

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

In the Matter of	)	
	)	
The Commercial Mobile Alert System	)	PS Docket No. 07-287
	)	
	)	

**ORDER ON RECONSIDERATION AND ERRATUM**

**Adopted: July 14, 2008**

**Released: July 15, 2008**

By the Commission:

**I. INTRODUCTION**

1. On April 9, 2008, we released the Commercial Mobile Alert System First Report and Order (*CMAS First Report and Order*),<sup>1</sup> in which we adopted technical requirements necessary to enable participating Commercial Mobile Service (CMS) providers to offer a Commercial Mobile Alert System (CMAS) to their customers, as required by section 602(a) of the WARN Act.<sup>2</sup> In the Order we adopt today, we take two actions relating to the *CMAS First Report and Order*. First, on our own motion we reconsider and clarify the timeline under which the *CMAS First Report and Order* required CMS providers to implement the CMAS technical requirements, standards and protocols. Second, we correct the effective date of the rules we adopted in the *CMAS First Report and Order*.

**II. ORDER ON RECONSIDERATION**

2. In its recommendations, the CMSAAC recommended a 12 month period from the date of submission of the Commercial Mobile Service Alert Advisory Committee (CMSAAC) recommendations for CMAS participants to complete an industry standardization process.<sup>3</sup> Subsequent to that standardization period, the CMSAAC recommended that participating CMS providers be provided an additional 18 to 24 months to test and deploy the CMAS.

3. In the *CMAS First Report and Order*, the Commission adopted a timeline for compliance with the rules adopted therein.<sup>4</sup> In the new section 10.11 of the rules, the Commission required that:

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<sup>1</sup> The Commercial Mobile Alert System, *First Report and Order*, PS Docket No. 07-287, FCC 08-99 (2008) (*CMAS First Report and Order*).

<sup>2</sup> Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, (2006) (WARN Act), § 602(a).

<sup>3</sup> CMSAAC recommendations, § 12.2 and Figure 12-1. The CMSAAC submitted its recommendations to the Commission on October 12, 2007.

<sup>4</sup> *CMAS First Report and Order*, ¶¶ 92-95.

Notwithstanding anything in this part to the contrary, a Participating CMS provider shall comply with the rules in this part no later than 10 months from the date of announcement by the FCC of an entity or entities to provide the Alert Aggregator and Federal alert gateway functions.<sup>5</sup>

4. Upon further review of section 10.11 of our rules, we are concerned that it may lead electing CMS Providers to the erroneous conclusion that they must begin delivering CMAS alerts to consumers at the end of the ten-month period discussed in the rule. This was not our intention. Rather, we intended that our rules would be implemented in a manner consistent with the CMSAAC recommended timeline.

5. In order to ensure that the date by which electing CMS providers must comply with the technical rules adopted in the *CMAS First Report and Order* is clear, we clarify on our own motion the manner in which the CMAS First Report and Order implements the CMAS deployment timeline. Accordingly, we revise paragraph 95 of the *CMAS First Report and Order* to read as follows:

The Federal Alert Aggregator and Alert Gateway will make the Government Interface Design specifications available. In accordance with the CMSAAC proposed timeline, CMS providers must begin development and testing of the CMAS in a manner consistent with the rules adopted in this *CMAS First Report and Order* no later than 10 months from the date that the Alert Aggregator/Alert Gateway makes the Government Interface Design specifications available.<sup>6</sup> This time period is consistent with the 10 months the CMSAAC proposed timeline indicates would elapse between the availability of the Aggregator/Gateway interface design specification and the beginning of CMAS development and testing. We believe that this will give the government and industry stakeholders sufficient time to begin development, including the federal government's role. It will also give electing CMS providers adequate time to come into compliance with the rules adopted herein.<sup>7</sup>

6. For the same reasons we revise section 10.11 of our new part 10 to read as follows:

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<sup>5</sup> *CMAS First Report and Order*, Appendix C, Section 10.11.

<sup>6</sup> We state *infra* that this Report and Order shall become effective 60 days after publication in the Federal Register, except that any new or modified information collection requirements contained in the Appendix will not become effective prior to OMB approval. However, the rules themselves specifically state that CMS providers must begin development and testing of the CMAS in a manner consistent with the CMAS rules no later than 10 months from the date that the entity or entities identified to perform the Alert Aggregator and Alert Gateway functions makes the Government Interface Design specifications available. This is similar to Commission's adoption of rules requiring all EAS Participants to be able to receive CAP formatted EAS alerts no later than 180 days after FEMA publishes the technical standards and requirements for such FEMA transmissions. See Review of the Emergency Alert System, 22 FCC Rcd 13275, 13310 and Appendix C; see also 47 C.F.R. § 11.56. That Order became effective 30 days after publication in the Federal Register, or 60 days after Congress's receipt of a Congressional Review Act report, except that new or modified information collections did not become effective prior to OMB approval.

<sup>7</sup> We note that our adoption of an effective date and compliance deadline have no impact on the WARN Act's requirement that CMS providers notify the Commission whether or not they intend to transmit emergency alerts within 30 days of the Commission's issuance of rules required under section 602(b). See WARN Act, § 602(b).

Notwithstanding anything in this part to the contrary, a Participating CMS provider shall begin development and testing of the CMAS in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.<sup>8</sup>

7. We will address issues concerning the timing of CMAS testing and deployment, including the CMSAAC's recommendation for up to an additional 24 months for initial deployment, in a subsequent order.

### III. ERRATUM

8. The last sentence of paragraph 100 of the *CMAS First Report and Order* is corrected to read as follows:

The Order shall become effective 60 days after publication in the Federal Register, except that any new or modified information collection requirements contained in Appendix C will not become effective prior to OMB approval. We will publish a notice in the Federal Register announcing the effective date of any information collections.

### IV. PROCEDURAL MATTERS

9. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>9</sup> requires that a regulatory flexibility analysis be prepared for notice and comment proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>10</sup> The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."<sup>11</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>12</sup> Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>13</sup>

10. In the *CMAS First Report and Order*, the Commission adopted technical rules necessary to enable CMS alerting capability for CMS providers who elect to transmit emergency

<sup>8</sup> A revised section 10.11 is set forth in the rules in the Appendix.

<sup>9</sup> The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been modified by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>10</sup> 5 U.S.C. § 605(b).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

<sup>13</sup> 15 U.S.C. § 632.

alerts to their subscribers. In this *Order on Reconsideration*, the Commission is clarifying that participating CMS providers, including small entities, do not have to begin to deliver CMAS alerts at the end of the ten-month period discussed in the *CMAS First Report and Order*. Thus, the burden estimates under both this Order on Reconsideration and the CMAS First Report and Order are identical. Therefore, we certify, pursuant to section 605(b) of the RFA, that the action taken herein will not have a significant economic impact on a substantial number of small entities.

#### V. ORDERING CLAUSES

11. IT IS ORDERED, that pursuant to sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act, this Order on Reconsideration and Erratum IS hereby ADOPTED.

12. IT IS FURTHER ORDERED, that the rules adopted in this Order on Reconsideration shall become effective 60 days after publication in the Federal Register, except that any new or modified information collection requirements contained in the Appendix will not become effective prior to OMB approval. We will publish a notice in the Federal Register announcing the effective date of any information collections.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47

C.F.R.

Part 10 as follows:

**PART 10—COMMERCIAL MOBILE ALERT SYSTEM**

1. The authority citation for Part 10 continues to read as follows:

Authority: 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

2. Revise § 10.11 to read as follows:

§ 10.11 CMAS Implementation Timeline.

Notwithstanding anything in this part to the contrary, a Participating CMS provider shall begin development and testing of the CMAS in a manner consistent with the rules in this part no later than 10 months from the date that the Federal Alert Aggregator and Alert Gateway makes the Government Interface Design specifications available.