ See *id.*

whether we should delete section 11.42.⁶²⁰ Only one commenter, Trilithic, addressed this issue directly, stating its “‘full[] support’ for deletion of these provisions.”⁶²¹

206. *Decision.* We are deleting section 11.42 from the Part 11 rules because, as explained in the *Third FNPRM*, this section no longer serves any purpose.⁶²² Because our removal of these unnecessary code section does not affect the obligations of EAS Participants, it should have no cost impact on EAS Participants.

207. *Eliminating the EAS Operating Handbook.* As specified in section 11.15, the FCC issues the EAS Operating Handbook, which summarizes the actions personnel at EAS Participant facilities must take upon receipt of an EAN, EAT, tests, and state and local area alerts.⁶²³ EAS Participants are required to maintain a copy of the handbook at their facilities for manual processing of EAS messages.⁶²⁴ In the *Third FNPRM*, we observed that the various procedures and announcements set forth in the EAS Operating Handbook were developed for the manual processing of EANs during the National Level emergency condition outlined in section 11.54.⁶²⁵ Thus they would be largely superfluous if EANs were processed on a message-by-message basis.⁶²⁶ Accordingly, we sought comment on whether, if we were to adopt message-by-message processing of EANs, we should eliminate the EAS Operating Handbook and whether we should require EAS Participants to maintain within their facilities a copy of the current, FCC-filed and approved versions of the State and Local Area EAS Plans.⁶²⁷ We also observed that if we were to eliminate the EAS Operating Handbook, the related provisions in section 11.54(a), (b)(2), and (5)-(8) would become superfluous.⁶²⁸ Accordingly, we asked whether, if we eliminated the EAS Operating Handbook, we should also delete section 11.54(a), (b)(2), and (5)-(8).⁶²⁹

208. The majority of comments addressing this issue opposed elimination of the EAS Operating Handbook. NCTA stated, “As a concise reference document for operators on the national EAS requirements, we believe that the handbook is still necessary and should be updated to reflect changes in Part 11 rather than eliminated or substituted with state plans.”⁶³⁰ NCTA added, “The EAS handbook further serves as a reliable training and resource tool for EAS participants and covers areas that may not be included in the state plans.”⁶³¹ With respect to replacing the EAS Operating Handbook with State EAS Plans, NTA asserted, “state plans lack consistency, need updating, and some states have no plan on

⁶²⁰ *See id.*

⁶²¹ Trilithic Comments at 3.

⁶²² *See Third FNPRM*, 26 FCC Rcd 8149, 8205-06, para. 151.

⁶²³ *See* 47 C.F.R. § 11.15.

⁶²⁴ *Id.*

⁶²⁵ *See Third FNPRM*, 26 FCC Rcd 8149, 8207, para. 154.

⁶²⁶ *See id.*

⁶²⁷ *See id.*, para. 155.

⁶²⁸ *See id.* at 8208, para. 157.

⁶²⁹ *See id.*, para. 158.

⁶³⁰ NCTA Comments at 13.

⁶³¹ *Id.*

record.”⁶³² NAB expressed essentially the same views.⁶³³ AT&T opposed elimination of the EAS operating Handbook on grounds that it “provides much needed uniformity to the EAS system.”⁶³⁴

209. Monroe stated, “Regarding the EAS Operating Handbook, we do not feel it should be deleted, however if it is retained, the EAS Operating Handbook must be updated to correct a range of ambiguities, inconsistencies and errors.”⁶³⁵ Trilithic stated that the EAS Operating Handbook should be “relegated to informational-only status.”⁶³⁶ Trilithic also supported deletion of sections 11.54(a), (b)(2), and (5)-(8).⁶³⁷ Kenneth Evans (Evans) stated, “While I have used the FCC EAS Handbook to help train broadcast station employees, . . . I feel it might be more efficient to just provide a Quick Guide to cover the basic needed information.”⁶³⁸ Evans added, “Such a sheet could provide the basic information in a concise form to provide an over all understanding of the rules from Part 11.”⁶³⁹

210. *Decision.* With respect to the question of whether we should eliminate the EAS Operating Handbook, we observe that the test data from the November 9, 2011, Nationwide EAS Test, which we are in the process of reviewing, may provide insight on this matter. It would be premature to make any decisions on eliminating the EAS Operating Handbook until after we have reviewed and digested the test data we have received from the November 9, 2011, Nationwide EAS Test. Accordingly, we defer taking any action on this issue at this time.

211. However, we are deleting sections 11.54(a), (b)(2), and (5)-(8). These provisions all refer to procedures set forth in the EAS Operating Handbook designed to implement the National Emergency Condition, which we are eliminating.⁶⁴⁰ Although we do not decide whether to retain the EAS Operating Handbook here, if we elect to retain it, as most commenters support, it will at most serve as an informational document to aid EAS Participant personnel in handling EAS messages manually. It will not itself establish any procedures (such as on-air announcements) that must be followed.⁶⁴¹ Sections 11.54(a), (b)(2), and (5)-(8) serve no purpose under the approach we are adopting for handling EANs, and thus we delete them from the Part 11 rules. Because our removal of these unnecessary code sections does not affect the obligations of EAS Participants, it should have no cost impact on EAS Participants.

212. *Non-Participating National (NN) Sources.* As we explained in the *Third FNPRM*, the Part 11 rules permit EAS Participants to request FCC authorization not to participate fully in the national level EAS activation.⁶⁴² Essentially, these non-participating stations follow all of the EAN-related

⁶³² *Id.*

⁶³³ See NAB Comments at 22-23.

⁶³⁴ AT&T Comments at 5.

⁶³⁵ Monroe Comments at 27.

⁶³⁶ Trilithic Comments at 4.

⁶³⁷ *Id.* at 3.

⁶³⁸ Kenneth Evans Comments, EB Docket 04-296 (filed July 20, 2011) at 4 (Evans Comments).

⁶³⁹ Evans Comments at 4.

⁶⁴⁰ As outlined in the *Third FNPRM*, section 11.54(a) indicates that the EAS Operating Handbook summarizes the procedures to be followed upon receipt of an EAN and EAT; section 11.54(b)(2) requires EAS Participants to follow EAS Operating Handbook procedures; section 11.54(b)(5)-(8) sets forth certain requirements related to the announcements contained in the EAS Operating Handbook. See *Third FNPRM*, 26 FCC Rcd 8149, 8208, para. 157.

⁶⁴¹ See, e.g., Trilithic Comments at 4.

⁶⁴² See *Third FNPRM*, 26 FCC Rcd 8149, 8197, para. 130 (citing 47 C.F.R. §§ 11.18(f), 11.19, 11.41(b)).

requirements except broadcasting the Presidential audio message.⁶⁴³

213. In the *Third FNPRM*, we sought comment on whether we should eliminate NN status altogether, in which case all EAS Participants would be required to broadcast the Presidential EAS message.⁶⁴⁴ In this regard, we observed that there are relatively few NN stations in existence, they are already required to deploy a decoder that complies with all EAS message processing requirements, and they already follow most of the EAN processing requirements.⁶⁴⁵

214. Commenters supported elimination of NN status. Timm, for example, noting that there are few NN stations in existence, commented that the “NN status should be eliminated, and all EAS Participants would then be required to carry the President’s [] messages.”⁶⁴⁶ BWVG agreed, stating that “CAP, for all practical purposes, eliminates most if not all of the problems that led to the NN designation.”⁶⁴⁷ BWVG argued that “it is time for the NN to go[,] [except that a] CAP-specific NN waiver of some sort may be necessary if the Commission grants compliance relief to broadcasters or cable systems that cannot achieve IP connectivity, and can prove it.”⁶⁴⁸ NSBA stated that “retaining NN Status is largely unnecessary given that there are so few NN Stations, and, in any event, such stations are already required to deploy a decoder that complies with all EAS message and EAN processing requirements.”⁶⁴⁹ NSBA further stated, “Given the changes in the broadcast industry since the advent of the NN Status, the Commission should consider eliminating the NN Status altogether.”⁶⁵⁰

215. *Decision.* We are eliminating NN status on the grounds that it is not necessary. Accordingly, we are deleting references to NN status from sections 11.18, 11.41, 11.54, and 11.55 of the Commission’s rules,⁶⁵¹ and we are deleting section 11.19 altogether.⁶⁵² We will require any existing stations operating under NN status to meet the full message-by-message EAN processing requirements, and CAP-related requirements, by the June 30, 2012, general deadline for processing CAP-formatted messages. We find that elimination of NN status is warranted because it does not appear to serve any purpose today, as NN entities already are required to deploy a decoder that complies with all EAS message processing requirements,⁶⁵³ and they follow all of the EAN processing requirements, except broadcasting the audio message.⁶⁵⁴ Further, as we observed in the *Third FNPRM*, there are relatively few NN stations.⁶⁵⁵ Moreover, no entity with or without NN status filed comments objecting to our proposed

⁶⁴³ See 47 C.F.R. §§ 11.18(f), 11.54(b)(2)(ii).

⁶⁴⁴ See *Third FNPRM*, 26 FCC Rcd 8149, 8198, para. 132.

⁶⁴⁵ See *id.* (citing 47 C.F.R. §§ 11.11, 11.18(f)).

⁶⁴⁶ Timm Comments at 7.

⁶⁴⁷ BWVG Comments at 51.

⁶⁴⁸ *Id.*

⁶⁴⁹ NSBA Comments at 17 (footnote omitted).

⁶⁵⁰ *Id.*

⁶⁵¹ See 47 C.F.R. §§ 11.18(f), 11.41, 11.54(b)(2)(ii) and (b)(11), and 11.55(c)(3).

⁶⁵² See 47 C.F.R. § 11.19.

⁶⁵³ See 47 C.F.R. § 11.11.

⁶⁵⁴ See 47 C.F.R. § 11.18(f).

⁶⁵⁵ See *Third FNPRM*, 26 FCC Rcd 8149, 8198, para. 132. According to our records, fewer than fifty stations have applied for NN status since the EAS rules were adopted in 1995 and most of these made their applications shortly after we adopted our rules. We also observe that a number of NNs changed their status to PNs during the (continued....)