

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

In the Matter of)
)
Amendments to Part 11 of the Commission’s Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)

ORDER

Adopted: December 6, 2023

Released: December 6, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) addresses the request filed by Mississippi Authority for Educational Television (MAET), dba Mississippi Public Broadcasting, on behalf of eight noncommercial educational TV stations and eight noncommercial educational radio stations for a temporary waiver of the Commission’s requirement that Emergency Alert System (EAS) Participants prioritize the Common Alerting Protocol (CAP)-formatted version of an EAS message when it receives both a legacy version and a CAP-formatted version of the same alert.1 For the reasons discussed below, the Bureau partially grants the request.

II. BACKGROUND

2. Overview of the EAS. The EAS is a national system used to disseminate public warnings of impending emergencies over broadcast, cable, and satellite networks to consumers’ radios, televisions, and other audio and video devices.2 Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators3 may transmit EAS messages to EAS Participants (for distribution to the public) either over FEMA’s Internet-based platform known as the Integrated Public Alert and Warning System (IPAWS) using the CAP format, or over the so-called “legacy” EAS distribution system, a broadcast-based process in which messages are transmitted via audio channels and relayed from one EAS Participant to another throughout a geographic area.4 EAS Participants typically receive legacy EAS messages by monitoring

1 Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System, PS Docket No. 15-94, Report and Order, FCC 22-75 (2022) (2022 Part 11 Report and Order).

2 Id. See 47 CFR § 11.2(b) (defining “EAS Participants”).

3 See 47 CFR § 11.31 (describing “EAS Protocol”); see also FEMA, Alerting Originators, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities#:~:text=An%20Alert%20Originator%20is%20an,composing%20and%20issuing%20the%20alert (last updated June 26, 2023).

4 In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant’s local audience, but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert the sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in

(continued...)

audio transmissions from other EAS Participants or other sources. EAS Participants receive IP-based messages transmitted over IPAWS by periodically checking an Internet-connected server (a process known as “polling”) for messages from alert originators in CAP format.⁵ Alert messages transmitted over the legacy EAS are encoded in the Specific Area Message Encoding (SAME) protocol format (developed by the National Weather Service for weather alerts) and consist of audible tones that convey header codes, a two-tone attention signal, an audio stream (typically no longer than two minutes of a person’s voice), and an end-of-message signal.⁶ The header codes identify the type of event covered by the alert, the originator of the message, and the relevant times, locations, and geographic areas. CAP-formatted alerts disseminated over the IPAWS platform can convey considerably more information than legacy EAS-based alerts in the SAME format. For example, CAP alert messages may include detailed directions on how the public should respond to the specific emergency, information in languages other than English, picture and video files, and URLs. This information cannot be relayed when CAP alerts are converted into legacy alerts for distribution over the legacy EAS;⁷ all data other than the header codes are lost in this conversion process.

3. On September 30, 2022, the Commission took measures to promote clarity and accessibility of alerts and to maintain public confidence in the EAS as a reliable source of emergency information.⁸ Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.⁹ With a few enumerated exceptions, the Commission requires EAS Participants, upon receiving a legacy EAS alert message, to check whether a CAP version of the same alert is available by polling the IPAWS feed for CAP-formatted EAS messages.¹⁰ If a CAP version is available, the EAS Participants must transmit the CAP version rather than the legacy version. EAS Participants may not transmit an alert in legacy format until at least 10 seconds after receiving its header codes unless they confirm by polling the IPAWS feed that no matching CAP version of the message is available.¹¹ EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission’s rules, by December 12, 2023.¹²

4. *MAET Request.* On November 15, 2023, the MAET filed a request for a temporary

turn, is received not only by that entity’s audience, but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and have delivered it to the public.

⁵ See 47 CFR 11.52(e)(2); Federal Emergency Management Agency (FEMA), *EAS Participants*, <https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/emergency-alert-system-participants> (last updated July 28, 2021).

⁶ See 47 CFR § 11.31.

⁷ For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.

⁸ *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

⁹ *2022 Part 11 Report and Order* at 6, para. 14.

¹⁰ This requirement applies only to valid alert messages relating to event categories and locations for which the EAS Participant normally transmits such alerts pursuant to the State EAS Plan. The requirement does not apply to national emergency messages (i.e., alerts with the EAN event code), messages associated with national tests of the EAS (bearing the NPT code), or required weekly test messages (bearing the RWT code).

¹¹ *2022 Part 11 Report and Order* at 5, para. 11.

¹² See 47 CFR § 11.55(c)(2).

waiver (i.e., extension) of the December 12, 2023, compliance date for EAS CAP prioritization.¹³ MAET requested a temporary waiver for one year for its entire statewide public broadcasting network, which consists of eight noncommercial educational TV stations and eight noncommercial educational radio stations that blanket the entire State of Mississippi. In so requesting, MAET states that its current EAS encoders were acquired and installed in 2011 and are not compatible with the software that has been released by the EAS equipment manufacturer to “update” more recent-version encoders. Thus, contrary to the cost expectations in the FCC rulemaking record when the new EAS rules were established that the costs would be minimal, MAET states that it must invest in brand new encoders in order to meet the new EAS rules.¹⁴ MAET estimated the cost of these new encoders to be \$31,787.84. To meet this cost, MAET applied for, and on October 13, 2023, was awarded federal funds through the Next Generation Warning System (NGWS) grant program, as administered by the Corporation for Public Broadcasting (CPB),¹⁵ sufficient to purchase and install nine (9) new EAS encoders to meet the EAS requirements and improve emergency alerting throughout the entire State of Mississippi.

5. MAET states that, with the NGWS grant award documents now in place, it expects to place the order for the necessary equipment by December 15, 2023, and, based on information provided by the manufacturer and vendor, MAET expects that the earliest that the equipment could be manufactured and delivered would be March 2024 with installation and testing scheduled immediately afterward.¹⁶ Out of an abundance of caution, however, and given that NGWS is a brand new federal grant program and that there may be unexpected delays, MAET seeks a one-year waiver of the December 12, 2023 compliance deadline.¹⁷

6. MAET argues that there is good cause to grant the waiver, in that “it will allow federal grant funds to be used to permit MAET to comply with the terms and timing of a FEMA federal grant program funding the purchase and installation of the equipment necessary to comply with the new EAS rules.” In particular, they argue that, as a state entity providing public broadcasting service to a rural state and to underserved communities, “MAET must be a careful steward of its finances and seek out appropriate federal grant funding opportunities. Thus, MAET reasonably relied on the NGWS grant program for the funds necessary to procure and install the required new EAS equipment.”¹⁸ Additionally, Petitioner stated

¹³ MAET Request for Temporary Waiver of December 12, 2023 Compliance Deadline, PS Docket No. 15-94 (filed Nov. 15, 2023), <https://www.fcc.gov/ecfs/document/11151273722245/1> (Extension Request).

¹⁴ *NDAA Order*, 36 FCC Rcd at 10701-02, para. 14; *Review of the Emergency Alert System*, Fifth Report and Order, 27 FCC Rcd 642, 726, para. 265 (2012) (adoption of CAP will help ensure accessibility and encourage alert originators to provide hearing-disabled accessible alerts); *Review of the Emergency Alert System*, Sixth Report and Order, 30 FCC Rcd 6520, 6542, para. 47 (2015); *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket No. 15-94, Report and Order, 33 FCC Rcd 7086, 7100, para. 34 (2018) (*Alerting Reliability Order*) (“[L]ack of confidence [in the EAS] can lead the public to require additional information before taking action in response to future alerts, potentially slowing evacuations and other public safety efforts.”).

¹⁵ In March 2022, as part of the Department of Homeland Security Appropriations Act, 2022 (Pub. L. No. 117-103), Congress appropriated \$40 million to the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) for a new grant program targeted at improving emergency alerting, the NGWS Grant. DHS issued a Notice of Funding Opportunity for the NGWS grant in 2022, that stated that Congress intended that FEMA work with the Corporation for Public Broadcasting (CPB) to implement the NGWSP for public broadcast entities. CPB proceeded with the grant process specified in the NOFO and was awarded the grant by FEMA in September 2022. CPB then stood-up the NGWS grant program and issued a Request for Applications in beginning in August 2023. MAET submitted its NGWS grant application on September 5, 2023, and was notified of the award of the grant on October 13, 2023. Extension Request at 3.

¹⁶ Extension Request at 3.

¹⁷ *Id.*

¹⁸ *Id.* at 4.

that “[T]he public will not be harmed by the temporary waiver because MAET will continue to use its current (legacy) EAS equipment for emergency alerting until the new equipment is operational.” On November 21, 2023, America’s Public Television Stations and the Corporation for Public Broadcasting filed comments in support of MAET’s request.¹⁹

III. DISCUSSION

7. A provision of the Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²⁰ The Commission may find good cause to extend a waiver “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²¹ The waiver applicant generally faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²² Based on the circumstances described herein, we conclude there is good cause to provide an extension of time until April 30, 2024, to accommodate the anticipated purchasing, installation and testing timeframe estimated by MAET.

8. First, through discussion by the Commission’s Public Safety and Homeland Security Bureau staff (PSHSB) with MAET’s legal representative and engineering team, it became apparent that that several of MAET’s stations are already utilizing EAS equipment capable of complying with the Commission’s rules and, in fact, only eight of MAET’s stations require an extension of the compliance deadline: stations WMAO-FM, WMAO-TV, WMAU-FM, WMAU-TV, WMAW-FM, WMAW-TV, WMPN-FM, and WMPN-TV.²³ Specifically, according to MAET engineers, these eight stations utilize older DASDEC-II hardware from Digital Alert Systems, which include only 32-bit CPUs running software version 4.3 or 4.4 and are incapable of receiving the necessary software update to accommodate the December 12, 2023 deadline. The remaining eight stations included in MAET’s waiver are using newer DASDEC-II hardware with 64-bit CPUs which can accommodate the necessary software update. As such, there is no basis to provide relief for these latter eight stations.

9. As to the eight stations with equipment that require replacement in order to become compliant, we find it in the public interest to accommodate a reasonable and narrowly-tailored extension of time to support the intended use of the procured DHS grant, particularly in light of the challenges MAET would face as a state government body and public broadcasting entity to otherwise identify funds for equipment replacement outside of the grant process. In particular, MAET also argues that, the Commission should also consider hardship, equity, and more effective implementation of the FCC’s underlying policy rationale in its waiver analysis, in that the NGWS grant program prioritizes funding that improves emergency alerting for underserved communities, including tribal, minority and rural communities. We agree with MAET that the particular use and intent, in part, of the Federal grant program would be furthered by MAET’s use of the funds to support the equipment upgrade for compliance with the Commission’s CAP prioritization rules and justify waiver of our rules in this instance.²⁴

10. MAET also represents that during the pendency of the upgrades, that the EAS equipment now in place will continue to operate in all respects except for the CAP prioritization aspect until the new

¹⁹ America’s Public Television Stations and Corporation for Public Broadcasting Comments (APTS and CPB Comments), PS Docket No. 15-94 (filed Nov. 21, 2023).

²⁰ 47 CFR § 1.3.

²¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²² *WAIT Radio v. FCC*, 418 F.2d at 1157.

²³ MAET notes that its public TV and public radio stations “share” transmission sites and EAS encoders, which means that these eight stations are served by four sets of EAS equipment.

²⁴ Extension Request at 5; APTS and CPB Comments at 1, 7.

equipment is installed, so there will be no interruption to alerting. We condition our grant on the continued operation of the older equipment as so stated.

11. While MAET requests an extension until December 12, 2024, we find that in light of the reduced number of stations in actual need of upgrade as described above, a more limited duration for relief is appropriate. Moreover, in light of this reduced scope and based on its deployment estimates for equipment delivery in March 2024 with deployment and testing immediate thereafter that a date of April 30, 2024, for compliance more appropriately balances the ability of MAET to take advantage of the Federal grant funding offered while still ensuring reasonably timely delivery of these alerting functionalities to the underserved communities MAET cites as its constituents.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, section 11.55(c)(2) of the Commission's rules, 47 CFR § 11.55(c), IS WAIVED, as to stations WMAO-FM, WMAO-TV, WMAU-FM, WMAU-TV, WMAW-FM, WMAW-TV, WMPN-FM, and WMPN-TV, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED IN PART to afford these MAET stations until April 30, 2024.

13. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.²⁵

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

²⁵ See 47 CFR §§ 0.191 and 0.392.