

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of	)	
	)	
Amendment of Part 11 of the Commission's	)	PS Docket No. 15-94
Rules Regarding the Emergency Alert System	)	
	)	
Wireless Emergency Alerts	)	PS Docket No. 15-91

To: The Commission
Marlene H. Dortch, Secretary

JOINT COMMENTS OF THE NAMED STATE BROADCASTERS ASSOCIATIONS

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Summary

As the representatives of the majority of our nation's local television and radio broadcasters, which are key EAS participants,¹ the State Associations have long and active experience in helping to manage the process of developing State EAS Plans for submission to the Commission for review and approval. Accordingly, the State Associations are in a unique position to assemble and provide critical input to the Commission on these matters.

The State Associations played a leading role in a five-year effort to authorize IPAWS in federal law. Prior to the bill's enactment earlier this year, IPAWS had existed only as the result of a Presidential order. Importantly, the new law calls for the creation of an advisory group of federal and state partners and EAS stakeholders to work on improvements to our nation's warning system. It also calls for FEMA to incorporate EAS/IPAWS training in the National Incident Management System, ensuring that communication to the public will remain part and parcel of emergency managers' incident response.

The State Associations are appreciative of the very hard work and insightful treatment of the subject of EAS by the Commission and its staff, as evidenced by the scope of the NPRM. The State Associations, however, are concerned that some approaches proposed or being considered by the Commission would place unreasonable burdens on State Emergency Communications Committees, which typically consist of volunteer members, and/or would impose "one size fits all" type regulations on matters which are better left to the states, which can tailor approaches more suitable to their respective individual needs. The matters of concern include the development of a State EAS Plan template, the inclusion of certain information, such as SECC governance structures and local area EAS plans, in State Plans, and some of the

¹ See 47 C.F.R §11.11(a).

security measures and related reporting obligations proposed by the Commission. The State Associations believe, in particular, that the Commission's security proposals are over-reaching and would chill full participation in the EAS network.

The State Associations also oppose the proposal that State EAS Plans include platforms such as social media which are not part of the EAS network. The unreliability of social media as an alert platform, the large number of people who use social media infrequently or not at all, and the rapid developments in social media technology and applications make these sort of non-broadcast/cable platforms unsuitable for inclusion in State EAS Plans. The pace of those technological advances, and the evolution of social media generally, would make it extremely difficult to address the role of social media in EAS Plans and to keep Plans updated.

The State Associations support the proposal that EAS Participants have the ability to conduct live code tests at their discretion without the need for a waiver, and support the proposal that EAS tones be permitted in PSAs, subject to monitoring to assure that such tones do not inadvertently trigger alerts. We also believe that the use of WEA tones should be permitted in bona fide news reports to educate the public as to WEA.

In general, the State Associations believe that certain decisions are best left to state and local entities, as those entities are in the best position to make determinations in which key factors which will differ from place to place. In accordance with that concept, we believe that EAS Participants and governmental entities should have the discretion to determine the languages in which PSAs and other EAS related programs should be broadcast.

Finally, the State Associations call for the use of selective override to address the problem of cable force tuning, which results in television viewers being deprived of critical emergency information at the times they most need it.

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The State Broadcasters Associations named below (the "State Associations"), by their attorneys in this matter and pursuant to Section 1.415 of the Rules of the Federal Communications Commission (the "Commission"),² hereby respectfully file their Joint Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding³. These Joint Comments are timely filed by virtue of the Commission's action granting an extension of time until June 8 to file comments.⁴

Introduction

The State Associations are appreciative of the very hard work and insightful treatment of the subject of the Emergency Alert System ("EAS") by the Commission and its staff, as evidenced by the scope and detail of the NPRM. The NPRM raises a large number of issues and questions that are of great importance to the effective functioning of the nation's critical public

² See 47 C.F.R. § 1.415.

³ See *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System and Wireless Emergency Alerts*, PS Docket No. 15-91, PS Docket No. 15-94, Notice of Proposed Rulemaking, 31 FCC Rcd 594 (2016) ("NPRM").

⁴ See *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System and Wireless Emergency Alerts*, Order, PS Docket No. 15-94, PS Docket No. 15-91, DA 16-482 (rel. May 5, 2016).

alert and warning systems. Among these are questions regarding substantial changes in the development and content of State EAS Plans, issues regarding live code testing and public service announcements, the continued usefulness of local area EAS plans, the use of social media platforms for alerting purposes, and issues of securing the EAS network. Many of the matters upon which the Commission seeks comment involve issues of the extent to which additional burdens would be placed upon States and on volunteer State Emergency Communications Committees (“SECCs”). Also at the heart of many of these matters is the balance between State and Federal control over aspects of the emergency alert and warning systems, an issue which is of great importance to the governance of our nation.

As the representatives of the majority of our nation’s local television and radio broadcasters, which are key EAS Participants,⁵ the State Associations have long and active experience in helping to manage the process of developing State EAS Plans for submission to the FCC for review and approval. Accordingly, the State Associations are in a unique position to assemble and provide critical input to the Commission on these matters.

The State Associations also played a leading role in a five-year effort to authorize the Integrated Public Alert and Warning System (“IPAWS”) in federal law. Prior to the bill’s enactment earlier this year, IPAWS had existed only as the result of a Presidential order. Importantly, the new law calls for the creation of an advisory group of federal and state partners and EAS stakeholders to work on improvements to our nation’s warning system. It also calls for FEMA to incorporate EAS/IPAWS training in to the National Incident Management System, ensuring that communication to the public will remain part and parcel of emergency managers’ incident response.

⁵ See 47 C.F.R §11.11(a).

These Joint Comments are structured to follow the organization of the NPRM in order to facilitate Commission review.

Discussion

A. Improving Alerting Organization at the State and Local Levels

1. EAS Designations

In the NPRM, the Commission seeks comment as to whether changes in defined terms are desirable and whether additional EAS designations should be added to the Commission's rules. Specifically, the Commission has proposed to designate the primary entry point for a Presidential alert as a PEP, to designate the entity tasked with delivering a Presidential Alert to a state's EAS Participants as a National Primary ("NP"), and to designate the entity tasked with delivering a state alert as a State Primary ("SP").⁶

With the exception of adding a designation for "PEP" to Section 11.18 of the Commission's rules, as proposed by the Commission, the State Associations urge the Commission to retain the current EAS hierarchy designations. The current designation structure provides needed flexibility for states to fit definitions to their individual needs, and substantial changes to the designations would require corresponding changes to State EAS Plans which would burden the resources of SECCs. In addition, National Primary (NP) and Primary Entry Point (PEP) facilities perform the same EAS hierarchy function of serving as entry points for Presidential and national authority messages; however, PEP facilities also satisfy certain FEMA resiliency and operational requirements. For example, PEPs are designed to remain operational and self-sufficient for at least 30 days after a catastrophic event, while NPs are not. EAS Participants will have an operational need to know which facilities are PEP facilities, and due to

⁶ NPRM at ¶17.

the common functionality of PEPs and NPs as primary entry points for Presidential Alerts, the designation of NPs could lead to confusion among EAS Participants.

The State Associations do not recommend the adoption of special-event or special-purpose EAS hierarchy designations like “Amber-Alert Primary” and “satellite-NP” designations.⁷ An EAS hierarchy designation should be for all hazards and situations. Using unique entry points for special events or hazards may lead to monitoring assignment confusion and complications for EAS Participants and procedural complications for emergency message requesters.

Likewise, we do not recommend adopting the “Relay Station” designation proposed by the Commission.⁸ Regardless of whether a facility or a technology is serving as a relay between operational areas or inside an operational area (e.g., between a Local Primary (“LP”) and a Participant too remote for LP signal reception), the current designation State Relay (“SR”) properly describes the relay function and should be retained.⁹

As a general matter, however, the Commission should make its rules regarding EAS designations simpler and easier to use by moving all EAS definitions, which are currently scattered across Sections 11.18, 11.20 and 11.21, to Section 11.2 of the Commission’s rules. Such a “housekeeping” amendment would ease the burden on SECC members and EAS Participants who may not deal with the EAS rules on a frequent and regular basis.

The jobs of SECC members, who are typically volunteers, could also be made easier by more clearly defining the important part played by SECCs in the alert system. The Commission

⁷ See NPRM at ¶¶20-22.

⁸ NPRM at ¶17.

⁹ See 47 C.F.R. §11.20.

acknowledges the important role of SECCs in the NPRM,¹⁰ but the term “SECC” is not defined in the rules, nor do the rules spell out the specific duties of the SECCs.

Currently SECCs function as alerting plan originators but without clear direction as to oversight, authority, or specific duties and responsibilities. Moreover, SECCs typically operate as volunteer organizations without adequate funding or liability protections for members. The Commission should address these matters in its rules, first by clarifying the role and responsibilities of SECCs, and then by considering options designed to address funding and liability issues based upon those responsibilities.¹¹ In doing so, however, the Commission must exercise caution that it does not impose new obligation on SECCs or otherwise compromise their autonomy or the flexibility they must have to address the individual needs of their respective states.

2. State EAS Plan Filing Interface (SEPFI)

Standardization and Structure

The Commission requires that State EAS Plans, which contain guidelines for EAS Participants and others, be filed and approved prior to implementation by the Chief of the Public Safety and Homeland Security Bureau.¹² In the NPRM, the Commission proposes to require that such filings be done online through a State EAS Plan Filing Interface (“SEPFI”), and be accomplished by use of a standardized template prepared by the Public Safety and Homeland Security Bureau.¹³ While the State Associations do not necessarily object in principle to the concept of an online plan using some type of template, a single template designated for use by all states must provide the flexibility necessary to address the different needs of the various states.

¹⁰ NPRM at note 3.

¹¹ See, e.g., NPRM at ¶8 for a description of the role of SECCs.

¹² 47 C.F.R. § 11.21.

¹³ NPRM at ¶ 25.

For example, large states may have very different issues than smaller states; e.g., a hurricane or storm can easily blanket a state such as Delaware or Rhode Island, but few if any events are sufficiently extensive to impact all parts of a large state such as Texas or California.

The template concept envisioned by the Commission purportedly would “streamline the development of State EAS Plans by identifying the appropriate informational parameters for State EAS Plans.”¹⁴ This would appear to contemplate a standardized and comprehensive template to be used by all states. However, as CSRIC IV has noted, and the Commission has acknowledged, there is no one-size-fits-all framework for State EAS Plans,¹⁵ and SECCs, which are often an informal grouping of volunteers, have limited resources to rewrite plans. We agree with the CSRIC IV position that “SECCs must be free to design and maintain their respective state’s own robust and redundant EAS relay networks in the best and most practical ways possible”.¹⁶

The Commission also significantly underestimates the commitment of time and resources which would be required to revise State EAS Plans to be in accord with a new and substantially different template. A rewrite of State EAS Plans to conform to a master template would impose an unreasonable burden on SECCs, which as noted above are primarily volunteer groups. The Commission estimates that each State EAS Plan takes approximately twenty hours to complete.¹⁷ A more accurate estimate is probably in the hundreds of hours for many or most states, and an estimate of the time necessary to substantially rewrite an EAS Plan to fit a completely new standardized template would be nearly the same.

¹⁴ NPRM at ¶28.

¹⁵ Id.

¹⁶ CSRIC EAS State Plan Report at p. 20
(https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3_EAS_Plans_Final_Report_032514.pdf).

¹⁷ NPRM at ¶ 26.

The template envisioned by the CSRIC IV in the CSRIC EAS State Plan Report cited by the Commission in the NPRM is essentially a table in which a SECC would fill in monitoring assignments by region and county.¹⁸ The State Associations support a template substantially similar to that proposed in the CSRIC EAS State Plan Report provided that it can be completed without an overly burdensome commitment of time and resources by SECCs, that it adequately addresses the security risks of placing sensitive information online, and that it would provide clear guidance on how official signatures would be obtained and periodic plan updates performed. But any template which attempts to impose a rigorous level of standardization upon State Plans would require essentially a complete rewriting of a State Plan and would unduly restrict the flexibility that should be afforded to states to craft EAS plans which are appropriate for their individual issues and needs. If the Commission's ultimate aim is to standardize the presentation of State Plans in order to make it easier to locate particular pieces of information, we suggest that it develop, with stakeholder input, a set of "best practices" such that, for example, the list of authorities who can send alerts is always in Appendix A, the table of monitoring assignments is always in Appendix B, etc. Such an approach would necessitate only a rearrangement of existing information, rather than a complete rewrite of the plan. In addition, information more susceptible to revision (e.g. monitoring assignments) could be contained in Appendices making plan updating simpler to accomplish.

In the event such a template is adopted, we believe that the Commission approval process for State Plans should be streamlined. In the past, the Commission sometimes has failed to act in a timely manner on State Plans submitted for approval. We therefore propose a process by which a State Plan would be deemed approved if the Commission takes no action within sixty

¹⁸ See Section 6.1 (Appendix 1) to CSRIC EAS State Plan Report.

days after submission. In addition, an adequate period should be provided, including a grandfathering period of at least twelve months for existing Plans, during which SECCs can transition to any new template.

Security

The Commission requests comment on ways to protect sensitive data contained in State EAS Plans,¹⁹ and notes that some EAS Plan data is password protected and/or requires user log-in information.²⁰ We recognize the need to protect certain EAS Plan data and support a proposal to require password or log-in protection, provided, however, that the SECCs have authority to approve access to EAS Plan data. The implementation of security measures such as user identification and password protection would permit the SECCs to limit access to stakeholders such as EAS Participants and public safety officials. In connection with security issues the Commission should also address the issue of how to protect SECC members from liability for security breaches.²¹

National Advisory Committee (NAC)

We strongly urge the Commission to reactivate the National Advisory Committee. The NAC could provide a valuable resource to interface with, and improve communications among, the Commission, SECCs, FEMA, NWS and other stakeholders. While a NAC, which would likely be a volunteer group, may not have the resources to undertake review of each proposed State EAS Plan,²² it should be able to provide valuable guidance on more global issues, such as assisting in developing a workable template for the State EAS Plans described above. The recently enacted Integrated Public Alert and Warning System Modernization Act of 2015 directs

¹⁹ NPRM at ¶31.

²⁰ NPRM at note 101.

²¹ See Section A.1 *supra*.

²² See NPRM at ¶32.

FEMA to convene a subcommittee of its National Advisory Committee to work on improvements to the nation's alerting system. That subcommittee sunsets in three years, however, at which point we will once again be without a stakeholder group that can address EAS-related issues in an ongoing, organized fashion. To the extent that it would be duplicative for both the Commission and FEMA to stand up NAC subcommittees at this time, the Commission should consider picking up the threads of the FEMA subcommittee once the sunset period has arrived. In the meantime, it would not be unreasonable for the FEMA subcommittee to address such issues as the Commission raises in the NPRM.

3. State EAS Plan Contents

Organizational Elements - A List of Entities Authorized to Activate EAS.

The State Associations agree that all authorized EAS message originators should be identified in the State EAS Plan.²³ We disagree, however, that SECCs should orchestrate any disruptions or rescheduling of state or local messages. SECCs are simply not equipped to handle those tasks. Post-event Presidential addresses to the nation are rarely no-notice events. In situations where public safety and emergency management officials have advance notification of a Presidential address to the nation, public safety officials are in the best position to determine delaying, rescheduling or alternate routing options for their protective action guidance to the public.

Organizational Elements - A Description of SECC Governance Structure.

The State Associations believe that the Commission's proposed requirement that SECC governance structures be contained in State EAS Plans is unnecessary, and that the determination as to whether to include such information in an EAS Plan is better left to the states, which are in

²³ NPRM at ¶39.

the best position to determine whether adding that information would provide value.²⁴ We also believe that each SECC should retain the flexibility to determine the governance structure and method of selecting its membership and chairpersons that best suits that individual SECC.

Organizational Elements - LECCs and Local Area EAS Plans.

The Commission asks about the extent to which Local Area EAS Plans add value and whether they should be subsumed in State EAS Plans.²⁵ The input received by the State Associations indicates that local plans exist in a number of areas, particularly in large states, that those plans are generally perceived to be valuable and that there is no apparent reason to eliminate them in local areas where SECCs deem them appropriate. However, requiring local plans to be incorporated into State EAS Plans would make the State Plans more unwieldy, and would burden SECCs to no apparent useful purpose.

Operational Elements - Expanded Emergency Alerting Procedures

The State Associations oppose the Commission's proposal that State EAS Plans should include all available alert distribution mechanisms that the state utilizes, including WEA, highway signs and social media.²⁶ State EAS Plans are intended to provide a guide as to how a Presidential Alert is delivered to the nation, and how other authorities deliver alerts via the EAS Participants listed in the Commission's rules: principally broadcast television and radio, and cable television.²⁷ While states may supplement their alert procedures by using other platforms, such as social media, and should be afforded the flexibility to do so, such other platforms are not part of EAS and should not be required to be described in the State EAS Plans.

²⁴ See NPRM at ¶37.

²⁵ NPRM at ¶ 41.

²⁶ NPRM at ¶¶ 42-45.

²⁷ See 47 C.F.R. § 11.11.

With respect to social media, its use for alerting purposes differs from state to state, and may differ even within a state depending upon the specific emergency or other event which triggers an alert. States must be able to consider the inherent unreliability and ineffectiveness of social media as an alert distribution platform and weigh that against any benefits which may be obtained by its use.²⁸ Social media is by its very nature a means of sharing information among people on a social basis, but generally without any means of verifying that information. Social media is also far from ubiquitous. Many people, particularly the elderly, may seldom or never use social media, rendering it a completely ineffective means of reaching those populations in an emergency. Moreover, the ways in which social media is used by citizens, and the types of social media used, are continuously evolving as new technologies and consumer preferences emerge. To require that the use of these platforms be set out in EAS Plans would deprive states of the flexibility needed to deploy such platforms in the most effective manner, and in addition would burden SECCs with the task of making frequent revisions to the Plans as such uses and the related technology evolve.²⁹

The Commission's experience with WEA is also instructive in considering social media as part of the alert network. In 2008, pursuant to the Warning Alert and Response Network Act,³⁰ the Commission adopted rules allowing Commercial Mobile Services ("CMS") providers to voluntarily deliver timely and accurate emergency alerts to subscribers' mobile devices.³¹ But due to its voluntary nature, the WEA system has provided an incomplete alerting solution at best,

²⁸ As to the unreliability of social media and its potential to be used to spread misinformation, see, e.g., *Fake Brussels YouTube Videos Prove Ease of Digital Disinformation*, The Guardian, March 23, 2016 (<http://www.theguardian.com/media/2016/mar/23/fake-youtube-videos-brussels-attacks-facebook-twitter>).

²⁹ This lack of flexibility is also a reason not to require that local plans be incorporated into state plans.

³⁰ Warning, Alert and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006).

³¹ See NPRM at ¶9.

with a large number of CMS providers not participating.³² While there is value in reaching the American public in as many ways and on as many platforms as possible, there is no reason to assume that the use of social media will be as successful in providing a comprehensive and ubiquitous alerting mechanism as the broadcast-based EAS has been.

In sum, the State Associations feel strongly that State EAS Plans should be parochial to the EAS network; i.e. confined to EAS Participants and the existing EAS structure. A more appropriate way to address the use of other platforms for alerting purposes would be to develop a master or model IPAWS plan (similar to the State Communications Interoperability Plan used by emergency response agencies) which would address IPAWS governance and interconnectivity among various IPAWS dissemination avenues.

Operational Elements - Monitoring Assignments.

The State Associations agree with the Commission's proposal that State EAS Plans should continue to divide their respective states into geographically-based operational areas.³³ However, we do not recommend a nationwide definition of an operational area. Geographical and topographical factors make it very difficult for SECCs to conform to any FCC-mandated one-description-fits-all definition, and states need to retain the flexibility to establish operational areas which best suit their individual situations. We therefore recommend that SECCs have the flexibility to define operational areas within their respective states based on their individual operational considerations.

We also recommend that the adoption of local operational area plans be an option, but not a mandate, for SECCs. Experience from the former EBS system has taught the State

³² See FCC Master WEA Carrier Registry (<http://transition.fcc.gov/pshs/services/cmas.html>) which indicates that as of March 2, 2015 more than 450 CMS providers had elected not to participate in the system, nearly 50 had withdrawn, and only 76 had made an "in-whole" or "in-part" election to participate.

³³ NPRM at ¶48.

Associations that efforts to develop and maintain local operational area plans can be an administrative nightmare and frequently not worth the effort. Additionally, in smaller states there may be no need to create local plans.

We agree with the Commission's goal of eliminating single-point-of-failure problems and support the concept that each EAS Participant should monitor at least two independent sources.³⁴ However, we do not believe that such a provision should be a requirement. In small markets and rural areas the monitoring of two sources may not be practicable. Therefore, we recommend that the FCC encourage the use of independent sources but permit flexibility to allow for areas where compliance may not be practicable or possible.

Operational Elements - A Description of "One-to-Many, Many-to-One" Alerting Implementation.

The Commission has proposed that State EAS Plans should describe the extent to which alert originators coordinate alerts with community feedback mechanisms, such as 9-1-1.³⁵ We believe that it is important that 9-1-1 dispatchers focus on their primary responsibility of receiving emergency calls and relaying information directly to first responders. The introduction of additional streams of information could impede this function, and could also create the risk that an unnecessary alert will be sent due to actions taken by a dispatcher who is not adequately trained in the role and use of the alert system. Such a system could also place EAS Participants, such as broadcasters, in the position of having to determine whether an alert initiated by a dispatcher is something that needs to be broadcast immediately or requires further verification.

Testing/Outreach Elements - Testing Procedures.

With regard to required testing of EAS, the Commission has proposed that procedures for Required Monthly Tests ("RMT"), Required Weekly Tests ("RWT") and national tests be

³⁴ NPRM at ¶50.

³⁵ NPRM at ¶53.

written into the State EAS Plans.³⁶ The State Associations oppose this proposal. While we recognize the efficacy of a State Plan referring to the Part 11 rules governing such tests and laying out the procedures for their conduct, we disagree that a State Plan should include the schedule, origination source, and script for such tests. States need some degree of discretion in performing such tests, and a requirement that test procedures be included in the Plans is likely to decrease flexibility and increase the burden on SECCs, who will be required to rewrite plans to account for changes in procedures or testing dates. Many SECCs outline testing procedures and schedules in a document separate from the EAS Plan,³⁷ which is a more appropriate and flexible approach, and it is unclear what benefit would be derived from adding this information to the EAS Plans.

The Commission also seeks comment as to whether state and local Wireless Emergency Alert System (“WEA”) testing is a necessary part of state-level preparedness to receive a Presidential alert.³⁸ While some testing of WEA is desirable, given the national nature of such alerts the Commission should consider whether such tests would be better performed by FEMA at a national level.

Security Elements - General

We agree with the Commission that security and reliability are key components of an alerting system.³⁹ The Commission, however, goes on to request comment on whether descriptions of the methods EAS Participants have used to achieve security should be set forth in the EAS Plans.⁴⁰ It would be extremely burdensome for volunteer SECCs to collect this

³⁶ NPRM at ¶¶ 54-56.

³⁷ See, e.g., RMT schedules listed on website of Maine Association of Broadcasters (<http://www.mab.org/eas/eas-required-monthly-test-schedule/>).

³⁸ NPRM at ¶ 57.

³⁹ NPRM at ¶ 58.

⁴⁰ Id.

information from EAS Participants and revise their plans to incorporate the information. Additionally, it would create some degree of risk to have such information spelled out in an EAS Plan that may be posted on a publicly-accessible website, or otherwise available for public inspection. We believe that a certification process would suffice to ensure security compliance.⁴¹

B. Building Effective Community-Based Alerting Exercise Programs

1. Live Code Tests

The Commission proposes that EAS Participants be allowed to conduct live code tests as a separate category of alerting exercise, without a waiver from the Commission, provided that certain actions are taken to assure that the public is notified that it is only a test and not an actual emergency, and to co-ordinate the test among EAS Participants and others.⁴² Many broadcasters, under the leadership of their State Associations, currently conduct live code tests pursuant to the waiver process, and have found them useful as a way to test EAS. Those broadcasters which conduct live code tests typically take actions to notify the public about the tests and to coordinate tests with state and local authorities. The State Associations and their members have found this process to be a good way to maintain strong relationships with state and local emergency management agencies as well as to test and improve EAS systems, and instances of public backlash or confusion regarding the use of live codes in EAS testing seem to be rare. With regard to the frequency of testing, EAS Participants are aware of the issues involved with over-alerting and can self-police to ensure that live code tests are not performed too frequently.

While some State Associations believe that live code testing could create problems, particularly with respect to exercises dealing with politically sensitive issues such as events that may look like terrorism but are later determined not to be, the State Associations generally

⁴¹ See Section D.1 *infra*.

⁴² NPRM at ¶ 60.

support elimination of the waiver requirement and amendment of the rules to allow EAS Participants greater discretion and flexibility in conducting live code tests. Elimination of the waiver requirement would, for example, eliminate the need for states, which co-ordinate live code tests with adjacent states, to also coordinate waiver requests, and would enable EAS Participants to reschedule live code tests when necessary due to unforeseen circumstances without the need for requesting additional waivers from the Commission. We support the elimination of the waiver requirement and an approach which permits individual states the flexibility to determine whether or not to conduct live code tests.

2. EAS PSAs

The Commission has also proposed to amend its rules to permit the use of EAS tones or codes in public service announcements.⁴³ We cautiously agree with this proposal and add a related proposal. First, the Commission's rules already require that EAS testing be performed on a weekly and monthly basis,⁴⁴ and the use of EAS tones in PSAs with too great a frequency may run the risk of desensitizing the public to their use in an actual emergency as well as potentially automatically triggering EAS alerts "downstream." While broadcasters would be inclined to exercise restraint in the number and frequency of educational EAS PSA messages (after all, listeners and viewers generally do not find the EAS tones to be aurally pleasing), the Commission should closely monitor the landscape in order to ensure that overuse does not occur and that the EAS is not auto-triggered as a result of any such PSAs. Second, in addition or as an alternative, many states and local subdivisions have avenues for disseminating public service announcements via local news entities, and we recommend the continued use of these paths.

⁴³ NPRM at ¶ 66.

⁴⁴ 47 C.F.R. § 11.61.

Third, many stations with local newscasts periodically wish to educate their listeners and viewers about the WEA, especially in advance of approaching severe weather events. The public remains far less familiar with WEA availability, functionality, and tones, and stations should be permitted to air the WEA tones (i.e., the audio Attention Signal) as part of bona fide news stories (during both regularly scheduled newscasts and news segments that interrupt regular programming) for the limited purpose of educating the public. Such tones should not be permitted to be used as generalized attention sounders in news or for any other purpose; only for the limited purpose of educating the public about the WEA in the context of news stories covering emergency conditions, emergency preparedness, and other similar situations and circumstances and only to the extent there is no risk that such use would trigger EAS boxes or mobile devices downstream.⁴⁵ Indeed, the Commission has recognized the importance of consumer education about the WEA and its tones by granting a waiver that has allowed broadcasters to air FEMA educational WEA PSAs for an extended period of time covering multiple years.⁴⁶ The news coverage proposal represents a natural and important extension of that policy, and it may be likely to have a greater effect on consumer knowledge and WEA education than the existing PSA-only campaign.

In the event the Commission declines to adopt the proposal to allow broadcasters to air educational EAS PSAs and/or educational WEA news stories, we believe the Commission should consider waiver requests for such programming on an accelerated, streamlined basis so that alerting authorities and broadcasters that wish to use EAS or WEA tones in PSAs and/or

⁴⁵ Perhaps FEMA could do proof of performance testing to determine whether a radio or television broadcast of the WEA tones would trigger devices in the vicinity.

⁴⁶ See, e.g., *Improving Wireless Emergency Alerts and Community-Initiated Alerting, Waiver of Section 11.45 of the Commission's Rules to Allow Broadcast of Public Service Announcements Produced by the Federal Emergency Management Agency to Educate the Public on the Wireless Emergency Alert System*, Order, 30 FCC Rcd 13302 (2015) (extending the waiver through May 19, 2017).

news stories for legitimate reasons—such as, without limitation, to reach communities for whom English is a second language in advance of a developing severe weather threat—may be able to timely implement such program material to preserve life, safety, health, and property.

3. Accessible Alerting Exercises

The Commission has requested comment on how to best assure that persons with limited English language proficiency can become aware of EAS in order to receive and understand alerts.⁴⁷ In this regard, we believe that states should be afforded the utmost flexibility to air PSAs or other announcements or programs in conjunction with live code tests, if they choose to conduct such tests. We also believe that limiting the use of such PSAs to EAS Participants and governmental entities strikes an appropriate balance between enabling such entities to increase awareness of EAS, on the one hand, and reducing the likelihood that the public will become desensitized by overuse of the Attention Signal, on the other hand.⁴⁸

We are concerned, however, about the Commission's request for comment on accountability measures.⁴⁹ The phrasing of the question suggests that the Commission is considering some sort of mandate concerning outreach to multilingual and disabled communities, with attendant penalties for failure to perform. Such a mandate obviously would raise serious First Amendment concerns. Beyond the Constitutional issues, however, this is another example of a situation in which there is no "one size fits all" solution. As the Commission recently noted in the Multilingual Alerting Order, "The record...supports reliance upon voluntary arrangements among and between EAS Participants and other parties to achieve multilingual solutions that reflect the resources, localized needs and environmental characteristics of the communities they

⁴⁷ NPRM at ¶¶ 69-74.

⁴⁸ NPRM at ¶66.

⁴⁹ NPRM at ¶73 ("What accountability measures should be instituted or encouraged if the tests fail to reach citizens due to their lack of English proficiency or disability?")

serve.”⁵⁰ Such voluntary arrangements must necessarily extend to PSAs and other outreach and awareness efforts. We note that, given the vast diversity of foreign languages spoken in some areas, such as New York City, it may well prove impossible for EAS Participants or governmental agencies to produce and distribute “enough” PSAs in “enough” languages to satisfy an arbitrary accountability threshold. EAS Participants, in particular, should not be penalized for their good faith efforts to conduct live code testing that serves to heighten awareness of life-threatening hazards across the entire population. An express or implicit requirement that live code testing be conducted in languages other than English will complicate the ability, and thus chill the willingness, of EAS Participants to serve the community at large through live code testing.

C. Leveraging Technological Advances in Alerting

1. Cable Force Tuning and Selective Override

The “force tuning” and “selective override” provisions of the Commission’s EAS rules allow cable service providers to transmit EAS information by automatically tuning subscribers’ set top boxes to a designated channel that carries the required EAS message, and by overriding emergency information which is being carried over other channels on the cable system.⁵¹ These rules permit cable systems to unilaterally override television broadcasters’ emergency programming, even where the weather or other emergency programming provided by the broadcaster is far more detailed and relevant.

⁵⁰ *In the Matter of Review of the Emergency Alert System, Independent Spanish Broadcasters Association et. al. Petition for Immediate Relief*, Order, EB Docket No. 04-296, FCC 16-32 (2016) (the “Multilingual Alerting Order”) at ¶32.

⁵¹ 47 C.F.R. § 11.51(g)-(h). See also NPRM at ¶76-84.

Forced tuning is an issue with real world and potentially serious consequences for viewers. As an example, a viewer of a television station in Denver had this to say about forced tuning during an alert:

The broadcast sound...would go silent but the picture would still show (just no words were coming out of the announcers' mouths). And then we'd hear the beginning of the weather alert. This would last several seconds, then the broadcast sound would push back in for a couple of words, then the alert would take over, then the broadcast sound, then the alert... We could not follow either--the broadcast became an unintelligible jumble, and so did the alert.⁵²

In short, forced tuning can have the effect of thwarting the fundamental purpose of the alert system: to convey accurate and detailed emergency information, such as shelter-in-place or evacuation instructions, storm pathways and the status of power outages, to the public in real time. The State Associations support the position of the National Association of Broadcasters which would require that cable operators implement selective override so that certain channels can, simply upon written notice to the cable operator, opt out of automatic forced tuning of all cable channels, thereby enabling stations which are EAS Participants to offer uninterrupted emergency information.⁵³ Television stations are a key source, if not the primary source, of severe weather and emergency information, and have spent millions of dollars in developing sophisticated news and weather reporting facilities to serve their viewers. Yet, at the times when they are most needed, they are effectively "blacked out" by cable providers for untimely and incomplete information. Stations which provide the crucial emergency information that their viewers depend upon must be given the ability to provide that information in an uninterrupted manner. *It is ironic that the Commission, which has labored so hard over the years to strengthen the national EAS network, and has encouraged the broadcast industry to do more and*

⁵² Comments of viewer of KUSA-TV/KTVD-TV regarding weather alert, November 30, 2015.

⁵³ See, e.g., *Comments of the National Association of Broadcasters*, EB Docket No. 04-296 (filed Aug. 14, 2014).

more to provide emergency information to more people, has taken little or no action to ensure that the television broadcast industry's relayed emergency alerts and follow-on emergency information are reliably, and without interruption, received by the very people who are viewing television station programming.

D. Securing the EAS

In the NPRM, the Commission sets forth various complex and far-reaching proposals for ensuring the security of the EAS.⁵⁴ While the few cases of system security breaches are lamentable, they are isolated and rare incidents which in some cases are out of the control of EAS Participants and beyond the Commission's regulatory reach. It should be noted that the Commission's outreach on its security notices and advisories was less than robust. The draconian measures the Commission proposes in the NPRM are likely to lead to EAS Participants "shutting down" their EAS activities and doing no more than necessary - airing required tests and Presidential alerts - in order to avoid the penalties incumbent on rule violations for failure to report a breach, report a force-tuning block, certify a software upgrade where Participant resources may not permit such upgrades,⁵⁵ or certify security measures such as firewalls in cases where such measures may not be feasible. Such proposals are also likely to discourage qualified individuals from serving on SECCs due to the burden of compliance and increased potential liability concerns.

⁵⁴ NPRM at ¶¶108-145.

⁵⁵ In the past, EAS equipment providers have been magnanimous in providing software upgrades at no charge to accommodate mandated changes such as the adoption of the "six zeroes" location code and the NPT alert code. However, it cannot be expected that, going forward, the providers will continue to provide such updates for free, inasmuch as they must devote considerable time and resources to these efforts. The many system changes the Commission proposes in the NPRM may lead to the need for sweeping revisions to EAS encoder-decoder software, necessitating many man-hours to develop and deploy. If equipment providers opt to recoup their costs via a charge for the upgrade, the resultant expense may be beyond the capability of smaller, and even medium-sized, EAS Participants.

In any case, the proposed 15 minute/30 minute timelines for reporting certain breaches are completely unrealistic,⁵⁶ given that many stations operate in unattended mode for a period of time, while others, such as satellite-delivered religious stations and translators, operate in unattended mode all the time. If a late-night talk show host were to (mistakenly) air EAS tones as part of a comedy bit, would a station general manager be expected to awaken at 1:30 a.m. and report to the Commission by 2:00?

Taken as a whole, the proposed security measures are so sweeping that they represent an entire new regulatory paradigm, the nature of which is so chilling that it will almost surely result in a reduced commitment to EAS among EAS Participants. We suggest that, as an interim measure, as part of ETRS or some other regular filing, the FCC ask whether a station has changed the default username and password on its EAS equipment and placed the equipment behind a firewall or taken other security measures to shield the equipment from being operated “in the wild.” These are threshold security measures that present minimally resource-intensive and easily achievable standards. Other proposed security measures should not be mandated at this time without a full vetting process, including stakeholder input. The Commission may want to consider opening a separate rulemaking process to enlarge the public record on these other proposals.

We present comments below on specific proposals.

1. Improving EAS Network Security

With respect to the Commission’s proposals on security certifications by EAS Participants,⁵⁷ we believe that the Commission’s proposal of a five-year certification period with a sunset if it appears that EAS Participants are effectively managing cybersecurity risk, as an

⁵⁶ See NPRM at ¶¶129 and 132.

⁵⁷ NPRM at ¶111

alternative to annual certification, would be effective to confirm adequate security procedures without unduly burdening Participants. The Commission should also clarify the impact an EAS Participant's failure or inability to make an adequate certification would have.

2. Reach of Proposed EAS Security Rules

The Commission asks for comment as to whether heightened security measures should apply to Presidential Alerts, or whether all EAS alerts should be afforded the same security levels. We believe that security measures should be employed at the entry point of the network and should be applied equally to all alerts. Whether an alert is generated by the President and is processed into a NP or PEP facility, or is from a Governor or public safety official and is processed into an SP facility, the security procedures should be the same. Once in the system, EAS Participants in receipt of an EAS message from a NP, PEP, SP or LP station should be able to consider the message valid and justified in taking appropriate actions.

3. Software-defined EAS Networking

The Commission requests comment on the benefits and challenges of centralizing the configuration and management of the EAS network.⁵⁸ While the technical issues involved in such an approach are beyond the scope of these Joint Comments, we believe that the risk of creating a single point of failure would exist in any centralized system. In contemplating a centralized network, the Commission must give careful consideration to building in sufficient redundancy and to the inherent unreliability of the Internet, particularly in times of emergency.

E. Preserving EAS Defense through Planned Diversity

The Commission has requested comment on whether both the traditional broadcast EAS network and the Internet-based IPAWS system should be retained. The Associations support the retention of the traditional EAS protocol, which provides redundancy for the IPAWS system. As

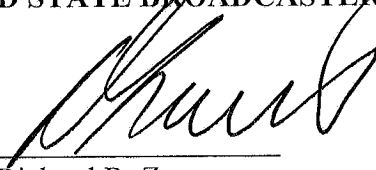
⁵⁸ NPRM at ¶163-170.

an Internet based system, IPAWS is subject to cyber attacks and hacking, and in any event constitutes a single failure point, while the EAS network on the other hand is less vulnerable to cyber attacks.⁵⁹ It is unlikely that stakeholders would be confused by having two systems. Research has found that people are likely to seek an additional source in the event of an alert to confirm the first source. Consequently, the availability of multiple alerting sources is likely to reinforce the alerting process rather than complicate it.⁶⁰

For these reasons, the State Broadcasters Associations named below respectfully request that the Commission adopt the positions set forth in these Joint Comments.

Respectfully submitted,

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Alabama Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas

⁵⁹ In the Multilingual EAS Order, the Commission recognized the importance of the traditional EAS system. ("The legacy EAS remains the backbone for distributing information between EAS Participants via the daisy chain process.") Multilingual EAS Order at ¶8.

⁶⁰ See, e.g., Mileti and Sorensen, *Communication of Emergency Public Warnings*, prepared for FEMA, August 1990, at §2.2.3.3 ("An initial first warning response is to seek more information and confirm the initial warning.") (<http://www.osti.gov/scitech/biblio/6137387-tDRffv/>)

Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, Wyoming Association of Broadcasters

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