



Virginia Association of Broadcasters Legal Review



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FCC ADOPTS EMERGENCY ALERT SYSTEM (“EAS”) RULES FOR COMMON ALERTING PROTOCOL (“CAP”) FORMATTING

The FCC has adopted new rules for the processing of emergency alert messages in its recently-released *Fifth Report and Order* in its latest EAS proceeding (the “*Order*”), which aims to transition from legacy EAS to the “next generation” of emergency alert messages. (The *Order* can fairly be described as alphabet soup, using numerous acronyms—we have attempted to limit the number of acronyms in this memorandum, but with limited success.) As expected, the new rules will require EAS participants to receive and convert CAP-formatted messages according to federal standards. The *Order* does not alter the EAS Protocol or the EAS generally but instead is primarily intended to establish rules requiring CAP-formatted EAS messages to be converted into EAS Protocol for transmission over the current EAS architecture and to update existing rules to conform to the current EAS environment. As we have previously advised, broadcasters must have CAP-compliant equipment installed and operational by **June 30, 2012**, to comply with the CAP requirements.

Here are the highlights of the final rules adopted by the Commission.

* *Convert and Retransmit CAP-Formatted Messages.* Beginning June 30, 2012, stations will be required to receive and convert messages in CAP format for redistribution over EAS equipment. All EAS participants must be able to convert CAP-formatted alert messages into EAS Protocol following to the conversion procedures set forth in the EAS-CAP Industry Group’s Implementation Guide (“Guide”). (The Guide is available at http://eas-cap.org/ECIG-CAP-to-EAS_Implementation_Guide-V1-0.pdf.)

Typically, of course, stations will rely on equipment manufacturers to ensure that their EAS gear is compliant with these requirements—equipment manufacturers are prohibited from marketing non-compliant gear, and it goes without saying that broadcasters should not alter, reprogram or operate the equipment in a manner that would interfere with its ability to perform the proper conversion. It bears mentioning that the new rules deviate from the Guide in one minor way, relating to text-to-speech conversion; the FCC has tabled the issue for now and reserved it for a separate (later) proceeding.

* *Monitor IPAWS for Federal Alert Messages.* As expected, the new rules require EAS participants to monitor FEMA’s Internet-based Integrated Public Alert and Warning System (“IPAWS”) for federal CAP-formatted alert messages. The FCC has determined that it is unrealistic, however, to require that EAS participants adhere to a specific technical standard for CAP monitoring because the technology is still evolving. As a result, the new rules will permit stations to monitor the IPAWS system for messages using *either* “pull” (such as Really Simple Syndication, also known as RSS) or “push” (such as email and instant messaging) interface technologies. This is a change from the Commission’s earlier proposal that EAS participants must be able to monitor IPAWS using an RSS feed. The key is that stations use an interface technology that enables distribution of federal CAP-formatted alert messages from IPAWS to the station’s EAS equipment.

* *No Change to Monitoring Requirements for State and Local Alert Messages.* In the Order, the FCC concluded that “there is no reason to establish a generally applicable requirement for state CAP message monitoring.” Thus, the monitoring requirements associated with CAP messages initiated via state and local EAS systems will be determined in the same manner as previously. Specifically, state and local alerting authorities will develop state and local CAP alert monitoring requirements and set these forth in their State EAS Plans, to be submitted to and approved by the FCC.

* *Elimination of Separate Requirement to Receive and Transmit Gubernatorial Messages.* The FCC has eliminated the requirement, first implemented in 2007, that stations receive and transmit CAP-formatted messages initiated by state governors. The FCC has concluded this requirement is “unnecessary” because it would pose operational difficulties for stations and it would duplicate features available through IPAWS. According to the *Order*, the elimination of this requirement will also avoid additional costs to broadcasters associated with upgrading EAS equipment in order to receive CAP-formatted gubernatorial alerts.

* *Use of Intermediary Devices Permitted.* Under the new rules, the FCC will allow stations to use “intermediary devices” in tandem with their legacy EAS equipment to meet their obligations to convert CAP-formatted messages for EAS distribution. In this proceeding, NAB and other industry advocates have supported the use of intermediary devices as alternatives for compliance, so that stations will not be required to replace all of their EAS equipment. For example, instead of replacing its

EAS system, a station will be permitted to use a stand-alone intermediary device to receive and decode a CAP-formatted message and convert the message into an EAS Protocol compliant message, to be transmitted through the station's legacy EAS system. For some stations, especially smaller stations, using intermediary devices may be a cost-saving alternative method of compliance. While the *Order* recognizes that some intermediary devices may not be capable of transmitting the enhanced text features made possible by CAP, the new rule requires that stations using any intermediary device be able to provide full enhanced text functionality June 30, 2015. Thus, at that time, stations using intermediary devices may have to replace their EAS gear to ensure full compliance.

* *Encoder/Decoder Requirements.* The new rules modify the decoder requirements to include the capability to decode CAP-formatted messages and convert them into EAS Protocol-compliant messages for retransmission. Stations will also be required to use decoders with at least one data input port in addition to the audio inputs currently required. The *Order* makes no major changes to current minimum encoder requirements, but the new rules will require encoders to have at least one audio input port and at least one data input port.

* *Enhanced Text and Video Display.* The new rules include an enhanced video display requirement for the retransmission of messages on television. Messages in CAP format are capable of carrying "enhanced text" information that includes additional visual components of the message. According to the FCC, "such visual displays of alert information will be significantly more detailed than what has been possible under the legacy EAS." Under the new rules, television stations will be required to receive and pass through the "enhanced text" contained in a CAP message. However, there is an exception to this requirement for stations using intermediary devices. For the first 3 years after the effective date of the rules, television stations using intermediary devices are only required to have the capability to retransmit basic text messages. Beginning June 30, 2015, intermediary devices will also be required to have the capability to pass through the "enhanced text" contained in a CAP message—in other words, to receive and transmit all visual display components of the alert message.

* *Waivers for Stations Without Broadband Internet Access.* Because CAP messages will be distributed over the Internet through the IPAWS system, the practical effect of the new rules will be that all EAS participants must have broadband Internet access. The FCC has acknowledged that in some very limited circumstances, broadband Internet may not be available and, therefore, compliance would be impossible or extremely costly for affected stations. Accordingly, the FCC has concluded that a waiver may be granted to excuse compliance on a case-by-case basis where broadband Internet service is "physically unavailable." The *Order* suggests that a waiver from the requirements to receive CAP-formatted messages would not exceed six months. Even with a waiver, of course, a station would be required to continue to operate its legacy EAS equipment.

* *Clarification Applicable to Certain Noncommercial Satellite Stations.* The *Order* clarifies that noncommercial educational “satellite” stations operating pursuant to a main studio waiver need not deploy CAP-capable EAS equipment, provided that the EAS equipment deployed at the parent station site meets all CAP-related and other requirements.

* *Attention Signal Duration Changed to 8 Seconds.* The new rules set the duration of the Attention Signal to 8 seconds. Previously, the Attention Signal could be anywhere between 8 and 25 seconds long. The FCC found that the Attention Signal continues to serve an important purpose as an audio notification to the general public that an alert is about to be aired.

* *Termination of Non-Participating (NN) Status.* Under current rules, stations may request FCC authorization not to participate fully in the national level EAS activation. Stations granted such authorization are known as Non-Participating or NN stations. In making the decision to terminate the existence of NN stations, the FCC observed that there are relatively few NN stations in existence, that they are already required to deploy a decoder that complies with all EAS message processing requirements, and that they already follow most of the EAS processing requirements—essentially the only thing they were not required to do was broadcast a Presidential message. In light of these facts, the FCC has decided to eliminate the NN status “on the grounds that it is not necessary.” Any station that believes it is an NN station should consult with its communications counsel to ensure it takes all appropriate steps to properly participate in all components of the EAS.

* *National Alert Messages Will Terminate With EOM Signal.* The new rules provide that a National Alert message (i.e., an EAS message from the President) will be terminated with an end of message (EOM) signal at the end of each message, instead of the Emergency Activation Termination (EAT) method that requires manual processing. The *Order* eliminates the EAT method altogether, in favor of a message-by-message, automated processing operation. Broadcasters have supported elimination of the EAT method to the extent it will reduce the burden on stations; the automated EOM approach does not require human assistance to process the message.

The *Order* is expected to be the final modification to the rules before they go into effect, on June 30, 2012. With just over four months left until the effective date, broadcasters should take all necessary steps to ensure timely compliance by June 30.

We will continue to keep you apprised of significant developments in this proceeding.

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If you should have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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