



Virginia Association of Broadcasters Legal Review



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**TV WHITE SPACES REGISTRATION DEPLOYED NATIONWIDE;
REMINDER TO RENEW REGISTRATIONS FOR PROTECTION OF
WIRELESS MICROPHONES**

As of March 1, 2013, the Commission now authorizes *nationwide* registration and operation of unlicensed TV white spaces devices. Previously, TV white spaces devices were only authorized for limited operation in the East Coast region.

Registration is available for white spaces device operators through two approved database administrators: Spectrum Bridge and Telcordia. A public testing period is currently underway for two more database administrators, Key Bridge and Google. The test interfaces for Key Bridge and Google are available at the following URLs: <http://keybridgeglobal.com/whitespace/> and <http://www.google.org/spectrum/whitespace/>.

The Commission has emphasized that TV white spaces device operators must contact a database administrator to obtain a list of available channels before deploying wireless services. The databases are intended to protect TV broadcast and other licensed services operating in these bands from interference caused by the devices. Protected services include broadcast television stations (full power, Class A, low power TV, and TV translator stations); fixed broadcast auxiliary service (BAS) links; and receive sites of Class A, low power TV, and TV translator stations.

For most protected broadcast services, the data needed by white spaces operators to provide the necessary protection is automatically extracted from the Commission's databases or provided expressly in the rules, and nothing further will need to be done to obtain protection. However, wireless microphone users and operators of temporary BAS links must register their sites to receive protection from TV white spaces devices. Certain venues where unlicensed wireless microphones are used must also request approval for registration.

Registrations of wireless microphones are valid for a maximum of one year and must be *renewed* to ensure continued protection from interference. Stations would be well-advised to register their licensed wireless microphone operations with Spectrum Bridge or Telcordia immediately and to renew any existing registrations before they expire. The registration information will be shared among all approved database systems. Thus, if Key Bridge and/or Google are approved, a separate registration will not be necessary.

If your station has questions about registration or renewal, please contact your communications counsel.

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FCC WILL HOST MAY 3 WORKSHOP FOR BROADCASTERS TO DISCUSS THE SPECTRUM AUCTION BAND PLAN

The FCC has announced that it will host a full-day workshop for broadcasters on May 3, 2013, to discuss the 600 MHz wireless band plan that would result from the spectrum incentive auctions. The workshop will evaluate the 600 MHz plan proposed in the proceeding as well as alternative band plan proposals.

The workshop will also address certain concerns raised by commenters so far in the auction proceeding, including issues relating to mobile antennas, harmonics, co-channels, and other technical issues. According to the Public Notice announcing the event, the FCC may address other issues, such as guard bands or channel 37 issues, in future workshops.

The workshop will be webcast live on May 3, 2013, beginning at 9:30 a.m. Eastern, at the following URL: <http://www.fcc.gov/live>.

The Commission continues to encourage broadcasters to visit its informational website for more information on the spectrum incentive auctions, available at the following URL: <http://www.fcc.gov/learn>.

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M-EAS STANDARD APPROVED FOR MOBILE TV EMERGENCY ALERTS

A final standard has been approved by the Advanced Television Systems Committee for the delivery of emergency alert messages over mobile devices through the Mobile Emergency Alert System (“M-EAS”).

M-EAS is available to consumers with a mobile DTV receiver for their smartphone or tablet. The system can be tailored to receive geo-targeted messages based on the location of the receiver. In the event of an emergency alert, M-EAS will trigger a banner on the device’s screen. The system will also accommodate audio, text-to-speech, weather radar images, and video messages. The receiver enables consumers to receive the broadcast signal, of course, even when Internet access or cellular service are unavailable. It has been estimated that 120 broadcast stations are already transmitting M-EAS through their digital signal.

The M-EAS standard is based on the existing open standard for mobile DTV, known as ATSC A/153. And, like traditional broadcast EAS technology, the standard uses the familiar Common Alert Protocol (“CAP”) for emergency alert messages and is compatible for adoption into the national IPAWS alert system once the service is deployed nationwide.

The Advanced Television Systems Committee adopted the industry standard just in time for a demonstration of the service at the NAB Show in April.

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FCC SEEKS COMMENT ON INDECENCY ENFORCEMENT POLICY

The FCC recently announced in a Public Notice that it has dismissed more than one million stale or unsupported indecency complaints against broadcast stations, equivalent to roughly 70% of the backlog of pending complaints that were tallied last fall.

The Public Notice also invites comment on whether and how the Commission should make changes to its current broadcast indecency policies in light of the *FCC v. Fox* case. Broadcasters will recall that in *FCC v. Fox*, in June 2012, the U.S. Supreme Court ruled that the FCC could not impose fines on broadcasters who did not have notice of the Commission's indecency enforcement policy. The Supreme Court did not render a decision on the substance of the policy itself. The Public Notice now initiates a new proceeding seeking comment on what the FCC's enforcement policy should be going forward. It is likely that a formal *Notice of Proposed Rulemaking* will soon be issued, but the new docket (13-86) is already open and interested broadcasters should not wait to submit comments.

At bottom, the Public Notice asks whether the FCC should revert to its "fleeting expletives" enforcement policy from recent years or return to the long-standing *Pacifica* standard. Although comments are not required to be limited to the following issues at this stage, the Public Notice specifically asks if the Commission should:

- * treat expletives in a manner consistent with the long-standing *Pacifica* case (looking for "deliberate and repetitive use in a patently offensive manner");
- * treat isolated expletives as set forth in the *Golden Globe* case (prohibiting even "fleeting expletives"); or
- * treat isolated (non-sexual) nudity the same as or differently from isolated expletives.

While the proceeding moves forward, the Public Notice promises that the FCC will continue to review and investigate pending complaints for enforcement in "egregious cases." However, the "egregious" standard has not been formally defined, which may pose additional procedural problems in enforcement actions. Although the Public Notice purports to ask for comment on adopting a policy for egregious cases, it suggests that the FCC is *already following* such a policy in its investigation of pending complaints.

For interested commenters, the questions posed for comment will be extremely important to developing the standard for enforcement on a going-forward basis.

Comments in this proceeding are due May 20, and reply comments are due June 18.

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EMERGENCY INFORMATION VIDEO DESCRIPTION RULES ADOPTED

The Commission recently adopted rules implementing requirements for video description of emergency alert messages as proposed late last year. The adopting *Report and Order and Further Notice of Proposed Rulemaking* (the “*Order*”) also seeks comment on additional contours of the new rules. Fortunately, the compliance deadline is more than two years away.

The new rules require broadcasters who provide emergency information to viewers through visual-only means during non-newscast programming (for example, through an on-screen crawl) to video describe the information concurrently on a secondary audio stream. Under the new rules, the aural translation of emergency information must take priority over all other content on the secondary audio stream. Thus, the aural translation can and should supersede other content on the secondary audio stream, including video description of programming, foreign language translation, or duplication of the main audio stream.

Although the emergency alert messages are not required to be translated verbatim, the information presented aurally must accurately and effectively communicate the same critical details about a current emergency and how to respond to the emergency as those that are provided visually.

Importantly, the Commission has declined to adopt a “technical capability” exception. In other words, all television stations must get the equipment necessary to make a secondary audio stream available for description of emergency alerts by the two-year compliance deadline. This is an important difference from the rules governing video description of other programming, which include a “technical capability” exception.

The FCC has also declined to change the definition of “emergency information” from its current conception, which covers “information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e, critical details regarding the emergency and how to respond to the emergency.” The Commission proposed to expand the definition to include new examples of such circumstances. Although the final rules do not contain any explicit changes, according to the *Order*, the FCC interprets the current definition to include severe thunderstorms and other severe weather events.

The *Order* also revises the rules to clarify that video programming providers and distributors are subject to the rules according to their roles in creating and distributing the emergency information content. Specifically, the new rules require that the entity that

creates the visual emergency information content and adds it to the programming stream is responsible for providing the aural translation of the information on a secondary audio stream. Video programming distributors are responsible for ensuring that the aural translation of the emergency information, including an accompanying aural tone, is ultimately passed through to consumers.

According to the *Order*, the new rules extend the current requirement that an aural tone accompany the main program audio to alert the audience that emergency information is available and further require that an aural tone accompany the information available on the secondary audio stream.

In connection with the new rules, the Commission also seeks further comment on properly tagging secondary audio streams to ensure that visually impaired audiences can locate the emergency information on a secondary audio stream. According to the *Order*, the FCC expects local broadcasters to coordinate with manufacturers to ensure that consumers can easily access video description and emergency information provided on a secondary audio stream.

The rules adopt a deadline for compliance beginning two years from the date of publication in the Federal Register. As of the date of this memorandum, publication has not yet occurred.

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FCC RELEASES REPORT ON RESULTS OF NATIONWIDE EAS TEST, ENFORCEMENT LIKELY TO BEGIN SOON

The FCC has released a report summarizing the lessons learned from the nationwide EAS test conducted on November 9, 2011, and making recommendations for improvement of the EAS system (the “Report”). Among other things, the Report suggests that the FCC may institute enforcement proceedings against stations who have not filed reports on the results of the test. The Report also recommends another nationwide test in the future, although the date of the next test has not been announced.

The Report promises that the Commission will initiate further rulemaking proceedings regarding EAS. The rulemaking will likely reexamine state EAS plans, seek to develop recommended “best practices” for EAS operation, and create a new electronic filing system for test result data in advance of the next nationwide test.

The Report also signals that the Commission may take enforcement action against stations who failed to report on the results of the nationwide test, as required. The Report notes that a significant number of EAS Participants, including some broadcasters, did not file the required reports. According to the Report, the Public Safety and Homeland Security Bureau plans to confirm cases of continued non-filers and refer them to the Enforcement Bureau for possible further action. Accordingly, any stations who have not

filed reports regarding the results of the nationwide EAS test should do so immediately. (Although the FCC has disabled the electronic filing system, EAS participants may still submit late-filed paper reports.)

Generally, the Report finds the nationwide EAS test was widely successful but revealed technical issues for many broadcasters. The Report notes that 83% of broadcasters reported successful receipt of the test notification. The Report identifies some technical troubles experienced by participants, including inability to retransmit the notification and deliver the alert to the public, problems due to the short test length, delays in rebroadcast, and other operational and programming difficulties.

As mentioned above, any stations who have not filed reports regarding the results of the nationwide EAS test should do so immediately. If your station has questions about the reports or EAS compliance, please consult with your EAS equipment manufacturer and your communications counsel.

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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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