

action.

216. We believe that, at most, there are minimal costs associated with the elimination of NN status, given that all NN stations must already comply with all equipment and operating requirements save for broadcasting the actual Presidential audio message. On the other hand, there are considerable benefits to eliminating NN status. Most importantly, by eliminating NN status, we add to the number of entities that will be available to broadcast national-level emergency information to the public. Moreover, elimination of this outmoded provision will increase administrative efficiency.

217. *Deleting Section 11.44.* Section 11.44 sets forth the priority scheme for EAS message transmissions during the period of national emergency triggered by an EAN and terminated by an EAT, as set forth in section 11.54.⁶⁵⁶ According to section 11.44, during this period, EANs take priority over and preempt all other EAS messages.⁶⁵⁷ Section 11.44(b) specifies that when a Presidential message is not being transmitted, EAS Participants are required to transmit all other EAS messages in the following order: first, Local Area Messages; second, State Messages; and, third, National Information Center (NIC) Messages.⁶⁵⁸ Section 11.44(d) specifies that “[d]uring a national emergency, the facilities of all EAS Participants must be reserved exclusively for distribution of Presidential Messages,” and “NIC messages received from national networks which are not broadcast at the time of original transmission must be recorded locally by LP sources for transmission at the earliest opportunity consistent with the message priorities in [section 11.44(b)].”⁶⁵⁹

218. As we explained in the *Third FNPRM*, the priority scheme set forth in section 11.44 was intended to apply during the National Level emergency condition codified in section 11.54, which is initiated by the EAN and terminated by the EAT.⁶⁶⁰ We also explained that if section 11.54 were revised to reflect a streamlined, message-by-message processing approach, as we proposed, section 11.44 would become superfluous.⁶⁶¹ Accordingly, we sought comment on whether we should delete section 11.44.⁶⁶² We also asked whether the existing provisions in other sections of Part 11 sufficiently confer priority status to EANs and whether we should make any changes to existing provisions to ensure that EANs maintain primary status.⁶⁶³

219. Timm recommended deletion of section 11.44 based largely on the reasoning set forth in

(Continued from previous page) _____
preparation for the November 9, 2011 Nationwide EAS Test. See email from Glinda M. Corbin, Esq., dated October 20, 2011 (noting change of status of 35 television broadcast stations from NN to PN).

⁶⁵⁶ See 47 C.F.R. §§ 11.44, 11.54(b)(3).

⁶⁵⁷ See 47 C.F.R. § 11.44(a).

⁶⁵⁸ See *id.* § 11.44(b).

⁶⁵⁹ *Id.* § 11.44(d).

⁶⁶⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8208-09, para. 160.

⁶⁶¹ See *id.* at 8209, para. 162.

⁶⁶² See *id.* at 8209-10, para. 163.

⁶⁶³ See *id.* (citing, e.g., 47 C.F.R. § 11.33(a)(11) (requiring, with respect to decoders, that “[a] header code with the EAN Event code specified in § 11.31(c) that is received through any of the audio inputs must override all other messages”); 47 C.F.R. § 11.51(m)(2), (n) (requiring that encoders air EANs “immediately” whether operating in automatic or manual mode); and 47 C.F.R. § 11.52 (e), (e)(2) (requiring that EAS Participants interrupt “normal programming” when an EAN is received “immediately” when operating in manual mode (no time period is expressed for interrupting normal programming in automatic mode))).

the *Third FNPRM*.⁶⁶⁴ Trilithic supported deletion of this section, except 11.44(a), providing for EAN priority and preemption over any other type of EAS message, which it stated “should be retained or moved to another section (unless it is already contained elsewhere).”⁶⁶⁵ Sage supported basically the same position as Trilithic.⁶⁶⁶

220. *Decision.* We are deleting section 11.44 from the Part 11 rules. As we observed in the *Third FNPRM*, this section is superfluous under the message-by-message approach for processing EANs we adopt in this order.⁶⁶⁷ Although priority for EANs already is provided for in the other sections of Part 11,⁶⁶⁸ we agree with commenters that the explicit language on EAN preemption and priority in section 11.44(a) is worthwhile to retain, and we therefore will incorporate it into the definition of the EAN in section 11.2. 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.

221. *Revising Section 11.53.* Section 11.53 specifies how EANs are initiated at the federal, state, and local levels for purposes of triggering the national level emergency procedures in section 11.54.⁶⁶⁹ In particular, this section indicates that, at the national level, EAN messages are sent from a government origination point to broadcast stations and other entities participating in the PEP system and then disseminated by EAS Participants.⁶⁷⁰ This section further requires that EAN messages originate from state and local governments in accordance with State and Local Area EAS plans.⁶⁷¹ In the *Third FNPRM*, we sought comment as to whether this section has any relevance in the streamlined EAN processing model we proposed.⁶⁷² We also sought comment on whether, to the extent section 11.53 is relevant in its own right and should be retained, we should revise it to incorporate CAP-formatted EAN messages, such as by including a cross-reference to section 11.52 to capture the federal CAP-formatted EAN origination process.⁶⁷³ We also observed that, to the extent states might originate CAP-formatted EAN messages, the methodology would be described in the State EAS Plan, just as the SAME-based distribution method is today.⁶⁷⁴ Accordingly, we sought comment on whether the existing language regarding state EAN origination would be sufficient to capture CAP-formatted EANs originated by state CAP systems.⁶⁷⁵

222. Monroe, the only commenter addressing this issue, observed that “FEMA IPAWS has not yet issued requirements for a CAP-formatted EAN message,” and “[s]ince it is anticipated that EAN messages will be delivered over the current legacy EAS system for the foreseeable future, it would seem

⁶⁶⁴ See Timm Comments at 7-8.

⁶⁶⁵ Trilithic Comments at 3.

⁶⁶⁶ See Sage Comments at 19.

⁶⁶⁷ See *Third FNPRM*, 26 FCC Rcd 8149, 8209, para. 162.

⁶⁶⁸ See *supra* note 663.

⁶⁶⁹ 47 C.F.R. § 11.53.

⁶⁷⁰ See *id.*

⁶⁷¹ See *id.* § 11.53(b).

⁶⁷² See *Third FNPRM*, 26 FCC Rcd 8149, 8210, para. 164.

⁶⁷³ See *id.*, para. 65.

⁶⁷⁴ See *id.*

⁶⁷⁵ See *id.*

that § 11.53 remains relevant in its current form.”⁶⁷⁶

223. *Decision.* We are deleting section 11.53 from the Part 11 rules. As we observed in the *Third FNPRM*, section 11.53 specifies how EANs are initiated at the federal, state, and local levels for purposes of triggering the national level emergency procedures in section 11.54.⁶⁷⁷ Because we are deleting almost all of section 11.54, and implementing message-by-message processing for the EAN, section 11.53 is largely superfluous. However, we will, for informational purposes, incorporate the relevant language in section 11.53(a) and (b), describing federal, state, and local origination of the EAN, into the definition of EAN in section 11.2 and clarify that such origination applies only to EANs formatted and transmitted in accordance with the EAS Protocol requirements in section 11.31. Because our removal of these unnecessary code sections and clarification of sections 11.53 (a) and (b) does not affect the obligations of EAS Participants, it should have no cost impact on EAS Participants.

224. *Revising Section 11.11(a).* In the *Third FNPRM*, we also sought comment on whether, if we were to streamline EAN processing, we should revise section 11.11(a) to remove the references therein to “participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels.”⁶⁷⁸ No commenter addressed this issue directly.

225. *Decision.* We are revising section 11.11(a) to remove the references therein to “participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels.”⁶⁷⁹ As we explained in the *Third FNPRM*, these references are a holdover from the EBS rules and serve no purpose in the streamlined version of EAN processing we are adopting here.⁶⁸⁰ 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.

226. *Deleting Section 11.16.* Section 11.16 describes the “National Control Point Procedures,” which are “written instructions issued by the FCC to national level EAS control points,” covering National Level EAS Activation, EAS Test Transmissions, and the National Information Center (NIC).⁶⁸¹ In the *Third FNPRM*, we explained that these instructions (and this rule section) essentially are the standard operating procedures that were used in the EBS for manually activating, terminating, and testing national-level messages (*i.e.*, EANs).⁶⁸² We also explained that the Commission developed these procedures for manual processing of EANs sent over the EAN Network, which no longer has any relevance.⁶⁸³ Accordingly, we sought comment on whether we should delete section 11.16, along with section 11.54(b)(12), which requires LP (*i.e.*, PEP) stations to adhere to the National Control Point Procedures following receipt of an EAN.⁶⁸⁴ Trilithic and BWVG supported deletion of the sections as

⁶⁷⁶ Monroe Comments at 23.

⁶⁷⁷ See *Third FNPRM*, 26 FCC Rcd 8149, 8210, para. 164.

⁶⁷⁸ See *id.* at 8210-11, para. 166.

⁶⁷⁹ See 47 C.F.R. § 11.11(a).

⁶⁸⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8210-11, para. 166.

⁶⁸¹ 47 C.F.R. § 11.16.

⁶⁸² See *Third FNPRM*, 26 FCC Rcd 8149, 8211, para. 167.

⁶⁸³ See *id.*

⁶⁸⁴ See *id.*

proposed in the *Third FNPRM*.⁶⁸⁵

227. *Decision.* With respect to the question of whether we should delete section 11.16, 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. Accordingly, we defer taking any action on this issue at this time. We are, however, deleting section 11.54(b)(12) and incorporating its requirement for PEP stations to follow the National Control Point Procedures into Section 11.16.

F. Part 11 Revisions Not Related to CAP

228. In the *Third FNPRM*, we sought comment on potential revisions to various provisions in Part 11 that are not related to CAP. These issues are addressed below.

1. Definitions

229. *LP-1 Definition.* In the *Third FNPRM*, we asked whether we should revise the definition for LP-1 stations in section 11.2(b) to reflect that these stations can be a radio or a TV station.⁶⁸⁶ BWWG supported this change.⁶⁸⁷ No other commenter addressed this issue directly.

230. *Decision.* We are revising section 11.2(b) to reflect that LP-1 stations can be either radio or TV stations. Our assessment of State EAS Plans confirms that there are both radio and TV stations serving as LP-1 stations, and thus, this rule revision is necessary to reflect these factual circumstances. We do not believe that this rule clarification will have any significant cost impact on EAS Participants.

231. *PEP Definition.* As we explained in the *Third FNPRM*, section 11.2(a) currently defines the PEP system as “a nationwide network of broadcast stations and other entities connected with government activation points” that is used to “distribute the EAN, EAT, and EAS national test messages and other EAS messages.”⁶⁸⁸ The definition also explains that “FEMA has designated 34 of the nation’s largest radio broadcast stations as PEPs,” which are “designated to receive the Presidential alert from FEMA and distribute it to local stations.”⁶⁸⁹ The PEP system is also defined in section 11.14, which mirrors most of the language in section 11.2(a).⁶⁹⁰ We tentatively concluded in the *Third FNPRM* that we should delete section 11.14 from the Part 11 rules because it mirrors the definition in section 11.2(a).⁶⁹¹ With respect to the PEP system definition in section 11.2(a), we sought comment on whether the use of actual numbers to reflect the number of PEP stations is so inflexible that it requires revision via an amendment to the rule every time FEMA adds another station to the PEP system and whether we should delete the numerical reference.⁶⁹² We also sought comment on whether we should revise the language in

⁶⁸⁵ See Trilithic Comments at 3, BWWG Comment at 61.

⁶⁸⁶ See *Third FNPRM*, 26 FCC Rcd 8149, 8211-12, para. 169.

⁶⁸⁷ BWWG Comments at 61.

⁶⁸⁸ *Third FNPRM*, 26 FCC Rcd 8149, 8212, para. 170 (citing 47 C.F.R. § 11.2(a)).

⁶⁸⁹ 47 C.F.R. § 11.2(a).

⁶⁹⁰ Specifically, section 11.14 reprints the first two sentences in section 11.2(a). Compare 47 C.F.R. § 11.2(a) with 47 C.F.R. § 11.14.

⁶⁹¹ See *Third FNPRM*, 26 FCC Rcd 8149, 8212, para. 172.

⁶⁹² See *id.*, para. 173.

section 11.2(a) to clarify that the PEP stations distribute the EAN, EAS national test messages, and other EAS messages in accordance with the EAS Protocol requirements in section 11.31.⁶⁹³

232. BWWG supported our proposal to delete section 11.14.⁶⁹⁴ With respect to revising the language in section 11.2(a) to make clear that the PEP stations originate EAS messages in accordance with the EAS Protocol requirements, BWWG responded: “[A] better definition of the program would be, ‘The FEMA Primary Entry Point program (PEP) is [the] last ditch means for the President to communicate with the largest possible percentage of the American public to communicate reassurance of government continuity if traditional means for broadcast video and audio communication are disabled or otherwise not available. The majority of PEP outlets are AM radio stations, but network and other broadcast resources are used for backup and fill in.’”⁶⁹⁵ No other commenter addressed these issues directly.

233. *Decision.* We are deleting section 11.14 from the Part 11 rules because it mirrors the definition in section 11.2(a) and is therefore superfluous. We are also revising section 11.2(a) to delete the numerical reference to the actual number of PEP stations in existence. As we explained in the *Third FNPRM*, FEMA is in the process of increasing the number of PEP stations, and thus it is neither practical nor administratively efficient to try to keep the current number codified in Part 11.⁶⁹⁶ We also revise the language in section 11.2(a) to clarify that the PEP stations distribute EAS messages in accordance with the EAS Protocol requirements in section 11.31. This revision simply makes clear that PEP stations do not originate or distribute alert messages in CAP format and thus helps to differentiate SAME distribution from CAP distribution. We do not believe that this rule clarification will have any significant cost impact on EAS Participants.

234. *EAN and EAT Definitions.* Section 11.13 defines the EAN and EAT.⁶⁹⁷ In the *Third FNPRM*, we sought comment on whether we should delete section 11.13 and fold the definition for the EAN currently in section 11.13 into section 11.2.⁶⁹⁸ BWWG and Monroe agree that if the EAT is removed from the Part 11 rules, it should be deleted from section 11.13.⁶⁹⁹ Accordingly we are deleting section 11.13 from the Part 11 rules and folding the definition for the EAN currently in section 11.13 into section 11.2. Because we are deleting the EAT, section 11.13(b) is superfluous. As we indicated in the *Third FNPRM*, the proper location in Part 11 for the EAN definition, currently at section 11.13(a), is the definitions section in section 11.2.⁷⁰⁰ We therefore relocate the EAN definition to section 11.2 and delete section 11.13 altogether. We do not believe that these clarifications will have any cost impact on EAS Participants

2. Miscellaneous Rule Changes

235. *Geographic Codes.* Section 11.31(c) specifies the message formatting requirements for the

⁶⁹³ See *id.*

⁶⁹⁴ BWWG Comments at 61.

⁶⁹⁵ *Id.* at 62.

⁶⁹⁶ See *Third FNPRM*, 26 FCC Rcd 8149, 8155, para. 6, note 31.

⁶⁹⁷ See 47 C.F.R. § 11.13.

⁶⁹⁸ See *Third FNPRM*, 26 FCC Rcd 8149, 8213, para. 174.

⁶⁹⁹ See BWWG Comments at 62; Monroe Comments at 23.

⁷⁰⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8213, para. 174.

EAS Protocol, including the formatting of the location code.⁷⁰¹ This section (and section 11.31(f)) currently indicates that the location code “uses the Federal Information Processing Standard (FIPS) numbers as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication FIPS PUB 6–4.FIPS number codes.”⁷⁰² As we explained in the *Third FNPRM*, the FIPS publication has been replaced by American National Standards Institute (ANSI) Codes INCITS 31.200x (Formerly FIPS 6-4), Codes for the Identification of Counties and Equivalent Entities of the United States, its Possessions, and Insular Areas.⁷⁰³ Accordingly, we tentatively concluded that we should change the references to the FIPS standard in section 11.31 (and 11.34(d)) to reflect the ANSI standard that superseded it.⁷⁰⁴ We sought comment on this tentative conclusion.⁷⁰⁵ Monroe and BWWG supported our tentative conclusion.⁷⁰⁶ No other commenter addressed this issue directly.

236. *Decision.* We are changing the references to the FIPS standard in sections 11.31 and 11.34(d) to reflect the ANSI standard that superseded it. As we explained in the *Third FNPRM*, the FIPS standard is outdated and requires revision to keep the Part 11 rules current.⁷⁰⁷ We do not believe that this rule clarification will have any significant cost impact on EAS Participants.

237. *LPTV and LPFM.* In the *Third FNPRM*, based upon our review of the EAS rules covering Low Power TV (LPTV) and Low Power FM (LPFM) stations, we observed that the analog and digital broadcast station equipment deployment table in section 11.11(a) incorrectly identifies “LPFM” in the column that is supposed to contain Class A TV⁷⁰⁸ and incorrectly identifies “LPTV” in the column that should contain “LPFM.”⁷⁰⁹ We also observed that the term “LPFM” had been inadvertently omitted from the test requirements in section 11.61(a)(1)(i) (LPFM stations are only required to transmit test script, just like LPTV stations) and section 11.61(a)(2)(ii) (LPFM stations are only required to log receipt of the test, just like LPTV stations).⁷¹⁰ We tentatively concluded that we should correct these omissions, and we sought comment on this tentative conclusion.⁷¹¹ BWWG agreed with our tentative conclusion.⁷¹² No other commenter addressed this issue directly.

238. *Decision.* We are revising the analog and digital broadcast station equipment deployment table in section 11.11(a) to correctly identify LPFM and LPTV in their respective columns and are revising sections 11.61(a)(1)(i) and 11.61(a)(2)(ii) to include LPFM stations. These are corrections to ensure that the rules reflect prior decisions, and thus we do not believe that they will have any significant

⁷⁰¹ See 47 C.F.R. § 11.31(c).

⁷⁰² *Id.*

⁷⁰³ See *Third FNPRM*, 26 FCC Rcd 8149, 8213, para. 175.

⁷⁰⁴ See *id.*

⁷⁰⁵ See *id.*

⁷⁰⁶ Monroe Comments at 27; BWWG Comments at 62.

⁷⁰⁷ See *Third FNPRM*, 26 FCC Rcd 8149, 8213, para. 175.

⁷⁰⁸ See *id.* at 8216, para 187. Specifically, we observed that “[t]he “LPFM” category should be on the right-hand side of the column header shown for “FM class D,” which itself should be on the left-hand side (and the column header itself should be two separate headers rather than a single header covering two columns.” *Id.* at note 425.

⁷⁰⁹ See *id.*

⁷¹⁰ See *id.*

⁷¹¹ See *id.*

⁷¹² BWWG Comments at 65.

cost impact on EAS Participants.

3. Attention Signal

239. Section 11.32(a)(9) sets forth specifications regarding, among other things, tone frequencies, harmonic distortion limit, and transmission time period for Attention Signal generators in encoders.⁷¹³ Section 11.33(b) specifies Attention Signal requirements for decoders.⁷¹⁴ As we explained in the *Third FNPRM*, the Commission derived the Attention Signal specifications in sections 11.32(a)(9) and 11.33(b) from the Attention Signal specifications in the EBS rules, where they were used both to initiate processing of emergency alerts and to alert the public that an EAS Participant was about to air an emergency message.⁷¹⁵ In the current EAS architecture, however, the Attention Signal is used exclusively for alerting the public that an EAS Participant is about to air an emergency audio message.⁷¹⁶ Given the limited purpose of the Attention Signal in the EAS, we sought comment on whether we can delete most of the current provisions relating to the Attention Signal in sections 11.32(9) and 11.33(b) in favor of the minimal standard currently set forth in the EAS Protocol (at section 11.31(a)(2)).⁷¹⁷ We asked which, if any, of the equipment-related Attention Signal requirements in sections 11.32(9) and 11.33(b) we should incorporate into section 11.31(a)(2).⁷¹⁸ We also asked whether we should modify the duration limits for the Attention Signal, currently set at between 8 and 25 seconds, or whether we should delete the Attention Signal from the Part 11 rules altogether.⁷¹⁹ In addition, we observed that section 11.12, which specifies that EBS Attention Signal encoders and decoders can remain in operation until January 1, 1998, is obsolete.⁷²⁰ Accordingly, we tentatively concluded that we should delete section 11.12 from Part 11. We sought comment on this tentative conclusion.⁷²¹

240. The majority of commenters addressing these issues opposed elimination of the Attention Signal but supported limiting its duration to eight seconds. Sage agreed that “the rules should be updated to remove all uses of the attention signal other than to alert the public.”⁷²² Sage added, “Devices still need to detect the presence of the Attention Signal so that it can be removed from the incoming audio, the definition and accuracy of the tone must be retained in section 11.31(a)(2) and 11.32(a)(9).”⁷²³ According to Sage, “[t]he use of the Attention Signal should be maintained – as a notice to the public that something

⁷¹³ See 47 C.F.R. § 11.32(a)(9).

⁷¹⁴ See 47 C.F.R. § 11.33(b).

⁷¹⁵ See *Third FNPRM*, 26 FCC Rcd 8149, 8214, para. 178. Specifically, PEP stations broadcast the Attention Signal, along with an audio message. The Attention Signal served two functions: (i) it triggered circuitry within decoders deployed at stations monitoring the PEP stations to activate an audio alarm that alerted station personnel that an incoming EBS audio message was arriving (the station personnel would in turn broadcast an Attention Signal, using an Attention Signal generator, and rebroadcast the EBS audio message originally broadcast by the PEP station); and (ii) it served as an audio alert signal to listeners and viewers that an EAS Participant was about to air an emergency broadcast. See *id.*, note 407 (citing *1994 Report and Order* at 10 FCC Rcd 1790, para. 8).

⁷¹⁶ See *id.* (citing *1994 Report and Order* at 10 FCC Rcd 1814-15, para. 81).

⁷¹⁷ See *id.*

⁷¹⁸ See *id.*, para. 179.

⁷¹⁹ See *id.*

⁷²⁰ See *id.* at 8215, para. 181.

⁷²¹ See *id.*

⁷²² Sage Comments at 21.

⁷²³ *Id.*

important is about to be heard.”⁷²⁴ However, Sage added that “[t]o lessen audience fatigue, the length of the signal for required monthly tests could be reduced to two or four seconds, and kept at a maximum of eight seconds for real alerts.”⁷²⁵

241. Timm opposed deletion of the Attention Signal, stating that it “has become a familiar public notification that ‘official information’ is coming.”⁷²⁶ Timm also observed that the Commercial Mobile Alert System [now the Personal Localized Alerting Network (PLAN)] uses the same signal tones to alert mobile handset users of an alert, arguing that “[r]etaining the Attention Signal for EAS will further validate future alerts received via CMAS.”⁷²⁷ Timm agreed that the Attention Signal should be shortened and suggested that “the duration be amended to be from 4 to 8 seconds.”⁷²⁸

242. The Wireless RERC recommended “retention of the 8 seconds of the EAS two tone Attention Signal and that it be transmitted in all EAS messages containing an audio message.”⁷²⁹ The Wireless RERC further contended that “[t]he three bursts of digital signal at the start of an EAS message (usually about 3 or 4 seconds) is not of sufficient loudness or length for hearing impaired people to respond to and listen to the audio message especially since the audio message is usually transmitted only once.”⁷³⁰ The Wireless RERC also noted that “the public is familiar with the Attention Signal which has been in use since 1975,” and observed that PLAN uses the same signal.⁷³¹

243. The BWWG opposed deletion of the Attention Signal on grounds that it “serves a useful purpose as a necessary preamble to prepare the public to hear a warning.”⁷³² In this regard, BWWG noted that “[w]e have trained generations of people to understand that the attention signal means that they are about to hear critical information,” adding that “the attention signal provides a useful aural warning to those people at risk who are visually impaired.”⁷³³ BWWG also explained that “[i]f the attention signal is eliminated, marketers will use it to sell their wares, confusing the public while we try to educate them about whatever sound we decide should replace the attention signal.”⁷³⁴ With respect to the Attention Signal duration, BWWG asserted that “[m]ost (if not all) stations now use the 8 second signal so shortening the attention signal to a maximum length of 8 seconds in Part 11 will serve to limit the amount of time spent on this function while preserving the function’s benefits.”⁷³⁵ BWWG supported deleting section 11.12 from the Part 11 rules.⁷³⁶

⁷²⁴ *Id.*

⁷²⁵ *Id.*

⁷²⁶ Timm Comments at 10.

⁷²⁷ *Id.*

⁷²⁸ *Id.*

⁷²⁹ Wireless RERC Comments at 6.

⁷³⁰ *Id.*

⁷³¹ *Id.* at 7.

⁷³² BWWG Comments at 63.

⁷³³ *Id.*

⁷³⁴ *Id.*

⁷³⁵ *Id.*

⁷³⁶ *Id.*

244. Walker, Pavlica, and Gorman also support retention of the Attention Signal solely to alert the public, noting the public's longstanding familiarity with the tone.⁷³⁷ Gorman also stated that the "decoder filtering for 853 Hz and 960 Hz should be narrowed to [+/-] 2 Hz" to increase ease of filtering⁷³⁸ and that "Part 11 should require that the decoder filter out the attention tone before the audio recording is turned on" to prevent it from limiting time for playing the audio recording.⁷³⁹

245. Trilithic recommended "the complete elimination of the Attention Signal requirements."⁷⁴⁰ Trilithic added, "Detection and Demuting outside of an EAS message no longer serve a purpose,"⁷⁴¹ and that the "frequency tolerance, harmonic distortion requirements, output level requirements, and additional software/firmware support increase the cost of testing and producing EAS equipment."⁷⁴² Trilithic also argued that "[t]he public no[w] identifies the FSK bursts with emergency messaging so the Attention Signal is no longer needed as an aural indicator for the public."⁷⁴³

246. *Decision.* We are persuaded by commenters that the Attention Signal continues to serve a useful purpose in the EAS framework as an audio notification to the general public that an alert is about to be aired, and we therefore will retain the Attention Signal in the Part 11 rules. We are also persuaded that the duration of the Attention Signal should be limited to no more than eight seconds. Because we are not lowering the existing 8-second minimum duration for the signal, this will result in a uniform requirement that the Attention Signal be eight seconds in duration. BWWG indicated that most stations only air the Attention Signal for eight seconds, thus establishing an 8-second duration requirement for the signal will codify what has become common practice and ensure that when the signal is aired, it is done in a consistent manner.⁷⁴⁴ We are also persuaded that we should retain the technical parameters established for the Attention Signal in sections 11.31(a)(2) and 11.32(a)(9), but we are deleting section 11.33(b), which establishes Attention Signal requirements for decoders, as these were used for demuting and activation functions that do not apply to the EAS.⁷⁴⁵ We are also deleting section 11.12, which specifies that EBS Attention Signal encoders and decoders can remain in operation until January 1, 1998, as this section is obsolete. We do not believe that these revisions will have any significant cost impact on EAS Participants.

4. Equipment Issues

247. In the *Third FNPRM*, we addressed the following issues unrelated to CAP that involve the current encoder and decoder requirements.

⁷³⁷ See Walker Comments at 5; Pavlica Comments at 2; Gorman Comments at 1.

⁷³⁸ Gorman Comments at 1.

⁷³⁹ *Id.* at 2.

⁷⁴⁰ Trilithic Comments at 4.

⁷⁴¹ *Id.*

⁷⁴² *Id.*

⁷⁴³ *Id.*

⁷⁴⁴ See BWWG Comments at 63.

⁷⁴⁵ See *Third FNPRM*, 26 FCC Rcd 8149, 8214, para. 178. With respect to Sage's contention that decoders must still be capable of detecting the presence of the Attention Signal, we observe that Section 11.32(a) generally requires decoders to be capable of decoding the EAS Protocol, thus, decoders are required to detect the Attention Signal independent of section 11.33(a)(9). See Sage Comments at 21.

248. *Section 11.33(a)(9)*. Section 11.33(a)(9) allows EAS Participants to set their decoders to automatically reset to the monitoring state if the decoder does not receive an EOM for any given EAS message within a predetermined minimum time frame (not less than two minutes).⁷⁴⁶ This reset function does not apply to EANs. In the *Third FNPRM*, we explained that this provision essentially allows EAS Participants to establish a maximum duration for state and local EAS messages that their equipment will air automatically (by ensuring that their EAS equipment will automatically reset for any state or local EAS messages exceeding such time period).⁷⁴⁷ We further explained that the reset activation in section 11.33(a)(9) applies only when the EOM for a given EAS message has not arrived within the specified time period.⁷⁴⁸ We also described how transmitting an EOM is a minimum requirement for encoders and that because there is no EOM associated with an EAS message that has been canceled via reset, there is no EOM for the encoder to transmit.⁷⁴⁹ Under this interpretation of the rules, the encoder should not transmit an EAS message that has been canceled via reset.⁷⁵⁰ We sought comment on whether we should amend the rules to make this clearer or whether we should allow encoders to air EAS messages that have been canceled via reset.⁷⁵¹ We observed that airing an EAS message that does not have an EOM runs the risk of airing a partial message that may cause confusion among listeners and viewers but that a partial alert message may be better than none.⁷⁵²

249. Sage observed that there are “several reasons for an alert to be received without a proper EOM,” including an “EOM sent slightly after the two minute limit on a message that lasts exactly two minutes due to minor variations in transmission times, ambiguity in when the two minute time starts and ends, etc.[:] EOM not aired due to a hardware or software or human fault at the monitored location[:] [and] EOM not received due to bad reception.”⁷⁵³ Sage also observed that the receiving device has no way of discerning which of these instances represents a valid EAS message.⁷⁵⁴ Sage indicated that its equipment “does relay the alert . . . to provide consistent results for messages that are relayed in real-time vs. messages that are stored, and relayed at a later time.”⁷⁵⁵ Sage observed that “[w]aiting for a message to be received in its entirety and then relayed, would delay the transmission of the alert by as much as two minutes,” which can be a significant in a time-sensitive alert situation, such as a tornado warning.⁷⁵⁶ Sage also observed that “[m]any EAS manufacturers can start the relay of an alert as soon as the audio portion of the incoming message starts but before reception of the EOM, reducing delivery latency” and that “[t]hese messages will always be relayed, even if an EOM is not received.”⁷⁵⁷ Sage recommended that “the FCC should clarify the desired action, which we recommend should be to air the alert as if an EOM

⁷⁴⁶ See 47 C.F.R. § 11.33(a)(9).

⁷⁴⁷ See *Third FNPRM*, 26 FCC Rcd 8149, 8215, para. 183.

⁷⁴⁸ See *id.* at 8215-16, para. 184.

⁷⁴⁹ See *id.*

⁷⁵⁰ See *id.*

⁷⁵¹ See *id.*

⁷⁵² See *id.*

⁷⁵³ Sage Comments at 22.

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ *Id.*

had been received at the two minute time limit.”⁷⁵⁸

250. Gorman and Timm similarly support allowing EAS Participants to broadcast and encode a message that may have been shortened or cut off by reset.⁷⁵⁹ BWWG indicated “qualified” support for Sage’s position, apparently on the basis that “it is technically possible that new CAP-EAS devices can be ‘patched’ with a routine that will turn a defective warning that is just missing its EOM to recognize that fact and insert an EOM.”⁷⁶⁰

251. *Decision.* We agree with commenters that EAS Participants should be allowed to relay, for the benefit of downstream monitoring stations, messages they received that did not include an EOM within the reset time limit set on their decoder (presumably, two minutes). When a non-EAN alert exceeds that two minute mark, the EAS Participant’s EAS device should be allowed to generate an EOM to make up for the EOM that was not received with the original message. Sage and Timm indicate that current EAS equipment already functions in this manner, although it is not clear whether the EAS equipment generates the EOM for the EOM-missing message directly after the audio message (if any) or at the two-minute mark when the reset value triggers.⁷⁶¹ As Sage pointed out, there are many reasons why an EOM might not arrive before the reset value triggers that have nothing to do with the reliability of the message.⁷⁶² In addition, the only way to ensure that an EOM did arrive for a given EAS message prior to the reset value would be to delay relay of that message until the entire message and its EOM has been received, which could take up to two minutes (or more). We agree with Sage that incurring such delays for time-sensitive information would not be prudent where,⁷⁶³ for example, the incoming EAS message that lacked the EOM was brief and the receiving station waited until the two minute reset mark to generate the EOM.⁷⁶⁴ We also observe that these events are likely to be rare, and the alternative is to delay relaying such messages until the entire message and its EOM have arrived, a result which is not in the public interest. We do not believe that programming EAS equipment to meet this requirement will have any significant cost impact on EAS Participants.

252. *Section 11.33(a)(3)(ii).* Section 11.33(a)(3)(ii) specifies certain header code storage requirements for decoders.⁷⁶⁵ Among other things, this section requires storage of the header codes of the last ten valid messages received by the decoder that still have valid time periods and deletion of header codes as their valid time periods expire.⁷⁶⁶ In the *Third FNPRM*, we explained that TFT, responding to the *Part 11 Public Notice*, urged that we eliminate the requirement to delete messages upon expiration of their time periods because “there are cases in which such expired messages should be transmitted.”⁷⁶⁷ By

⁷⁵⁸ *Id.* at 23.

⁷⁵⁹ Gorman Comments at 2; Timm Reply Comments at 1-2.

⁷⁶⁰ BWWG Reply Comments at 6.

⁷⁶¹ *See* Sage Comments at 22; Timm Comments at 11.

⁷⁶² *See* Sage Comments at 22.

⁷⁶³ *See id.*

⁷⁶⁴ For example, if the monitored station did not generate an EOM for such message until the two-minute mark, the message relayed to downstream monitoring stations could contain a very brief audio message, followed by more than a minute of static or, according to Sage, the monitored station’s regular programming. *See id.*

⁷⁶⁵ *See* 47 C.F.R. § 11.33(a)(3)(ii).

⁷⁶⁶ *Id.*

⁷⁶⁷ *See Third FNPRM*, 26 FCC Rcd 8149, 8216, para. 185 (citing TFT, Inc., Comments, EB Docket 04-296 (filed May 14, 2010) at 5).

way of example, TFT suggested that “a Tornado Warning may be received by an EAS Participant with a minimum validity and circumstances, [that] in the judgment of the EAS Participant, may warrant transmission of the message although expired or retransmission of the message.”⁷⁶⁸

253. In the *Third FNPRM*, we explained that the storage and deletion requirements in section 11.33(a)(3)(ii) facilitate comparison of incoming EAS messages, which among other things should help prevent the automatic relay of duplicate messages.⁷⁶⁹ The alert message originator – not the EAS Participant – determines the valid time period specified for an alert.⁷⁷⁰ We observed that while some might agree that an EAS Participant should be able to determine in its own judgment that an expired EAS message is valid for the listeners or viewers in its area, others might argue that such determinations are best left to the state and local public safety authorities, whose purpose, training, information, and resources are designed to facilitate such determinations.⁷⁷¹ Accordingly, we sought comment on whether we should revise 11.33(a)(3)(ii) as proposed by TFT.⁷⁷² Specifically, we asked whether we should allow EAS Participants to air alert messages after expiration of the effective time period set by the alert message originator.⁷⁷³ BWWG supported TFT’s position.⁷⁷⁴ No other commenter addressed this issue directly.

254. *Decision.* We conclude that the valid time period should continue to be set by the message originator. This decision keeps the choice of when an alert should initiate or terminate in the hands of the party most responsible for the public’s safety, the alert initiator. EAS Participants have repeatedly stressed that they do not want the responsibility of alert origination, and allowing them to air expired alerts effectively puts them in that role. Because we leave the decision with the alert initiator rather than imposing a new technical obligation on the EAS Participant, we do not believe that this rule revision will have any significant cost impact on EAS Participants.

5. Training

255. In the *Third FNPRM*, we observed that some parties responding to the *Part 11 Public Notice* called for the federal government to provide EAS training for state and local emergency managers.⁷⁷⁵ We indicated that while we are committed to aiding FEMA in its efforts to develop training and public outreach programs for EAS Participants; state, local, and tribal alert warning authorities; and the public generally, the Commission lacks the authority to raise or distribute funds for EAS-related purposes.⁷⁷⁶ We therefore tentatively concluded that the Commission cannot provide training for state

⁷⁶⁸ See *id.*

⁷⁶⁹ See *id.*, para. 186.

⁷⁷⁰ See *id.* (citing 47 C.F.R. § 11.31(c) and explaining that the time period is one of the EAS Header Codes contained in the EAS Protocol).

⁷⁷¹ See *id.*

⁷⁷² See *id.*

⁷⁷³ See *id.*

⁷⁷⁴ See BWWG Comments at 64.

⁷⁷⁵ See *Third FNPRM*, 26 FCC Rcd 8149, 8217, para. 188.

⁷⁷⁶ See *id.* We observed that *Executive Order 13407* directs the Secretary of Homeland Security to conduct training related to the EAS, including “public education efforts so that State, territorial, tribal, and local governments, the private sector, and the American people understand the functions of the public alert and warning system and how to access, use, and respond to information from the public alert and warning system.” See *id.*, note 427 (citing *Executive Order 13407*, § 2(a)(vii) and 2(a)(viii)).

and local emergency managers, and we sought comment on this tentative conclusion.⁷⁷⁷ In making this tentative conclusion, we drew the distinction between EAS (and other alert system training, such as that which FEMA will do for IPAWS) and the workshops and summits that the Commission holds as part of its outreach mission.⁷⁷⁸

256. BWWG concurred that FEMA is the federal authority empowered to carry out such training.⁷⁷⁹ No other commenter addressed this issue directly.

257. *Decision.* We reiterate that the Commission lacks the authority to raise or distribute funds for EAS-related purposes and therefore cannot provide training for state and local emergency managers. We can, however, hold workshops and summits as part of our outreach mission. In addition, as indicated above, we plan to examine the relative merits of making the FCC Mapbook and EAS Operator Handbook more informative and useful for EAS Participants and their personnel.

6. Persons with Disabilities

258. As indicated in section IV.B(5) of this order, the Part 11 rules require an EAS Participant to create a visual message (typically aired in the form of a video crawl) that conveys certain basic information that is derived from the EAS header codes for the originator, event, location, and valid time period of the EAS message but do not require a textual transcription of the audio portion of an EAS message.⁷⁸⁰ In the *Third FNPRM*, we acknowledged that the resulting message may not convey as much in the visual alert as in the audio portion due to the technical limitations inherent in the EAS. This would be in tension with Federal statutory obligations⁷⁸¹ and with the Commission's policy that all members of

⁷⁷⁷ See *id.*

⁷⁷⁸ See *id.*

⁷⁷⁹ BWWG Comments at 65.

⁷⁸⁰ See 47 C.F.R. § 11.51(d), (g)(3), (h)(3), (j)(2). This is because visual EAS messages are typically pre-determined phrases programmed into the EAS equipment that correspond to specific EAS codes. For example, the visual depiction of the affected location described for the alert could be a county, whereas the subject matter of the alert may actually be limited to an area within that county. As a consequence, the information that is conveyed visually typically only reports the basic "who," "what," "when," and "where" associated with an audio EAS message and may not provide the specificity of the audio portion of an EAS message.

⁷⁸¹ See, e.g., 47 U.S.C. § 613 (video programming accessibility); 47 C.F.R. § 79.1 (closed captioning); 47 C.F.R. § 79.2 (visual access to emergency programming); 47 C.F.R. Part 11 (emergency alert system); Twenty-first Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260 and Pub. L. No. 111-265 (technical amendments to the CVAA) (requiring the Commission to promulgate rules to make emergency information provided by video providers, distributors, and owners to be accessible to people who are blind or visually impaired); Rehabilitation Act of 1973, Pub. L. No. 93-112, as amended, § 504, 29 U.S.C. § 794 (prohibiting discrimination against individuals with disabilities under any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service); and § 508, 29 U.S.C. § 794d (requiring Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public); Americans with Disabilities Act of 1990, Pub. L. No. 101-336, as amended (covering in Title II all activities of State and local governments regardless of the government entity's size or receipt of Federal funding); Executive Order 13347, 69 Fed. Reg. 44573 (July 26, 2004) (creating the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities "to ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism"); Executive Order 13407, 71 Fed. Reg. 36975 (June 26, 2006) (including in the public alert and warning system the capability to alert and warn all Americans, including those with disabilities).

the public receive equal access to emergency alerts.⁷⁸² We also acknowledged that the inconsistency between the broadcast audio and visual portions of an EAS alert message may not fulfill the intent of section 79.2, which requires that video programming distributors provide emergency information in both visual and audio formats.⁷⁸³

259. We sought comment on how the introduction of CAP into the EAS might enhance the accessibility of emergency alerts to people with disabilities.⁷⁸⁴ In this regard, we sought comment on whether there is in CAP some functionality that would allow EAS Participants to broadcast the same information in the visual portion (*i.e.*, the text crawl) of an EAS alert as is contained within the audio portion (if any).⁷⁸⁵ We also sought comment on whether it is technically feasible for the existing EAS system or EAS Participant facilities to broadcast anything in lieu of an audio message.⁷⁸⁶ We asked whether the equipment that EAS Participants will be using to receive CAP-based EAS alerts can simultaneously accommodate both an audio and textual message that can be delivered over the EAS.⁷⁸⁷ We also invited initial comment on the effectiveness of speech-to-text software and how EAS Participants might use it in a manner that neither delays nor inaccurately interprets an EAS alert message.⁷⁸⁸

260. The Wireless RERC recommended that EAS Participants should be allowed to create the video crawl from the enhanced text in the CAP message,⁷⁸⁹ adding that “[t]he additional text relating to the emergency alert would allow for more description which is highly important to those persons with

⁷⁸² See *Third FNPRM*, 26 FCC Rcd 8149, 8217, para. 189.

⁷⁸³ See *id.* Section 79.2 of the Commission’s rules requires video programming distributors to provide individuals who are deaf, hard of hearing, blind, or visually impaired with equal access to emergency information that such distributors provide to their viewers. Emergency information is defined as information about a current emergency that is intended to further the protection of life, health, safety, and property. See *id.*, note 429 (citing 47 C.F.R. § 79.2(a)(2)). Critical details that must be provided in an accessible format include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance. See *id.* (citing Note to 47 C.F.R. § 79.2(a)(2)). In addition, section 79.2 requires emergency information provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, to be accompanied by an aural tone for people who are blind or visually impaired. See 47 C.F.R. § 79.2 (b)(1)(ii). The CVAA instructed the Commission to improve the ability of this population to obtain emergency information by directing the promulgation of regulations that will require video programming providers, distributors, and owners to convey emergency information in a manner that is accessible to people who are blind or visually impaired. See Pub. L. No. 111-260 § 202 (a), amending 47 U.S.C. § 613(g). Over the past year, the Commission’s Video Programming Accessibility Advisory Committee, also created by the CVAA, has been working to develop recommendations to address such access, which will be delivered to the Commission in April 2012. See *id.* at §201. The Commission’s rules are due one year after receiving this report.

⁷⁸⁴ See *Third FNPRM*, 26 FCC Rcd 8149, 8217-18, para. 190.

⁷⁸⁵ See *id.*, para. 194. We recognized that enhancing the visual information broadcast by EAS Participants would not address instances in which no audio portion is included for state and local (and NWS) messages, either because the EAS message originator did not provide one or because the EAS Participant elected not to broadcast it. See *id.*, note 439 (citing 47 C.F.R. § 11.51(b), which states that EAS Participants are not required to provide the audio portion of state and local EAS messages).

⁷⁸⁶ See *id.* at 8219-20, para. 195.

⁷⁸⁷ See *id.*

⁷⁸⁸ See *id.*

⁷⁸⁹ Wireless RERC Comments at 5.

hearing limitations.”⁷⁹⁰ Wireless RERC also recommended that “[i]f the received CAP message contains audio, then the EAS participant can use speech to text conversion to provide the additional text information,” observing that “[t]his will begin to bridge the gap between Part 11 and Part 79.2.”⁷⁹¹

261. The Wireless RERC also observed that, “[e]nsuring that plans include instructions on how to alert the public, including individuals with disabilities, facilitates an understanding of how accessibility contributes to reduction in loss of life and/or property.”⁷⁹² The Wireless RERC added, “Between 2007 and 2009 the Wireless RERC reviewed 44 state and 64 local EAS plans,” and “[o]f the plans reviewed, only one state plan addressed the needs of people with disabilities; one local plan provided procedures for sending text; and one local plan provided a note on captioning.”⁷⁹³ The Wireless RERC reiterated that “including explicit instructions on notifying people with disabilities would vastly improve the accessibility and receipt of emergency information,” adding that “[p]eriodic updates at least every other year should be required, as officers change, stations are bought and sold, technologies are converged, and emerging technologies are adopted.”⁷⁹⁴

262. The RERC-TA asserted, “With respect to the tension between Part 11 and Section 79.2, we note that it would cease to exist if accessible textual descriptions, which are supported by CAP in the [description field], were not effectively stripped from the alert during the conversion from CAP to SAME.”⁷⁹⁵ The RERC-TA added that “the rules in Part 11 would merely need to stipulate that the TV station is allowed, and required, to make complete use of the textual information in the video crawl.”⁷⁹⁶

263. The RERC-TA acknowledged that although “it is premature to consider speech-to-text systems in lieu of authoring and propagating accessible textual information, . . . they should not be ruled out for future use.”⁷⁹⁷ The RERC-TA added, “Such systems’ accuracy leaves much to be desired – even 95 to 98% accuracy is not sufficient if it results in critical information being lost.”⁷⁹⁸ The RERC-TA offered that “[a] more catastrophic, scenario is a speech recognition error that goes undetected and results in a fundamental alteration of the meaning of the message – such as seeking shelter directly in the path of a tornado, rather than away from it.”⁷⁹⁹ The RERC-TA maintained that “[i]n such cases, no information is greatly preferable to incorrect information, because the person with a disability at least is aware that he or she needs to obtain additional information.”⁸⁰⁰

⁷⁹⁰ *Id.*

⁷⁹¹ *Id.*

⁷⁹² *Id.* at 4.

⁷⁹³ *Id.*

⁷⁹⁴ *Id.* at 5.

⁷⁹⁵ RERC-TA Comments at 15.

⁷⁹⁶ *Id.*

⁷⁹⁷ *Id.* at 16-17.

⁷⁹⁸ *Id.* at 17.

⁷⁹⁹ *Id.*

⁸⁰⁰ *Id.*

264. According to Timm, “[a]llowing CAP-derived-text-only visual crawls is in the public interest, and will rectify the FCC Rule 79.2 conflict.”⁸⁰¹ Timm also commented, “Current EAS CAP units do not include [speech-to-text] capability, and this would appear to be a complicated hardware upgrade not a simple software solution.”⁸⁰² Timm added, “While all current EAS CAP units on the market offer [text-to-speech], the Commission should think long and hard before considering mandating [speech-to-text].”⁸⁰³ BWVG suggested that “CAP easily has within it the capability of being able to tell devices at cable systems and television stations anything that can be envisioned to enhance accessibility.”⁸⁰⁴ BWVG added, “All we have to do is tell audio, video display devices for radio, television and cable what [to] do with CAP messages to best benefit all the disabled communities.”⁸⁰⁵

265. *Decision.* As detailed in section IV.B(5) of this order, we are requiring EAS Participants to meet the video display requirements in section 11.51(d), (g)(3), (h)(3), and (j)(2) by using the enhanced text in the CAP message, as outlined in the ECIG Implementation Guide. Because CAP alert message originators will be capable of providing a transcript of the audio message, we agree with commenters that this action helps harmonize the EAS rules with the requirements of section 79.2. As indicated above, the ECIG Implementation Guide procedure for displaying enhanced CAP text has already been adopted by industry and FEMA and has been implemented in integrated CAP-capable EAS devices and at least some component intermediary devices.⁸⁰⁶ Moreover, the record suggests widespread adoption by EAS Participants.⁸⁰⁷ We also observe that requiring display of enhanced CAP text will provide an incentive for state and local alert message originators to deploy and use CAP-based alert systems. Providing state and local alert message originators with a conduit for the transmission of transcripts of the audio portions of their messages should encourage alert originators to craft messages that will provide accessible alerting for persons with hearing and vision disabilities. As we discussed in section IV.B(5) of this order, CAP compliant EAS equipment is already capable of delivering the enhanced text, if provided by the alert initiator. Thus, we do not believe that this rule revision will have any significant cost impact on EAS Participants.

7. Proposals Beyond the Scope of this Order

266. A few commenters addressed issues that were not raised in the *Third FNPRM*. Because the issues raised were not raised in the *Third FNPRM*, we will not resolve them in this order. We will, however, briefly address them in turn.

267. Adrienne Abbott-Gutierrez (Gutierrez) stated that the current exemption in section 11.11(b) from deploying EAS equipment for analog and digital stations that operate as satellite stations or repeaters of hub stations should be eliminated in favor of requiring deployment of CAP-enabled equipment.⁸⁰⁸ Section 11.11(b) exempts such stations from having to deploy EAS equipment because

⁸⁰¹ Timm Comments at 12. *See also* Trilithic Comments at 9 (“TV Broadcasters are required to provide the same information in both the audio and video portions of their programming, and CAP text finally provides a mechanism for this.”).

⁸⁰² *Id.*

⁸⁰³ *Id.*

⁸⁰⁴ BWVG Comments at 66.

⁸⁰⁵ *Id.*

⁸⁰⁶ *See supra* para. 139.

⁸⁰⁷ *See supra* para. 132-137.

⁸⁰⁸ Adrienne Abbott-Gutierrez Comments, EB Docket 04-296 (filed July 18, 2011) at 2-3 (Gutierrez Comments).

these stations do not originate any programming but instead rebroadcast 100 percent of the hub station's programming.⁸⁰⁹ Gutierrez observed, "The full power radio and TV originating stations are not licensed to serve these remote areas [served by the satellite or translator stations]," and thus "EAS activations that are heard on translators and 'hub' stations are meant for communities hundreds of miles away from the community served by the translator or 'hub' station."⁸¹⁰ According to Gutierrez, "[i]n some cases, the rural audience is hearing activations that were issued for other states and in different time zones."⁸¹¹ Gutierrez continued that, "[w]ith the CAP technology, new EAS equipment could be added to translators or transmitters for 'hub' stations and activations could be issued by the local emergency managers for their specific areas without interrupting programming in other communities."⁸¹²

268. Translators and satellite stations currently are exempted by section 11(b) from having to install EAS equipment because such equipment is not necessary for them to carry a Presidential alert, which they receive from their hub station. The *Third FNPRM* did not seek comment on the use of translators or satellite stations to carry state or local alerts, whether in the CAP or SAME formats, and thus the record is insufficient for us to resolve this issue in this order. We note, however, that in response to the November 9, 2011, Nationwide EAS Test, the Commission will be receiving data on the use of translators to provide the EAN to areas that a full power radio or television signal cannot reach, which may provide insight on this matter. It would be premature to take any actions with respect to the use of translators until after we have reviewed and processed the test data from the November 9, 2011, Nationwide EAS Test.

269. There were a number of comments on the manner in which State EAS plans are filed, as well as how State Emergency Communications Committees (SECC), the entities that draft most State EAS plans, are chosen and trained.

270. The Wireless RERC argued that "[the] rules should make it mandatory to develop and file state and/or local EAS plans and establish guidelines for the structure of plans."⁸¹³

271. In addition, some commenters suggested that the Commission define the role and makeup of SECCs. Timm observed, "With the now increased responsibilities of updating the State EAS Plan to include CAP distribution, actually building those state CAP networks, interfacing to the FEMA IPAWS network, bringing the governor and designees up to speed on originating CAP messages, and incorporating any changes brought on by the proposed new rules, it would seem if these are intended duties of the SECC that the SECC should be more evident in Part 11."⁸¹⁴ Timm added, "While the structure and composition of the SECC is probably best left to each state to determine, general guidance, and at least acknowledgement of the SECC's existence, seem appropriate."⁸¹⁵ Timm proposed various

⁸⁰⁹ See 47 C.F.R. § 11.11(b) (specifying that "[a]nalog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy [their EAS-related] requirements . . . through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33").

⁸¹⁰ Gutierrez Comments at 3.

⁸¹¹ *Id.*

⁸¹² *Id.*

⁸¹³ Wireless RERC Comments at 4.

⁸¹⁴ Timm Comments at 15.

⁸¹⁵ *Id.* at 16.

rules covering SECC governance and responsibilities for inclusion into Part 11.⁸¹⁶

272. NSBA acknowledged that “neither FEMA nor the FCC have the authority to compel the various states and territories to fund, implement, or train their personnel for the conversion to CAP, or even to assist in the updating of statewide EAS plans” but nonetheless suggested that the Commission “re-establish[] its commitment to, and the authority and stature of, the [SECCs].”⁸¹⁷ NSBA proposed various requirements concerning the establishment, governance structure, and responsibilities that SECCs would have to follow to be “recognized” by the Commission.⁸¹⁸

273. BWWG stated, “[we] find[] it ironic that while the Commission and its Enforcement Bureau rely on local and state volunteer efforts to write plans that are the basis of assessing compliance, yet do not currently spell out who appoints members of local and state committees, nor what the proper composition of these committees should be to best meet the needs of the EAS.”⁸¹⁹ In this regard, BWWG observed that the Commission has not established a process by which Local Emergency Communications Committee and SECC Chairs may update their committees, particularly procedures for processing resignations and new appointments.⁸²⁰ BWWG maintained that “the Commission needs to address this vital issue as part of the Part 11 re-write.”⁸²¹

274. We note at the outset that NSBA is correct that the states implement EAS on a voluntary basis. We note, however, that State EAS Plans, if filed, must comply with FCC guidelines and be approved by the Chief of the Public Safety and Homeland Security Bureau.⁸²² Although a review of the manner in which state EAS Plans are constructed and filed is outside of the purview of this rulemaking, we note that the efficacy of State EAS Plans was very much an issue in the November 9, 2011, Nationwide EAS Test. The Commission will be receiving data on how well state EAS Plans operated as a tool for the effective propagation of the EAN. We believe that it would be premature to take any action with respect to state EAS Plans until after we have reviewed and processed the test data from the November 9, 2011, Nationwide EAS Test.

275. Commenters also raised concerns with the Part 11 test requirements. BWWG proposed that we eliminate the Required Weekly Test (RWT) specified in section 11.61(a)(2). According to BWWG, “under the LP system, other stations monitor very few non-LP stations” and thus “the alert tones do not trigger anything ‘down the line.’”⁸²³ BWWG added, “The only benefit that the RWT would have is to ensure the station’s ENDEC actually works once a week.”⁸²⁴ BWWG also observed that “RWTs do not contain any audio message as would a real EAS message” and “broadcast, television and cable entities with very few exceptions never issue real EAS warnings.”⁸²⁵ BWWG proposed that the RWT be replaced by “a full regional test, based on the current [RMT] on an area-wide or statewide basis,” which

⁸¹⁶ See *id.* at 16-17.

⁸¹⁷ NSBA Comments at 5.

⁸¹⁸ See *id.* at 5-8.

⁸¹⁹ BWWG Comments at 10 (*internal footnote omitted*).

⁸²⁰ *Id.*

⁸²¹ *Id.*

⁸²² See 47 C.F.R. § 11.21.

⁸²³ *Id.* at 6.

⁸²⁴ *Id.*

⁸²⁵ *Id.* at 6-7.

BWWG indicated “could be done on a different schedule than RMT’s, perhaps every three weeks, perhaps twice a month, with the SECC collecting information as to the performance of the system.”⁸²⁶

276. Evans stated that “Part 11 might define the purpose of the RMT so that our state plans can build a better model to test the system itself.”⁸²⁷ In this regard, Evans indicated, “[b]asically the question is, “Who should start the RMT?”⁸²⁸ Evans further indicated, “In my opinion the RMT is designed to test the system from start to finish . . . from the daisy chain, to the state relay, and even NOAA Weather Radio.”⁸²⁹

277. Testing the EAS was not an issue raised in the *Third FNPRM*. We note, however, that the EAS testing regime may be examined as part of the Commission’s review of the November 9, 2011, Nationwide EAS Test data. We will therefore defer any consideration of EAS testing matters until after we have completed that review.

V. PROCEDURAL MATTERS

A. Accessible Formats

278. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Regulatory Flexibility Analysis

279. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix B.

C. Paperwork Reduction Act Analysis

280. This Fifth Report and Order adopts modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These modified requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

281. In this present document, we have assessed the effects of revisions to current Part 11 reporting, recordkeeping, or compliance requirements as set forth in this Fifth Report and Order, and do not expect these revisions to alter the recordkeeping burden of any EAS Participants to any appreciable degree. There are no results specific to businesses with fewer than 25 employees.

D. Congressional Review Act

282. The Commission will send a copy of this *Fifth Report and Order* to Congress and the

⁸²⁶ *Id.* at 7.

⁸²⁷ Evans Comments at 4.

⁸²⁸ *Id.*

⁸²⁹ *Id.*

Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

283. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this Fifth Report and Order IS ADOPTED.

284. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE thirty (30) days after the date of their publication in the Federal Register, except for any reporting, recordkeeping or third-party collection requirements that contain new or modified information collections. Those rules will become effective on the date specified in a Commission notice published in the Federal Register announcing their approval under the Paperwork Reduction Act by the Office of Management and Budget.

285. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fifth Report and Order, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

2. Revise § 11.2 to read as follows:

§ 11.2 Definitions.

The definitions of terms used in part 11 are:

(a) Emergency Action Notification (EAN). The Emergency Action Notification is the notice to all EAS Participants and to the general public that the EAS has been activated for a national emergency. EAN messages that are formatted in the EAS Protocol (specified in §11.31) are sent from a government origination point to broadcast stations and other entities participating in the PEP system, and are subsequently disseminated via EAS Participants. Dissemination arrangements for EAN messages that are formatted in the EAS Protocol (specified in §11.31) at the State and local levels are specified in the State and Local Area plans (defined at §11.21). A national activation of the EAS for a Presidential message with the Event code EAN as specified in §11.31 must take priority over any other message and preempt it if it is in progress.

(b) Primary Entry Point (PEP) System. The PEP system is a nationwide network of broadcast stations and other entities connected with government activation points. It is used to distribute EAS messages that are formatted in the EAS Protocol (specified in §11.31), including the EAN and EAS national test messages. FEMA has designated some of the nation's largest radio broadcast stations as PEPs. The PEPs are designated to receive the Presidential alert from FEMA and distribute it to local stations.

(c) Local Primary One (LP-1). The LP-1 is a radio or TV station that acts as a key EAS monitoring source. Each LP-1 station must monitor its regional PEP station and a back-up source for Presidential messages.

(d) EAS Participants. Entities required under the Commission's rules to comply with EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems.

(e) Wireline Video System. The system of a wireline common carrier used to provide video programming service.

(f) Participating National (PN). PN stations are broadcast stations that transmit EAS National, state, or local EAS messages to the public.

(g) National Primary (NP). Stations that are the primary entry point for Presidential messages delivered by FEMA. These stations are responsible for broadcasting a Presidential alert to the public and to State Primary stations within their broadcast range.

(h) State Primary (SP). Stations that are the entry point for State messages, which can originate from the Governor or a designated representative.

(i) Intermediary Device. An intermediary device is a stand-alone device that carries out the functions of monitoring for, receiving and/or acquiring, and decoding EAS messages formatted in the Common Alerting Protocol (CAP) in accordance with §11.56, and converting such messages into a format that can be inputted into a separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, so that the EAS message outputted by such separate EAS decoder, EAS encoder, or unit combining such decoder and encoder functions, and all other functions attendant to processing such EAS message, comply with the requirements in this part.

3. Amend § 11.11 by revising paragraphs (a) and (d) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in §25.701(a) of this chapter (including certain Ku-band Fixed-Satellite Service Direct to Home providers); and SDARS, as defined in §25.201 of this chapter. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in §11.31, to send and receive emergency alerts, and comply with the requirements set forth in §11.56, in accordance with the following tables:

Table 1: Analog and Digital Broadcast Station Equipment Deployment Requirements

EAS equipment requirement	AM & FM	Digital AM & FM	Analog & Digital FM Class D	Analog & Digital LPFM	DTV	Analog & Digital Class A TV	Analog & Digital LPTV
EAS decoder ¹	Y	Y	Y	Y	Y	Y	Y
EAS encoder	Y	Y	N	N	Y	Y	N
Audio message	Y	Y	Y	Y	Y	Y	Y
Video message	N/A	N/A	N/A	N/A	Y	Y	Y

¹ EAS Participants may comply with the obligations set forth in §11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in §11.56(b).

Analog Cable Systems

Analog cable systems are subject to the requirements in Table 2 below. Analog cable systems serving fewer than 5,000 subscribers from a headend may either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 2.

Table 2: Analog Cable System Equipment Deployment Requirements

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder ¹	Y	Y
EAS encoder	Y	Y ²
Audio and Video EAS Message on all channels	Y	N
Video interrupt and audio alert message on all channels; ³ Audio and Video EAS message on at least one channel	N	Y

¹ EAS Participants may comply with the obligations set forth in §11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in §11.56(b).

² Analog cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

³ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [Note: Programmed channels do not include channels used for the transmission of data such as interactive games.]

Wireless Cable Systems (BRS/EBS Stations)

Wireless cable systems are subject to the requirements in Table 3 below. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 3.

Table 3: Wireless Cable System Equipment Deployment Requirements

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder ¹	Y	Y
EAS encoder	Y	Y ²
Audio and Video EAS Message on all channels ³	Y	N
Video interrupt and audio alert message on all channels; ⁴ Audio and Video EAS message on at least one channel	N	Y

¹ EAS Participants may comply with the obligations set forth in §11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in §11.56(b).

² Wireless cable systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

³ All wireless cable systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

⁴ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [Note: Programmed channels do not include channels used for the transmission of data services such as Internet.]

Digital Cable Systems and Wireline Video Systems

Digital cable systems and Wireline Video Systems must comply with the requirements in Table 4 below. Digital cable systems and Wireline Video Systems serving fewer than 5,000 subscribers from a headend must either provide the National level EAS message on all programmed channels including the required testing, or comply with the requirements in Table 4.

Table 4: Digital Cable System and Wireline Video System Equipment Deployment Requirements

EAS equipment requirement	≥5,000 subscribers	<5,000 subscribers
EAS decoder ¹	Y	Y
EAS encoder	Y	Y ²
Audio and Video EAS Message on all channels ³	Y	N
Video interrupt and audio alert message on all channels; ⁴ Audio and Video EAS message on at least one channel	N	Y

¹ EAS Participants may comply with the obligations set forth in §11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in §11.56(b).

² Digital cable systems and wireline video systems serving <5,000 subscribers are permitted to operate without an EAS encoder if they install an FCC-certified decoder.

³ All digital cable systems and wireline video systems may comply with this requirement by providing a means to switch all programmed channels to a predesignated channel that carries the required audio and video EAS messages.

⁴ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message. [Note: Programmed channels do not include channels used for the transmission of data services such as Internet access.]

SDARS and DBS

EAS equipment requirement	SDARS	DBS
EAS decoder ¹	Y	Y
EAS encoder	Y	Y
Audio message on all channels ²	Y	Y
Video message on all channels ²	N/A	Y