



Federal Communications Commission
Washington, D.C. 20554

May 27, 2009

DA 09-1112

Small Entity Compliance Guide

Commercial Mobile Alert System

Report and Order

FCC 08-99

PS Docket No. 07-287

Released April 9, 2008

Second Report and Order

and Further Notice of Proposed Rulemaking

FCC 08-164

PS Docket No. 07-287

Released July 8, 2008

Third Report and Order

FCC 08-184

PS Docket No. 07-287

Released August 7, 2008

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rules adopted in the above-referenced FCC rulemaking docket. This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the

appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Fax: 202-418-0232

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Background and Objectives of the proceeding

In the Commercial Mobile Alert System proceeding, PS Docket 07-287, the Commission established technical rules and administrative procedures listed below, for a Commercial Mobile Alert System (CMAS), under which commercial mobile service (CMS) providers may provide emergency alerts and warning to their customers. The Commission's authority to initiate this series of orders derives from the Warning Alert and Response Network (WARN) Act, which the President signed into law on October 13, 2006. As required by the WARN Act, the Commission initiated a series of rulemakings to implement this alerting system.

On December 14, 2007, the Commission released a Notice of Proposed Rulemaking (CMAS NPRM) that initiated a comprehensive rulemaking to establish the CMAS, under which commercial mobile service providers may elect to transmit emergency alerts to the public. The Commission received over 60 comments in response to the Notice.

On April 9, 2008, the Commission adopted and released the Commercial Mobile Alert System First Report and Order (*CMAS First Report and Order*) which satisfied section 602(a) of the WARN Act by adopting technical requirements necessary to enable CMS alerting capability for CMS providers that elect to transmit emergency alerts to their subscribers. Specifically, the Commission adopted the architecture for the CMAS in which a Federal Government entity would aggregate, authenticate, and transmit alerts to the CMS providers. In addition, the Commission adopted technologically neutral rules governing:

- *CMS provider-controlled elements within the CMAS architecture* (e.g., the CMS Provider Gateway, CMS Provider infrastructure and mobile devices, (47 C.F.R. §§ 10.1, et seq.);
- *Emergency alert formatting, classes, and elements*: Participating CMS Providers must transmit three classes of alerts - Presidential, Imminent Threat, and AMBER alerts (47 C.F.R. § 10.400);
- *Geographic targeting (geo-targeting)*: Participating CMS Providers generally are required to target alerts at the county-level as recommended by the Commercial Mobile Service Alert Advisory Committee (CMSAAC) (47 C.F.R. § 10.450);
- *Accessibility for people with disabilities and the elderly*: Participating CMS Providers must include an audio attention signal and vibration cadence on CMAS-capable handsets (47 C.F.R. §§ 10.520, 10.530);
- *Multi-language Alerting*: Participating CMS Providers will not be required at this time to transmit alerts in languages other than English;
- *Availability of CMAS alerts while roaming*: Subscribers receiving services pursuant to a roaming agreement will receive alert messages on the roamed-

upon network if the operator of the roamed-upon network is a Participating CMS provider and the subscriber's mobile device is configured for and technically capable of receiving alert messages from the roamed-upon network (47 C.F.R. § 10.470); and

- *Preemption of calls in progress*: CMAS alerts may not preempt a voice or data session in progress (47 C.F.R. § 10.510).

Participating CMS Providers shall begin development and testing of the CMAS in a manner consistent with these rules no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available. On May 30, 2008, the Federal Emergency Management Agency (FEMA) announced that it would perform this Alert Gateway role. Work on the Government Interface is proceeding. No date has been announced for its completion.

On July 8, 2008, the Commission adopted and released the Commercial Mobile Alert System Second Report and Order and Further Notice of Proposed Rulemaking (*CMAS Second Report and Order and FNPRM*) which satisfied Sections 602(c) and 602(f) of the WARN Act. Specifically, the *CMAS Second Report and Order and NPRM*:

- As required by Section 602(c) of the WARN Act, adopted rules requiring noncommercial educational and public broadcast television station licensees and permittees to install equipment and technologies on, or as part of, their digital television transmitters necessary to enable geo-targeting by participating CMS providers (47 C.F.R. § 10.340).
- As required by Section 602(f) of the WARN Act, adopted rules requiring participating CMS providers to participate in monthly tests initiated by the Alert Gateway and in additional periodic testing of the interface between the Alert Gateway and the CMS Provider Gateway (47 C.F.R. § 10.350).

On August 7, 2008, the Commission adopted and released the Commercial Mobile Alert System Third Report and Order (*CMAS Third Report and Order*) implementing section 602(b) of the WARN Act, which set forth requirements regarding how and when CMS providers must elect to provide CMAS; how CMS providers must notify customers about their decision to provide or not provide CMAS; how CMAS-related costs may be recovered; and the timeline under which participating CMS providers must begin CMAS deployment. Pursuant to the *CMAS Third Report and Order*, CMS providers were required to elect to provide CMAS in whole or in part or not at all, no later than September 8, 2008.

(47 C.F.R. §§ 10.220-230).

Pursuant to the *CMAS Third Report and Order*, CMS providers were required to elect to provide CMAS in whole or in part or not at all, no later than this date. As of January 15, 2009, the Commission has received 482 election filings representing 611 CMS licensees. Of those, 119 indicated that they would participate in whole, 27 indicated that they would participate in part, and 465 indicated that they would not participate.

Impact on Small Business

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in PSHSB Docket 07-287 (*CMAS NPRM*). The Commission sought written public comments on the proposals in the *CMAS NPRM*, including comment on the IRFA. Comments on the IRFA were to have been explicitly identified as being in response to the IRFA and were required to be filed by the same deadlines as that established in section IV of the *CMAS NPRM* for other comments to the *CMAS NPRM*. The Commission sent a copy of the *CMAS NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *CMAS NPRM* and IRFA were published in the Federal Register. There were no comments filed that specifically addressed the IRFA. The only commenter that explicitly identified itself as a small business was Interstate Wireless, Inc., which supported the Commission's adoption of the CMSAAC's recommendations. Although Interstate Wireless did not comment specifically on the IRFA, it did state that the cost of building and maintaining a CMS Provider Gateway would be more than it and other similarly situated Small Business CMS providers could afford and still be able to provide the alert service to the public without cost. Accordingly, Interstate Wireless requested that the Federal Government either provide the proper software and reception equipment for the CMS Provider Gateways, or provide grants to the Small Business CMS providers to purchase, install, and maintain the equipment themselves.

In the *CMAS First Report and Order*, the Commission responded to Interstate Wireless by noting that questions of funding are not addressed by section 602(a) of the WARN Act, and thus were outside of the scope of that order. The WARN Act does not otherwise give funding authority to the Commission, so the Commission is unable to grant Interstate Wirelesses' request. In the *CMAS Third Report and Order's* Final Regulatory Analysis, the Commission further responded to Interstate Wireless by noting that the requirements and standards on which the Commission sought comment responded to concerns raised by small businesses, many of which had been members of the CMSAAC. Specifically, the Commission cited its attempts to impose minimal regulation on small entities to the extent consistent with its goal of advancing its public safety mission by adopting requirements and standards for a CMAS that CMS

providers could elect to implement to provide alerts and warnings to their customers.

The Commission has not kept records that indicate how many, among the 119 full participants, and the 27 partial participants, are “small” businesses under the applicable SBA standards for determining the size of a business. However, given that the Commission deliberately sought, in adopting CMAS rules, to impose minimal burdens, if any, on small businesses, and given the fact that 146 CMAS providers chose to participate, the Commission at this time believes that its new rules do not impose unacceptably adverse economic or other burdens on small businesses that elected to become CMAS providers.

Recordkeeping and Other Compliance Requirements

Section 602(b)(2)(A) of the WARN Act required each Commercial Mobile Service (CMS) provider to notify the Commission, within 30 days of the Commission’s release of the CMAS Third Report and Order, whether it intends to participate in the CMAS. The information collected was the CMS provider’s contact information and its election, i.e., a “yes” or “no,” on whether it intends to provide commercial mobile service alerts. The Commission used the information collected to meet its statutory requirement under the WARN Act to accept licensees’ election filings and to establish an effective CMAS that will provide the public with effective mobile alerts in a manner that imposes minimal regulatory burdens on affected entities.

Internet Links:

CMAS Notice of Proposed Rulemaking, FCC 07-214, released December 14, 2007

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-214A1.pdf

CMAS First Report and Order, FCC 08-99, released April 9, 2008

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-08-99A1.pdf

CMAS Second Report and Order and Further Notice of Proposed Rulemaking, FCC 08-164, released July 8, 2008.

http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-08-164A1.pdf

CMAS Third Report and Order, FCC 08-184, released August 7, 2008.

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