Virginia Association of Broadcasters Legal Review

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Legal Memorandum

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New Multilingual Reporting Requirements for EAS Participants

The FCC has released a new Emergency Alert System ("EAS") order ("the Order") to address a decade-old petition relating to multilingual EAS messages. The Order was in response to a petition (filed in 2005 by several parties) that proposed changes to the EAS rules seeking to facilitate the dissemination of multilingual EAS alerts. Over the years, the Commission has sought and received comments on the issues set forth in the petition. Broadcaster comments generally supported the public service represented by the multilingual proposals and focused primarily on the technical difficulties of implementation if they were to become requirements.

In determining not to adopt multilingual EAS rules (other than the reporting requirements discussed below), the Commission acknowledged a variety of challenges inherent in the proposals, including some of the technical issues flagged by broadcasters. In addition, the FCC underscored the voluntary nature of state and local government participation in EAS, which makes the development of uniform multilingual EAS requirements difficult.

Significantly, the Order does not require stations to undertake any specific action to make multilingual EAS alerts available. Instead, the Order directs that State EAS Plans must, on a going-forward basis, include a description of the steps that have been or will be taken by EAS Participants (whether individually or in conjunction with state and local emergency authorities) to disseminate, broadcast or otherwise make available EAS alert content to non-English speaking audiences in the primary language of such audiences.

The Order requires that EAS Participants (including all broadcast stations) furnish the required information to State Emergency Communications Committees ("SECCs") no later than one year from the effective date of the Order. (As of the date of this memorandum, the effective date has not been announced.) The Order also mandates that all required information be compiled and summarized by the SECCs and be included in, or submitted as amendments to, State EAS Plans no later than six months after the EAS Participant submission deadline. In the Order, the FCC observed that a majority of EAS Participants would need to submit only a brief statement explaining their current and future plans regarding the provision of multilingual EAS messages in order to meet their reporting obligations.

What Must Be Reported to SECCs. More specifically, broadcast stations (in their capacity as EAS Participants) will be required to provide the following information to their respective SECCs:

- <u>Actions Already Taken</u>. A description of any actions **already underway** by the station (acting individually, in conjunction with other EAS Participants in the geographic area, and/or in consultation with state and local emergency authorities), to make EAS alert content available in languages other than English to the station's non-English speaking audience(s).

- <u>Actions Planned for the Future</u>. A description of any **future** actions planned by the station, in consultation with state and local emergency authorities, to provide EAS alert messages in languages other than English to the station's non-English speaking audience(s), along with an explanation for the EAS Participant's decision to plan or not plan such actions.

- <u>Additional Relevant Information</u>. Any other relevant information that the station may wish to provide, including state-specific demographics on languages (other than English) spoken within the state, and identification of resources used or necessary to originate current or proposed multilingual EAS messages. The FCC urges stations and SECCs to include any pilot projects or other initiatives that involve translation technologies or other innovative approaches to providing non-English alerts and emergency information to the public.

Material Changes Must Be Reported. If/when there is a "material" change to the information previously submitted, stations will be required, within 60 days of the occurrence of such material change, to submit a letter describing the material change to the respective SECC <u>and to send a copy of that letter directly to the FCC</u>. A SECC receiving such an update from an EAS Participant will be required to amend the State EAS Plan to include the information (and file the amended version with the FCC).

Brief Statements Acceptable. According to the Order, a broadcaster may satisfy its reporting requirements by simply stating that "no steps have been taken" (if, in fact, a station has taken no steps, and has not future plans to take steps, toward multilingual EAS messaging).

Effective Date. As previously noted, the reporting obligations do not have to be met until <u>one year</u> after the effective date of the Order. The effective date of the Order will be determined when a notice is published in the Federal Register. Before the FCC can announce the effective date, the Office of Management and Budget must approve certain aspects of the new requirements.

More Rules Coming?   Fortunately, the Commission recognized the technical challenges that stations would face if the original proposals were adopted. Nonetheless, at some point after SECCs have collected the required information from EAS Participants and have filed amended State EAS Plans, more regulation may be forthcoming from the FCC which may attempt to address, as an operational matter, the use of multilingual EAS alerts.

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Because the Association has a relationship with the North Carolina SECC, you may be hearing from your Association in the future, after the new reporting requirements become effective, in an effort to help coordinate the SECC's collection of information from stations. In the coming weeks (or, possibly, months, depending on how quickly the new requirements go into effect), we will let you know more about the process stations will use to report their multilingual EAS efforts to the SECC.

EAS Test Reporting System Anticipated to Launch Late 2016
Nationwide Test Slated for September

The FCC issued a Public Notice ("Notice") in April, announcing that the Emergency Alert System ("EAS") Test Reporting System ("ETRS") will launch later this year. (Generally, ETRS is intended to be used in connection with nationwide EAS tests.) In addition, the Commission quietly announced that the Federal Emergency Management Agency ("FEMA") intends to conduct a nationwide test of the EAS on **September 28, 2016**. The two agencies are attempting to coordinate the ETRS launch with the nationwide EAS test. The Notice provides a glimpse of the appearance of the upcoming reporting system with graphic illustrations of the online forms EAS Participants will be required to complete in the ETRS. It is important to note that the new ETRS is **not yet publicly available**.

The Notice states that the new ETRS is designed to allow state alert originators and SECCs to use the data collected from EAS Participants (including broadcast stations) to understand how an alert will propagate through a particular state, thus identifying potential single points of failure, poor transmission paths, and coverage gaps before they can potentially cause a system failure.

The ETRS is built on a platform that can be integrated with other FCC databases, reducing the need to re-collect data that EAS Participants have already provided in other databases. This ETRS system will replace the filing methods that were employed for the 2011 nationwide EAS test. EAS Participants must register an account in order to access the ETRS. A future FCC public notice, announcing the launch of the ETRS, will contain a URL address linking stations to an ETRS registration form on the Commission's website.

We will continue to keep you posted regarding ETRS and the next nationwide EAS test.

FCC Seeking Comment for the Development of
an Earthquake-Related Emergency Alert System

As participants in the Emergency Alert System ("EAS"), broadcasters are, from time-to-time, involved in disseminating earthquake-related EAS alerts. Recently, by issuance of a Public Notice, the FCC initiated an inquiry into how to develop a system for alerting the public (within 3 seconds) to the event of an earthquake.

Congress requires that the FCC submit a report, by September 18, 2016, outlining the regulatory and statutory changes that would be necessary to ensure that earthquake-related emergency alerts could be disseminated to affected areas in <u>fewer than 3 seconds</u> using the Integrated Public Alert and Warning System ("IPAWS"). (IPAWS is the same system used by public safety officials to alert and warn the public about emergencies via EAS.) According to the Public Notice, the FCC's report to Congress must include an analysis of signals, cell phone protocols, geographic targeting and limitations on message length and content, among other things.

Accordingly, in this proceeding, the Commission seeks to understand and analyze system requirements for an Earthquake Early Warning ("EEW") platform capable of delivering earthquake-related information to the public within the narrow window of 3 seconds. Technical considerations relating to a number of platforms are under consideration, some of which are related to the EAS. Although there are a number of subjects on which the Commission seeks comment, some of those related to EAS Participants (including broadcast stations) include the following:

- The extent to which FCC analysis of the feasibility of delivering EEWs requires an analysis of each step in the alert generation and dissemination process for each type of alert in order to eliminate delays or latencies;
- How long does it take an EAS Participant to receive a Common Alerting Protocol ("CAP")-formatted alert from IPAWS?
- How long does it take an EAS Participant to deliver a CAP-formatted alert from IPAWS to the public?
- How long does it take an EAS Participant to transmit an EAS Protocol-formatted alert to the public through the broadcast-based "daisy chain" architecture?
- Do the existing CAP and EAS Protocol frameworks provide alert originators with sufficient flexibility to issue follow-up messages about earthquakes?
- How do differences in alerting infrastructure and delivery methodologies affect incremental and overall system latencies and delays?
- What are the potential delivery path(s) for EEW creation and dissemination?
- What are the appropriate points in the IPAWS alert dissemination process from which latency could be measured? and
- The technical feasibility of delivering EEWs to the public in less than 3 seconds using particular starting points.

In fact, a majority of the questions being asked by the FCC focus on the time-related and technical aspects of various proposed methods of dissemination. The FCC also seeks comment concerning earthquake alert geographic targeting, message length and content, as well as the related costs.

The FCC is considering the use of other systems for the dissemination of EEWs. One system under consideration is the "Shake Alert" system that is being developed by the U.S. Geological Survey. The FCC seeks comment on the viability of the Shake Alert system as an option for providing IPAWS with the capability to deliver an EEW to the public in fewer than 3 seconds. The Commission is also considering, as a system model, Japan's Earthquake and Tsunami Warning System which is the only EEW service in the world that currently integrates mass EEW communications with cellular networks. (The Public Notice cites to one study which concluded that it is feasible to develop an EEW using 4G LTE cell broadcast network but it is not feasible on 2G and 3G networks or by using short message service (SMS) or Over-the-Top smartphone applications.)

The FCC has asked that any comments offered be supported by technical data where appropriate. Comments are due May 9, 2016, and reply comments are due June 8, 2016.

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

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