

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Review of the Emergency Alert System) PS Docket No. 15-94
)

ORDER

Adopted: September 27, 2016

Released: September 27, 2016

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we address a request by Gorman-Redlich¹ for waiver of the requirement in Section 11.56(a)(2) of the Commission’s rules for participants in the Emergency Alert System (EAS) to have equipment capable of converting EAS alert messages formatted in the Common Alerting Protocol (CAP) into messages that comply with the EAS Protocol as set forth in the Commission’s rules.² The Waiver Request asserts that some legacy EAS equipment is not able to correctly process alerts with the “six zeroes” national location code required under the EAS Protocol and asks the Commission to allow operators of this equipment to use an “entire state” location code instead.³ For the reasons set forth below, we find that Gorman-Redlich has failed to make the showing required for a waiver of the Commission’s rules, and we deny the Waiver Request.

II. BACKGROUND

2. The EAS Protocol is a method of constructing an alert message that can be effectively, efficiently, and uniformly processed by EAS equipment. An alert formatted in the EAS Protocol begins with a preamble and header codes that contain information regarding, *inter alia*, the identity of the alert originator, the type of emergency, and the location of the subject event (location code).⁴ The header codes are followed by an audio attention signal, an alert message, and an end of message code.⁵

3. Under the EAS’s traditional “legacy” structure, alerts are distributed over the air through a hierarchical, broadcast-based alert message distribution system in which a message originator at the local, state, or national level formats a message in the EAS Protocol and initiates the transmission of the message at a designated entry point into the system, from which it is relayed from one designated station

¹ The request is filed by James T. Gorman on behalf of Gorman-Redlich. We note that Gorman-Redlich Mfg. Co. is a manufacturer of emergency alerting equipment.

² Gorman-Redlich Waiver Request, PS Docket No. 15-94 (filed August 1, 2016) (Waiver Request). A comprehensive overview of the EAS is contained in the *Fifth Report and Order* in EB Docket No. 04-296. See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, *Fifth Report and Order*, 27 FCC Rcd 642 (2012) (*Fifth Report and Order*). The EAS rules can be found at 47 C.F.R. §§ 11.1, *et seq.*

³ Waiver Request at 1-2.

⁴ See 47 C.F.R. § 11.31.

⁵ See *id.*

to another until the alert is fully distributed.⁶ EAS alerts may also be distributed over the Internet via the Integrated Public Alert and Warning System (IPAWS), which is maintained by the Federal Emergency Management Agency (FEMA).⁷ Under this method, an EAS Participant receives an EAS alert directly from IPAWS by automatically checking the EAS Common Alerting Protocol (CAP) feed at regular intervals.⁸ IPAWS-based EAS alerts are written in CAP, an XML-based language designed to deliver alerts over the Internet.⁹ Under current Commission rules, EAS CAP alerts are based on the EAS Protocol.¹⁰

4. The Commission's alerting rules require EAS Participants¹¹ to be able to receive CAP alerts both from IPAWS as well as from the broadcast-based EAS structure. Under Section 11.51(d) of the Commission's rules, EAS Participants must be able to receive and retransmit CAP-formatted EAS alert messages.¹² Similarly, Section 11.56(a)(2) of the Commission's rules requires EAS Participants to deploy operational equipment capable of (i) converting CAP-formatted EAS alert messages into EAS messages that comply with the EAS Protocol, and (ii) processing such converted messages in accordance with the other requirements of Part 11.¹³

5. The Commission adopted the "six zeroes" national location code as part of the EAS Protocol in the *Sixth Report and Order*.¹⁴ The Commission explained that adoption of a "six zeroes" location code would improve the efficiency of the EAS by ensuring consistency between the EAS rules and industry CAP standards, which already recognize "six zeroes" as the national location code.¹⁵ This, in turn, would

⁶ See *Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7.

⁷ FEMA, Integrated Public Alert & Warning System, <https://www.fema.gov/integrated-public-alert-warning-system> (last visited Sept. 15, 2016). With this system, FEMA provides a gateway that can convey emergency alerts, drawn from a variety of public alerting systems, to all EAS Participants simultaneously.

⁸ FEMA, Common Alerting Protocol (CAP) Information for EAS Participants at 1, http://www.fema.gov/pdf/emergency/ipaws/cap_for_eas.pdf.

⁹ *Id.* CAP is an open, interoperable standard that can include multimedia, such as streaming audio or video. See *Fifth Report and Order*, 27 FCC Rcd at 648, para. 10.

¹⁰ See *Fifth Report and Order*, 27 FCC Rcd at 648, para. 10; see also 47 C.F.R. § 11.56.

¹¹ EAS Participants are the regulated entities that receive and broadcast alerts. These entities are defined in Section 11.11(a) of the Commission's rules and include radio and television broadcast stations, cable systems, wireline video systems, wireless cable systems, direct broadcast satellite service providers, and digital audio radio service providers. See 47 C.F.R. § 11.11(a).

¹² See 47 C.F.R. § 11.51(d).

¹³ *Id.* § 11.56(a)(2)-(3). Section 11.56(a)(2) specifically states that on or by June 30, 2012, EAS Participants must have deployed operational equipment capable of converting EAS alert messages formatted in CAP into EAS alert messages that comply with the EAS Protocol, "such that the Preamble and EAS Header Codes, audio Attention Signal, audio message, and Preamble and EAS End of Message (EOM) Codes of such messages are rendered equivalent to the EAS Protocol (set forth in §11.31), in accordance with the technical specifications governing such conversion process set forth in the EAS-CAP Industry Group's (ECIG) Recommendations for a CAP EAS Implementation Guide, Version 1.0 (May 17, 2010) (except that any and all specifications set forth therein related to gubernatorial 'must carry' shall not be followed, and that EAS Participants may adhere to the specifications related to text-to-speech on a voluntary basis)." *Id.* § 11.56(a)(2).

¹⁴ Review of the Emergency Alert System, *Sixth Report and Order*, 30 FCC Rcd 6520, 6526-27, para. 16 (2015) (*Sixth Report and Order*) (adopting "six zeroes" as the national location code for any future nationwide EAS test, as well as for any future nationwide EAS alerts); see also 47 C.F.R. § 11.31(f).

¹⁵ *Sixth Report and Order*, 30 FCC Rcd at 6527, para. 18.

facilitate integration of the EAS into IP-based alerting systems, such as IPAWS.¹⁶ The Commission also noted that using a single locality's location code for a national alert could cause confusion and that this was one of the issues arising from the first nationwide EAS test in 2011, which used a Washington, D.C. location code.¹⁷ In addition, the Commission noted that to issue an alert for the entire United States without a national location code would require two separate alerts because a single alert can only designate a portion of the fifty states (given that the EAS alert header can only hold thirty-one distinct location codes).¹⁸ Accordingly, use of a single national location code would simplify the national alerting infrastructure.¹⁹ The Commission also noted that use of a national location code would provide improved geo-targeting of an EAN if the President wanted to address a particular part of the country, rather than the nation as a whole.²⁰

6. The Commission noted that commenters unanimously supported adoption of the "six zeroes" national location code.²¹ In addition, the Commission noted that implementation of the new code would present negligible costs to EAS Participants because most EAS equipment deployed in the field already supported the "six zeroes" code or would require only a software update to provide such support.²² Further, the Commission noted that FEMA intended to conduct a second nationwide EAS test "in the near future" and that this test would use the "six zeroes" location code.²³ Accordingly, the Commission emphasized that "it is imperative that we ensure EAS Participants are capable of processing a test with [the six zeroes code] as rapidly as possible."²⁴ Some commenters had sought an implementation timeline of six months, while others argued for a twelve-month timeline.²⁵ The Commission adopted a period of "up to, but no longer than, twelve months" for EAS Participants to come into compliance with the new requirement.²⁶ This twelve month period ended July 30, 2016.²⁷ FEMA subsequently announced that it

¹⁶ *Id.* at 6527-28, para. 18.

¹⁷ *Id.* at 6528, para. 18. The Commission and FEMA conducted the first nationwide EAS test on November 9, 2011 to assess how the national EAS architecture would perform in practice and to implement any necessary improvements to ensure that the EAS, if activated in a real emergency, would perform as designed. The test involved the simultaneous transmission, receipt, and broadcast of a "live" national EAS alert by FEMA and thousands of EAS Participants across the United States and its territories. FEMA successfully initiated an Emergency Action Notification (EAN), the EAS event code that would be used for an actual Presidential activation of the nationwide EAS, and delivered the EAN to the EAS Primary Entry Point (PEP) stations. The PEP stations, in turn, distributed the EAN throughout the nation via the EAS's so-called "daisy chain" process. The Commission's Public Safety and Homeland Security Bureau received and analyzed data from participants in the test and, in 2013, released a report summarizing lessons learned from the test and the Bureau's recommendations for strengthening the EAS. See Federal Communications Commission Public Safety and Homeland Security Bureau, Strengthening the Emergency Alert System (EAS): Lessons Learned from the Nationwide EAS Test (2013), http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0412/DOC-320152A1.pdf.

¹⁸ *Sixth Report and Order*, 30 FCC Rcd at 6528, para. 18.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 6526, para. 16.

²² *Id.* at 6527, para. 17.

²³ *Id.* at 6545, para. 54.

²⁴ *Id.*

²⁵ *Id.* at 6545-46, para. 54.

²⁶ *Id.* at 6546, para. 55.

would conduct the second nationwide EAS test on September 28, 2016.²⁸

7. In its Waiver Request, Gorman-Redlich asserts some legacy EAS equipment employs equipment that is intended to add CAP functionality as required by the Commission's rules, but cannot process messages addressed with the "six zeroes" national location code.²⁹ Gorman-Redlich states that "it has come to the attention of many" that "certain manufacturers" of this equipment "are unwilling or unable – for whatever reason – to update their equipment" so that it can process the "six zeroes" code.³⁰ Further, Gorman-Redlich asserts that many broadcast stations continue to employ this equipment and that replacing it would represent a substantial monetary outlay for these stations.³¹ Gorman-Redlich requests a waiver for "stations that are not a LP-1 or LP-2 station and which have no down-stream monitoring assignments" in the EAS alerting system.³² For these stations, Gorman-Redlich asks the Commission to allow intermediary devices to insert state location codes into EAS header codes containing the national location code.³³ According to Gorman-Redlich, this "modification" will not result in any false activations based on location codes and will not result in the airing of duplicate alerts at any other stations.³⁴ The proposed waiver would last until these stations' legacy equipment "ceases to operate as designed."³⁵

8. The Commission received seven comments in response to the Waiver Request.³⁶ Commenters on behalf of six radio stations state that their stations serve small markets and that upgrading or replacing their legacy EAS equipment so that it can process the "six zeroes" location code would create

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²⁷ The Commission provided that the twelve-month period would run from the effective date of the rule amendments, which would be thirty days after publication in the *Federal Register*. *Id.* The new rules appeared in the *Federal Register* on June 30, 2015, so the deadline for complying with the "six zeroes" location code was July 30, 2016. *See* 80 Fed. Reg. 37,167, 37,167 (June 30, 2015).

²⁸ *See* Letter from Roger L. Stone, Assistant Administrator (Acting), National Continuity Programs, Federal Emergency Management Agency, to David Simpson, Bureau Chief, FCC Public Safety & Homeland Security Bureau, PS Docket No. 15-94 (filed Apr. 14, 2016); *see also Public Safety and Homeland Security Bureau Announces Nationwide Test of the Emergency Alert System on September 28, 2016*, Public Notice, 31 FCC Rcd 7664 (PSHSB 2016) (*EAS Test Announcement PN*). The primary test date is scheduled for September 28, 2016, and the secondary test date is scheduled for October 5, 2016, if necessary. *EAS Test Announcement PN* at 7664.

²⁹ Waiver Request at 1.

³⁰ *Id.*

³¹ *Id.* The Waiver Request also states that replacing this equipment would present the issue of how to dispose of it without detriment to the environment and without allowing it to fall into the hands of someone who could misuse it intentionally. *Id.*

³² *Id.* at 1-2.

³³ *Id.* at 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Comments in support of the waiver request were filed by William M. Donati, owner of Radio Station KRTN in Raton, New Mexico (KRTN Comments); Kenneth Bass, President of South Western Trails Cultural Heritage Association, Inc., licensee of Radio Station KALH-LP in Alamogordo, New Mexico (KALH Comments); John Malone, General Manager of Radio Station WLNK in Lincoln, Illinois (WLNK Comments); and Claude B. Parker, Vice President of the Garden Villas Community Association, Inc. and General Manager of Radio Station KHGV-LP in Houston, Texas (KHGV Comments); Keith D. Learn, owner of Radio Station KPLZ in Parker Arizona (KPLZ Comments); and Donald Ash, Board Member of WRAQ in Angelica, NY (WRAQ Comments). One comment was filed in opposition to the request by Sean Donelan (Donelan Comment).

a financial hardship.³⁷ These commenters also state that their stations are not LP-1 or LP-2 stations, and, to their knowledge, no other broadcast stations rely on their stations in the daisy chain operation of the EAS.³⁸ The comment in opposition argues that the waiver request does not identify the equipment to which the waiver would apply.³⁹

III. DISCUSSION

9. The Commission may waive its rules upon a showing of good cause.⁴⁰ Waiver is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.⁴¹ Applicants seeking a waiver face a “high hurdle” and must plead with particularity the facts and circumstances that warrant a waiver.⁴² Gorman-Redlich has not satisfied this burden because it fails to show that special circumstances warrant a deviation from Section 11.56(a)(2) and the “six zeroes” national location code, or that such deviation would serve the public interest.

10. The Waiver Request fails to show what, if any, special circumstances support a departure from Section 11.56(a)(2) and the “six zeroes” national location code. In particular, the Waiver Request fails to state with sufficient clarity who needs relief from the rule and why. It asserts that certain unidentified manufacturers of legacy EAS equipment are “unwilling or unable” to update their equipment so that it can correctly process the “six zeroes” national location code, yet it does not identify what this legacy EAS equipment is, how much of it is still in use, or why the manufacturers of this equipment and their EAS Participant customers cannot or will not update it to comply with the Commission’s rules.⁴³ Moreover, while it is true that commenters to the Waiver Request claim updating or replacing current equipment would pose a financial burden,⁴⁴ none of these commenters has identified the equipment at issue,⁴⁵ and none has indicated what particular costs distinguish its equipment from that required by the Commission’s rules, for which the upgrade to the “six zero” national location code should require no more than the minimal cost of a software upgrade.⁴⁶ Further, the request seeks a waiver on behalf of “non-LP-1/LP-2 stations with no downstream monitoring stations,”⁴⁷ a class that includes most of the

³⁷ See e.g., KALH Comments at 1 (noting that the cost of updating its equipment would be “virtually prohibitive”); KHGV Comments at 1 (noting that KHGV is a non-profit station, and that updating its equipment would require a “substantial monetary outlay”); KRTN Comments at 1 (noting that “[r]eplacing the equipment would be very costly for us and would put an extra financial burden on us which, at this time in our business, is difficult”); WLNX Comments at 1 (noting that WLNX is a non-commercial educational station, and that updating its equipment would require a “substantial monetary outlay”).

³⁸ KALH Comments at 2; KHGV Comments at 1; KRTN Comments at 1; WLNX Comments at 1.

³⁹ Donelan Comment at 1.

⁴⁰ See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴¹ *Northeast Cellular*, 897 F.2d at 1166.

⁴² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*) (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)).

⁴³ Waiver Request at 1-2.

⁴⁴ KALH Comments at 1, 3; KHGV Comments at 1; KLPZ Comments at 2; KRTN Comments at 1; WLNX Comments at 1; WRAQ Comments at 1.

⁴⁵ See Donelan Comment at 1.

⁴⁶ See *Sixth Report and Order*, 30 FCC Rcd at 6527, para. 17 (“Implementation of ‘six zeroes’ as the national location code will present negligible costs to EAS Participants because most EAS equipment deployed in the field already supports the ‘six zeroes’”).

⁴⁷ Waiver Request at 2.

radio stations in the country, a majority of the entities affected by the “six zeroes” requirement.⁴⁸ Granting the requested waiver, particularly as presented, would thus constitute an impermissible *de facto* rule change, rather than the narrowly crafted deviation from the rules permitted under the Commission’s waiver standard.⁴⁹ Additionally, the Waiver Request does not identify with sufficient particularity the duration of the requested waiver. It asks the Commission to waive the rule until the “affected legacy equipment” ceases to operate.⁵⁰ However, without more information on the equipment involved, the specific EAS Participants who need the waiver, and when such EAS Participants plan to upgrade their equipment, it is unclear when that would be or how we could even estimate a reasonable cut-off date.⁵¹ Accordingly, the Waiver Request has not shown that special circumstances warrant a waiver of Section 11.56(a)(2).⁵²

11. The Waiver Request also fails to show how a deviation from the Commission’s rules would serve the public interest. As noted above, the purpose of the “six zeroes” location code is to improve the efficiency of the EAS by ensuring consistency between the EAS rules and industry CAP standards, which already recognize “six zeroes” as the national location code. That consistency, in turn, facilitates the integration of the EAS into IP-based alerting systems, such as IPAWS. In addition, use of a single national location code is intended to simplify the national alerting structure and avoid confusion by eliminating the need to send multiple alerts or to use a single locality code for a nationwide alert. The relief sought by the Waiver Request – using state location codes for a nationwide alert – is exactly the sort of alternate, “workaround” process that the “six zeroes” national location code is intended to eliminate. Further, there is no indication that the requested “workaround” would be effective, as it would only apply to EAS alerts received via the IPAWS CAP feed. Alerts delivered over the air would contain the “six zeroes” code and would not be processed by the old EAS equipment. Finally, the Commission has emphasized the importance of meeting the deadline for implementing the “six zeroes” code so that EAS Participants can process the new code during the upcoming second nationwide EAS test.⁵³ Granting the Waiver Request would be inconsistent with the public interest goals of the second nationwide test,

⁴⁸ There are 550 EAS local areas, each of which may have one LP-1 station and one LP-2 station, for a maximum potential total of 1,100 LP-1 and LP-2 stations. FCC, Public Safety Tech Topic #21 – Emergency Alert System (EAS), <https://www.fcc.gov/help/public-safety-tech-topic-21-emergency-alert-system-eas#fn6> (last visited Sept. 15, 2016). There are 11,390 commercial radio stations in the United States. FCC, Broadcast Station Totals as of June 30, 2016 at 1, https://apps.fcc.gov/edocs_public/attachmatch/DOC-340211A1.pdf. Therefore, a majority of commercial radio stations are not LP-1 or LP-2 stations.

⁴⁹ See *Industrial Broad. Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970) (per curiam) (declining to require the FCC to “carry out extensive waiver proceedings” after already “carefully promulgat[ing] a general rule”).

⁵⁰ Waiver Request at 2.

⁵¹ The comments in support of the Waiver Request do not supply much information that would help to clarify the scope or duration of the requested waiver. We note that if these commenters believe they have a basis upon which to seek an individual waiver, they may file such a request.

⁵² See *WAIT Radio*, 418 F.2d at 1157; see also Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Petitions for Temporary Partial Exemption or Limited Waiver, *Memorandum Opinion and Order*, 27 FCC Rcd 9630, 9638-39, para. 16 (MB 2012) (finding a waiver request overbroad where some of entities covered by the request would not need the relief sought).

⁵³ In the *Sixth Report and Order*, the Commission noted that the most important goal of the proceeding was “to ready the national alerting infrastructure for a test that FEMA intends to conduct in the near future.” See *Sixth Report and Order*, 30 FCC Rcd at 6531, para. 23; see also *id.* at 6545, para. 54 (“[i]n light of the fact that FEMA intends to conduct a nationwide EAS test ‘in the near future,’ and that such a test will use ... the ‘six zeroes’ location code, it is imperative that we ensure that EAS Participants are capable of processing a test with these characteristics as rapidly as possible”).

including the goal of evaluating the reliability and effectiveness of the “six zeroes” code and other measures adopted after the first nationwide test.⁵⁴ Therefore, we find that the requested waiver would be inconsistent with the public interest goals underlying Section 11.56(a)(2) and the “six zeroes” location code without offering a clear benefit to the public interest.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, that the Waiver Request filed by Gorman-Redlich is DENIED.

13. This action is taken under delegated authority pursuant to 47 C.F.R. §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David G. Simpson
Rear Admiral, USN (ret.)
Chief, Public Safety and Homeland Security Bureau

⁵⁴ See *EAS Test Announcement PN*, 31 FCC Rcd at 7664.