



# Virginia Association of Broadcasters Legal Review



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August 5, 2019

## Legal Memorandum

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*In this issue, please find information about*

**Deadlines:**        **August 7:** [Nationwide EAS Test and EAS Form Two Due](#)  
                          **September 20:** [Comments on EEO Compliance/Enforcement NPRM Due](#)

**Developments:** [FCC's EAS Rules Requiring False Alert Reporting and Facilitating "Live Code Testing" Take Effect](#)

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### Two-Day Countdown to August 7: Nationwide EAS Test Date and Deadline to File Form Two

**\*\* All Broadcast Stations Must Participate \*\***

We write to remind you that the FCC and FEMA (the Federal Emergency Management Agency) have scheduled a live, [nationwide test of the Emergency Alert System](#) ("EAS") to take place in in just two days—on Wednesday, August 7, 2019. As discussed below, the **Form Two EAS Report is due the same day, on August 7.** The test is scheduled to occur at 2:20 p.m. Eastern Time.

Remember that **all broadcast stations are required to participate in the EAS**, as the FCC's EAS rules no longer recognize "non-participating" status for stations. Broadcasters should ensure that station EAS gear is functioning, assign responsibility for the filing of the Form Two EAS Report (and the "Form Three" nationwide EAS test report, due next month), and review the FCC's [EAS Operating Handbook](#). Note that the backup date for the test, if needed, is August 21.

The FCC and FEMA have [reminded](#) broadcasters that the test will be conducted through FEMA's [Integrated Public Alert and Warning System](#) ("IPAWS"). This year, the test message will originate from designated radio stations, known as Primary Entry Point stations, which participate in a component of IPAWS called the National Public Warning System. All other radio and television stations, through a "daisy chain" distribution system, should subsequently receive and broadcast the test message. According to the FCC and FEMA, this year's test will evaluate the readiness of the national alerting capability in the absence of internet connectivity. The test will be approximately one minute long, have a limited impact on the public with only minor interruption of radio and television programs, and will be similar to regular monthly EAS tests. Both the audio message and text crawl should be accessible to people with disabilities. (Note that the test will not include a message on cell phones via Wireless Emergency Alerts.)

*Preparations for the August 7 Nationwide EAS Test.* Stations will recall that three forms must be completed and filed in connection with the nationwide EAS Test—Form One, Form Two, and Form Three, respectively. Stations were required to complete and file Form One by July 3.

With the test just two days away, stations are encouraged to prepare now by taking the following steps:

- Ensure that the station's EAS equipment operates in compliance with the FCC's EAS rules, such as being capable of receiving and processing the NPT (national periodic test) code and the "six zeroes" national location code;
- Upgrade, as needed, EAS equipment software and firmware to the most recent version;
- Review the station's state EAS plan;
- Ensure that a copy of the July 2017 version of the EAS Operating Handbook is located at normal duty positions or EAS equipment locations and is immediately available to operators;
- Review the EAS Operating Handbook to become familiar with and prepare for the actions that will need to be taken upon receipt of the test alert; and
- Manually synchronize EAS equipment clocks to the official time provided by NIST (the National Institute of Standards and Technology), if the station's equipment does not automatically synchronize to an Internet time source.

*Form Two EAS Report Due August 7.* Form Two requires stations to report "day of test" information. **Form Two must be filed by 11:59 p.m. Eastern Time on August 7.** Most of Form Two's fields will auto-populate using the data each station provided in Form One. Form Two will ask broadcasters whether they received the nationwide EAS test message and whether they retransmitted the nationwide EAS test message. Form Two is intended to provide the FCC and FEMA only with a quick snapshot of the nationwide test. Form Two (like Forms One and Three) must be filed using the FCC's ETRS ([EAS Test Reporting System](#)).

*Form Three EAS Report Due September 23, 2019.* Form Three is the report on which stations will file detailed post-test data and describe any issues with receipt or retransmission of the nationwide test. Form Three will be due by September 23, 2019. We will be sure to remind you later about the third report.

## More on EAS: Rules Requiring Broadcasters to Report False EAS Alerts, Facilitating Use of “Live Code” Testing Now Effective

And, with the nationwide EAS test just days away, we also write to report on other recent EAS developments. Specifically, we write to let you know that several EAS-related Commission rules have now taken effect, including rules that (1) require broadcast stations to notify the Commission when and if they issue false EAS alerts, and (2) facilitate EAS officials’ ability to conduct more effective public safety tests and exercises using EAS equipment and provide guidance regarding when stations can participate in such “live code” tests.

The rules, discussed in greater detail below, took effect as of July 23, 2019. The Commission adopted them in a [Report & Order](#) (“Order”) in July 2018, and the agency hopes the rules will promote EAS readiness and reliability and help communities prepare for emergencies.

*False Alert Reporting.* The FCC’s rules prohibit transmission of the EAS codes or the EAS attention signal, or a recording or simulation of the codes or signal, for any purpose other than an actual alert or as part of an authorized test of the EAS. However, until adoption of the Order, the FCC did not require radio or television stations (or any other EAS participant) to report when its equipment has generated a false EAS alert or to disclose the underlying circumstances of that false alert.

In the wake of the false ballistic missile alert in Hawaii in January 2018, the FCC in the Order adopted a requirement that radio and television stations (and any other EAS participants) that transmit or otherwise send a false alert to the public must report the false alert to the FCC within 24 hours of discovering the false alert, and they must do so via an e-mail to the FCC Ops Center ([FCCOPS@fcc.gov](mailto:FCCOPS@fcc.gov)).

This e-mail should inform the FCC of the event and any details regarding the event of which the station is aware. The Order notes that if a station has no actual knowledge of its issuance of a false alert, then it would not be required to take any action. With this new requirement (again, effective as of July 23), the FCC aims to impose a minimally burdensome reporting requirement on EAS participants in order to provide the Commission, FEMA, and other affected stakeholders with necessary information to identify and address problems with the EAS.

Note that the Order does not define or provide much detail regarding what does and does not constitute a “false alert” sufficient to trigger the self-reporting requirement; we have reached out to the Commission seeking further clarification on this matter. For now, if your station believes it has issued a “false alert,” we recommend you reach out immediately to your communications counsel for guidance.

*“Live Code” Testing.* The Commission’s rules set forth event header codes that are used for alerts in specific emergency situations (e.g., TOR for tornado), as well as the specific test codes to be used for national periodic tests (NPT), required monthly tests (RMT), and required weekly tests (RWT). As mentioned above, the rules prohibit false or deceptive EAS transmissions. Stations, however, regularly seek waivers of these rules in order to use the EAS attention signal and the event codes (that is, “live” event header codes) to conduct local public awareness and proficiency training exercises; more than 150 such waivers have been sought since 2009.

The Order amended the EAS rules by (1) removing “live code” exercises from the prohibition against false or misleading use of the EAS attention signal, and (2) allowing stations to use the event codes and the EAS attention signal in non-emergency situations under the specific parameters discussed below—without requesting a waiver.

Per the Order, stations can voluntarily participate in “live code” tests provided that the entity conducting the test:

- (1) notifies the public before the test that live event codes will be used, but that no emergency is, in fact, occurring;
- (2) to the extent technically feasible, states in the test message that the event is only a test;
- (3) coordinates the test among EAS participants and with state and local emergency authorities, the relevant State Emergency Communication Committee (SECC) (or SECCs, if the test could affect multiple states), and first responder organizations, such as public safety answering points, police, and fire agencies; and
- (4) consistent with the FCC’s rules, provides in widely accessible formats the required notification to the public that the test is not, in fact, a warning about an actual emergency.

Like the “false alert” reporting rule, these “live code” test rules also took effect as of July 23. Note that, in order to avoid customer exhaustion and any dissipation of the value of alerting that could come from over-testing the system to the public, an alert originator may only conduct up to two “live code” tests per calendar year.

*Alert Authentication and Validation.* The Order also adopted certain EAS technical requirements; one deals with alert authentication, and the other involves validation measures. The deadline by which EAS participants, including broadcasters, must comply with these technical requirements is rapidly approaching: **August 12, 2019**.

On the technical side, the FCC in the Order adopted a requirement that all EAS participants, configure their systems to reject all IP-based, CAP-formatted EAS messages that contain an invalid digital signature, in order to help prevent the transmission of a false alert. However, the FCC did not mandate the use of digital signatures (it only mandates that systems reject alerts with invalid digital signatures), and it did not adopt rules that pertain to any specific authentication mechanisms at this time.

The other requirement with an August 12 compliance deadline deals with alert validation. Prior to the Order, the Commission did not require EAS decoders to validate alerts based upon the time period in the “time stamp” portion of the header code, i.e., the portion that determines the correct date and time for the alert. The Order changed that by amending the EAS validation rules

to require that decoders confirm that an alert's expiration time is set to take place in the future, and that its origination time takes place no more than 15 minutes in the future.

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## Comment Dates Extended for NPRM on EEO Compliance and Enforcement

The FCC has [extended](#) the comment dates on its [Notice of Proposed Rulemaking](#) (the “Notice”) seeking input on the Commission’s track record on EEO (equal employment opportunity) enforcement and whether the agency should make improvements to EEO compliance and enforcement. Comments will now be due by September 20, 2019, and reply comments are now due by November 4, 2019.

Currently—among other compliance and enforcement mechanisms—the Commission requires broadcasters and MVPDs to keep records sufficient to show compliance with required EEO recruiting initiatives, and the Commission conducts random EEO audits each year of approximately five percent of broadcasters. At a high level, the Notice seeks comment regarding potential improvements to compliance with and enforcement of the FCC’s EEO rules and policies, for both broadcasters and MVPDs.

In an effort to improve and/or augment its EEO policies and enforcement and compliance mechanisms, the Notice seeks comment regarding:

- analyses of the effectiveness of or potential improvements to the Commission’s current EEO enforcement efforts;
- whether elements of the EEO enforcement program should be removed or added to increase enforcement effectiveness;
- how, if at all, the Commission’s EEO audit process should be modified to ensure that the FCC receives sufficient information to verify that hiring decisions were made only after job openings were posted, and to ensure that the audit process uncovers discrimination at the distinct points of recruitment, interviewing, and selection; and
- any other suggested types of enforcement or compliance initiatives that would help deter discrimination in the broadcast and MVPD industries.

In addition, the Commission requests particularized support for any commenter’s proposals, including relevant data or studies, suggestions for overcoming any implementation difficulties, and a comparison of the relative costs and benefits of such proposals.

Several broadcasters have already weighed in on the Notice. In fact, a group of 82 broadcasters, mostly from smaller markets, filed [comments](#) last month advocating for, among other things, revising the small-station EEO exemption threshold from fewer than five full-time employees to fifty employees, and creating a “pragmatic and sensible definition of ‘employment unit’ that includes all employees in a broadcast station entity.”

4. Again, comments on the Notice are due September 20; reply comments are due November

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

*Tim Nelson, Editor*

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