

Written Statement of

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Concerning

The Emergency Alert System (EAS)

Before the

**U.S. House of Representatives
Select Committee on Homeland Security
Subcommittee on Emergency Preparedness and Response**

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EXECUTIVE SUMMARY OF JAMES DAILEY'S STATEMENT

Since the Cold War era, the United States has had a mechanism in place for the President to communicate with the public in the event of a national emergency. Throughout this time it has been the FCC's role to ensure that our licensees have the capability to deliver a Presidential level activation. Under the current Emergency Alert System, (known as EAS) all analog broadcast radio, television and cable systems are required to deliver a Presidential level activation of EAS, but their use of EAS in response to State and local emergencies, while encouraged, is voluntary.

Though the cold war is behind us, we still face homeland security threats and are acutely aware of the importance of timely and effective warnings. In addition, there are exciting changes in our communications medium as the digital migration continues to sweep across our country. As a result of these changes, EAS has recently been the subject of much examination. A broad range of issues have been raised by citizens, the Commission's federal advisory group the Media Security and Reliability Council, public/private partnerships such as the Partnership for Public Warning, and our federal and state partners. To ensure that we do our part to contribute to an efficient and technologically current public alert and warning system that can alert each and every citizen the Commission recently released a Notice of Proposed Rulemaking (NPRM) that seeks comment on whether the current EAS is the most effective way to warn the American public of an emergency and, if not, how the system can be improved.

In the NPRM, the Commission raises broad questions about whether the technical capabilities of EAS are consistent with the Commission's mission to ensure that public warning take full advantage of current and emerging technologies, particularly digital broadcast media. In the NPRM, the Commission also addresses the issue of the permissive nature of EAS at the state and local level and seeks comment on whether the voluntary nature of the state and local EAS structure is appropriate in today's world. Additionally, there are various miscellaneous issues upon which the Commission seeks comment. For example, what the respective roles of the federal government departments and agencies involved in the implementation of EAS should be, how the delivery pipeline for public warning can be made more secure and how it can be tested, how both emergency managers and the public can use and respond to a public warning system in the most effective manner, and how a public warning system can most effectively provide emergency warnings to the disabled community and communities for whom English is a second language. Indeed, a key focus is how to reach each and every citizen.

The issues addressed in the NPRM have been coordinated with the Department of Homeland Security (DHS) and its component, the Federal Emergency Management Agency, (FEMA), and with the National Oceanic and Atmospheric Administration (NOAA) and its component, the National Weather Service (NWS). The Commission values these agencies' continued participation in our review of EAS.

As Chairman Powell noted in his statement supporting the EAS Notice of Proposed Rulemaking, the EAS NPRM is "one of many vehicles by which we collectively explore the most effective mechanism for warning the American public of an emergency and the role of EAS as we move further into our digital future." We look forward to working with Congress, our colleagues at other Federal and State agencies, and the public to ensure that we can provide such a warning system to our citizens.

Written Statement of James A. Dailey

INTRODUCTION

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

Good morning. I am James A. Dailey, Director of the Enforcement Bureau's Office of Homeland Security at the Federal Communications Commission. I welcome this opportunity to appear before you to discuss the Emergency Alert System (known as EAS).

As Chairman Powell recently testified before the Senate Committee on Commerce, Science and Transportation, the FCC is committed to play our part in protecting our homeland and has designated Homeland Security as one of the Commission's six strategic goals, with particular attention to public safety and private sector readiness. The Commission is well aware that an effective public alert and warning system is an essential element of emergency preparedness, and that such a system is impossible without effective private sector participation. Accordingly, the Commission has been working with other Federal agencies and the private sector to ensure that the American public is provided with a robust, efficient and technologically current alert and warning system. This morning, I will provide you with a brief history of EAS and review the Commission's recent efforts to enhance and improve the system.

BACKGROUND

Since the early days of the Cold War, it has been the policy of the United States to ensure a mechanism exists whereby the President can notify the American Public in the event of a national emergency. This mechanism began in 1951 when President Truman established CONELRAD, which stands for Control of Electromagnetic Radiation. This early system had a two-fold purpose: one, to warn the public of an imminent attack; and two, to limit broadcasting

and thus restrict the ability of enemy missiles to use broadcasters as targeting beacons. Subsequent systems, such as CONELRAD's replacement, the Emergency Broadcast System, established in 1963 by President Kennedy, and the current Emergency Alert System were not designed to thwart attack, but were still based on the perceived need to have a sole, last resort method for the President to contact the American public in time of emergency, when other communication channels may be unavailable. The national Presidential message that is the foundation of EAS relies on delivery through analog radio and television broadcast stations and wired and wireless cable systems, and when activated, would override all other broadcasts or cable transmissions, national and local, to deliver an audio message from the White House. This system, mandatory at the national level, is also available on a voluntary basis for states and localities to deliver local emergency notification.

CURRENT OPERATION OF THE EAS SYSTEM

The Federal Communications Commission, in conjunction with the Federal Emergency Management Agency (FEMA) and the National Weather Service (NWS), implements EAS at the federal level. The respective roles currently are based on a 1981 Memorandum of Understanding between FEMA, NWS, and the Commission, on a 1984 Executive Order, and on a 1995 Presidential Statement of Requirements.

EAS mandates only delivery of a "Presidential message" and the Commission's EAS rules primarily are concerned with the implementation of EAS in this national role. In general, the Commission's rules prescribe: (1) technical standards for EAS; (2) procedures for radio and television broadcast stations and cable systems to follow in the event EAS is activated; and (3) EAS testing protocols. Under the rules, national activation of EAS for a Presidential message is

designed to provide the President the capability to transmit within ten minutes from any location at any time, and must take priority over any other message and preempt other messages in progress. Commission rules mandate EAS obligations only for analog radio and television stations, and wired and wireless cable television systems. Other systems, including, for example, low earth orbit satellite systems, paging, direct broadcast satellite (DBS), digital television (DTV), satellite Digital Audio Radio service (satellite DARS), and In-Band-On-Channel Digital Audio Broadcasting (IBOC DAB) currently have no EAS requirements.

Activation of the national-level EAS rests solely with the President. The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the President to make provisions for emergency preparedness communications and dissemination of warnings to governmental authorities and the civilian population in areas endangered by disasters. This authority has been delegated to the Department of Homeland Security's (DHS) Undersecretary for Emergency Preparedness and Response as director of FEMA. FEMA acts as the White House's executive agent for the development, operations, and maintenance of the national level EAS and is responsible for implementation of the national level activation of EAS, as well as EAS tests and exercises. Further, the National Oceanic and Atmospheric Administration, through the National Weather Service, makes extensive use of EAS to report weather and other emergencies.

EAS is essentially a hierarchal distribution system. FEMA has designated 34 radio broadcast stations as Primary Entry Point (PEP) stations. At the request of the President, FEMA distributes "Presidential Level" messages to these PEP stations. As the entry point for national level EAS messages, the PEP stations are monitored in turn by other stations in the hierarchical chain. Broadcast stations and cable systems are required to monitor at least two EAS sources for

Presidential alerts, as specified in their state EAS plans. Initiating an EAS message, whether at the national, state, or local level, is accomplished via dedicated EAS equipment. The EAS equipment provides a method for automatic interruption of regular programming and is capable of providing warnings in the primary language that is used by the station or cable system.

State Emergency Communications Committees and Local Emergency Communications Committees, comprised of emergency management personnel and volunteers from industry, may be established in each state and territory to prepare coordinated emergency communications systems and to develop state and local emergency communications plans and procedures making use of the EAS protocol and other Public Alert and Warning systems the state may use in combination with EAS. These committees also establish authentication procedures and the date and time of the required monthly EAS tests. FCC rules accommodate these state and local alert codes – such as the Amber alert code adopted by the FCC in 2002.

Along with its primary role as a national public warning system, EAS – and other emergency notification mechanisms – are part of an overall public alert and warning system, over which FEMA exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary. Thus, although Federal, state, and local governments, and the consumer electronics industry are taking steps to ensure that alert and warning messages can be delivered by a responsive, robust and redundant system, at the state and local level the voluntary nature of EAS has resulted in an inconsistent application of EAS as a component of an overall public alert and warning system for the American public. The public receive most of their alert and warning information through the broadcaster's and cable systems' voluntary activations of the EAS system on behalf of state and local emergency managers.

CURRENT ISSUES

The communications landscape is now drastically different from the Cold War era when EAS and its predecessors were originally conceived. Thus, the top down, one size fits all EAS approach may no longer be appropriate. Also, the introduction of wireless and digital technologies has broadened significantly the media through which public alert and warning can be delivered.

Under Chairman Powell's leadership in the period after the tragic events of 9/11, the Commission, through the Homeland Security Policy Council, and more recently, the Enforcement Bureau's Office of Homeland Security, has worked to provide leadership to the industries the Commission regulates to evaluate and strengthen the Communications infrastructure. One of the most visible results of this effort is the Media Security and Reliability Council (known as MSRC), a Federal Advisory Committee created by the Commission in March 2002, and comprised of leaders from the radio, television, multi-channel video, public safety and disabled communities.

In March 2004, the MSRC's Public Communications and Safety Working Group reported on the efficacy of EAS as a public warning mechanism. The Partnership for Public Warning (known as PPW), a not-for-profit, public-private partnership incorporated in January 2002, with the goal of promoting and enhancing effective, integrated dissemination of public warnings, provided another analysis. Both MSRC's Working Group and PPW advocate upgrading, not replacing, EAS. In particular, PPW asserts that any new public warning system design should take advantage of the existing EAS infrastructure and should be able to accommodate existing EAS equipment, noting that it would be difficult to replace or rebuild such a capability today at a reasonable cost.

RULEMAKING PROCEEDING

Based in large part on the recommendations of the MSRC Working Group and PPW, the Commission, on August 4, 2004 adopted a Notice of Proposed Rulemaking (NPRM) to treat, in a comprehensive fashion, the efficacy of EAS and the role of EAS as part of an overall public alert and warning structure. The NPRM seeks comment on whether EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances and best responds to the public's need to obtain timely emergency information. The NPRM also seeks comment on rules the Commission may adopt to enhance the effectiveness of EAS. The Commission encourages commenters to take into account MSRC's and PPW's recommendations.

One of the central issues on which the Commission seeks comment is the current role of EAS in an age when the communications landscape has evolved from what it was when EAS predecessors – and EAS itself – were originally conceived. In the NPRM, the Commission also seeks comment on the future roles of the federal government departments and agencies involved in the implementation of EAS.

The NPRM asks questions about the technical capabilities of EAS. New technologies, such as digital television, cellular technology, and personal digital assistants are rapidly redefining the communication and broadcast landscape, making available to the public warning technologies that are far more flexible and effective than the analog mechanism currently employed by EAS. Because EAS relies almost exclusively on delivery through analog radio and television broadcast stations and cable systems, the NPRM asks whether EAS is outdated, how it could be made more efficient, and whether it should be phased out in favor of a new model. Further, the Notice queries: If a new model were to be adopted, what legal and practical barriers

must be overcome to ensure its implementation and effectiveness? What technologies should serve as the basis for such a model? Alternatively, should EAS requirements be extended to other services, such as digital TV, digital audio broadcast, digital audio radio, or cellular telephones? The NPRM also seeks comment on security issues relevant to EAS and on the important question of how best to supply an effective public warning system to the disabled community and non-English speakers.

The FCC already has begun – and will continue throughout this proceeding – to coordinate with DHS and its component, FEMA, and the Department of Commerce and its component, the National Oceanic and Atmospheric Administration’s National Weather Service. We anticipate these federal partners will be active participants in the proceeding. In addition to seeking comments from all interested individuals and federal entities on the issues raised in the NPRM, we specifically seek the participation of state and local emergency planning organizations and solicit their views. Finally, we seek input from all telecommunications industries concerned about developing a more effective EAS. Comments are due October 29, 2004; reply comments are due November 29, 2004.

CONCLUSION

As Chairman Powell noted in his statement the EAS NPRM is “one of many vehicles by which we collectively explore the most effective mechanism for warning the American public of an emergency and the role of EAS as we move further into our digital future.” We look forward to working with Congress, our colleagues at other Federal and State agencies, and the public to ensure that we can provide such a warning system to our citizens.

The FCC is also aware that the Congress is taking an active interest in the issue of public alert and warning, and would welcome Congressional guidance in this area that would bring added certainty to the industry. The Commission stands ready to provide whatever technical assistance that the Congress would find helpful in this regard.

I thank you, Mr. Chairman, for the opportunity to appear before you today. This concludes my testimony and I would be pleased to answer any questions you or the other members may have.