

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

In the Matter of)
)
Review of the Emergency Alert System) EB Docket No. 04-296
)
)

ORDER

Adopted: November 18, 2010

Released: November 23, 2010

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. Section 11.56 of our rules states in relevant part that “all EAS¹ Participants must be able to receive CAP-formatted² EAS alerts no later than 180 days after FEMA publishes the technical standards and requirements for such FEMA transmissions” (the CAP reception requirement).³ In this order, for the reasons set forth herein, we waive pursuant to section 1.3 of our rules⁴ the 180-day period for implementation of the CAP reception requirement until September 30, 2011. We believe that this amount of time will prove sufficient for an orderly and efficient implementation of the CAP reception requirement.

II. BACKGROUND

2. On July 12, 2007, the Commission adopted the *EAS Second Report and Order*,⁵ in which it revised its Part 11 EAS rules,⁶ including the adoption of the CAP reception requirement in section

¹ The “EAS,” or Emergency Alert System, was established in 1994. See Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System, FO Docket 91-301, FO Docket 91-171, *Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 15503, 15503-15506 ¶¶ 1-4 (1994) (*1994 Report and Order*)(EAS, as successor to CONELRAD and EBS, is intended to be a national alerting system). The system also is used for the provision of state and local emergency alerts to the public since it was opened to state and local participation in 1963, and several thousand state and local EAS messages are transmitted annually. See *EAS Second Report and Order and Further Notice of Proposed Rule Making*, 22 FCC Rcd 13275, 13282 ¶ 14 (2007) (*EAS FNPRM*).

² The Common Alerting Protocol, or “CAP,” is an XML-based open, interoperable, data interchange format for collecting and distributing all-hazard safety notifications and emergency warnings to multiple information networks, public safety alerting systems, and personal communications devices. See <http://www.oasis-emergency.org/cap>.

³ 47 C.F.R. § 11.56.

⁴ 47 C.F.R. § 1.3.

⁵ Review of the Emergency Alert System; Independent Spanish Broadcaster Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, EB Docket No. 04-296, *Second Report and Order and Further Notice of Proposed Rule Making*, 22 FCC Rcd 13275, 13288 ¶ 26 (2007) (*EAS Second Report and Order and FNPRM*).

⁶ See 47 C.F.R. §11.1, *et seq.*

11.56.⁷ The purpose of the CAP reception requirement is to “further[] the prompt development of a state-of-the-art, next-generation national EAS.”⁸ This rule went into effect on December 3, 2007.⁹ No party sought reconsideration of or appealed the CAP reception requirement.

3. On July 30, 2008, FEMA announced its intention to adopt a version of CAP,¹⁰ and in late 2009, announced that this adoption could occur as early as the third quarter of 2010.¹¹ In March 2010, the Commission’s Public Safety and Homeland Security Bureau (Bureau), in anticipation of FEMA’s adoption of CAP, released a public notice seeking comment regarding the extent and manner in which the Commission may need to revise its Part 11 rules pending FEMA’s adoption of CAP (*Part 11 PN*).¹² The PN also sought comment on facts and stakeholder concerns that had arisen since the Commission’s 2007 Order.¹³

4. The Bureau received 14 comments and 10 replies to the *Part 11 PN*, the vast majority of which asserted that 180 days was an insufficient period to fulfill the mandate of the CAP reception requirement. Commenters variously stated that a 180-day cycle does not comport with vendors’ and EAS Participants’ budgeting schedules and, moreover, is insufficient given the relatively small number of manufacturing companies versus the large number of EAS Participants, the need for customer testing and approval (which alone may take more than 180 days), insufficient guidance regarding whether the FCC would require certification of CAP-compliant equipment, FEMA’s recently announced conformance testing of such equipment, uncertainty regarding encoder/decoder reactions to an EAN (the national alert event code), and a lack of provision for unforeseen events.¹⁴ Even the single commenter that stated that the 180-day clock was sufficient for itself conceded that “[s]ome segments of the user base, such as wireless and cable providers, have acceptance cycles that last longer than 180 days” and advised that should the Commission waive the deadline, a waiver should not be for “longer than a year.”¹⁵

5. On September 30, 2010, FEMA published the technical standards and requirements for CAP-formatted EAS alerts, triggering the CAP reception requirement’s 180-day clock, under which the

⁷ *Second Report and Order*, 22 FCC Rcd at 13288 ¶ 26.

⁸ *Id.*

⁹ See 72 Fed. Reg. 62,123 (2007).

¹⁰ See “FEMA Announces Intention To Adopt Common Alerting Protocol 1.1” available at <http://www.fema.gov/news/newsrelease.fema?id=45424> (last accessed Nov. 20, 2009).

¹¹ See “FEMA Reaches Milestone With Integrated Public Alert & Warning System” available at <http://www.fema.gov/news/newsrelease.fema?id=49848> (last accessed Nov. 20, 2009). The FEMA release indicated that OASIS had voted to approve the OASIS Common Alerting Protocol (CAP) v1.2 USA IPAWS Profile. That document, which is intended as a technical specification detailing how CAP is to be applied to various alerting systems, may be found at: <http://docs.oasis-open.org/emergency/cap/v1.2/ipaws-profile/v1.0/cd03/cap-v1.2-ipaws-profile-cd03.doc>

¹² See Public Safety and Homeland Security Bureau Seeks Informal Comment Regarding Revisions to the FCC’s Part 11 Rules Governing the Emergency Alert System Pending Adoption of the Common Alerting Protocol by the Federal Emergency Management Agency, EB Docket No. 04-296, *Public Notice*, DA 10-500 (PSHSB rel. Mar. 25, 2010) (*Part 11 PN*).

¹³ *Id.*

¹⁴ See Monroe Comments at 6-7; NAB Comments at 4-5; NCTA Comments at 4; NSBA Comments at 5; SpectraRep Comments at 4-5; Timm Reply Comments at 6; Trilithic Comments at 2; Monroe Reply Comments at 2; Nevada SECC Reply Comments at 1; NSBA Reply Comments at 3; Trilithic Reply Comments at 1; TFT Reply Comments at 2; Timm Reply Comments at 6.

¹⁵ Sage Reply Comments at 2-3.

deadline would be March 29, 2011.¹⁶ The three documents defining the FEMA Integrated Public Alert and Warning System (IPAWS) technical standards and requirements for CAP and its implementation are: (1) the OASIS CAP Standard v1.2; (2) an IPAWS Specification to the CAP Standard (CAP v1.2 IPAWS USA Profile v1.0); and, (3) a CAP to EAS Implementation Guide.¹⁷

6. On October 7, 2010, the Communications Security, Reliability and Interoperability Council (CSRIC), a Federal Advisory Committee established to provide recommendations to the Commission on how to ensure optimal security, reliability, and interoperability of communications systems, adopted a final report from its Working Group 5A.¹⁸ This working group, a cross-section of industry experts, had been specifically tasked by the CSRIC charter to provide proposed recommendations for revisions to the Commission's Part 11 rules in light of FEMA's pending adoption of CAP.¹⁹ In its report to the CSRIC, Working Group 5A recommended, *inter alia*, that the Commission consider "extending the 180 day clock to 360 days."²⁰ In support of this recommendation, the Working Group echoed many of the concerns raised by commenters to the *Part 11 PN*, and noted that the "trigger point starting the clock, as well as the length of the clock, need to factor in the following criteria in relation to CAP-based national alerts (EAN):

- FEMA adoption of CAP.
- FEMA initiation of IPAWS network for EAN dissemination.
- CAP-IPAWS conformance testing of devices/systems to be potentially connected to the IPAWS network
- FCC type certification of any CAP EAS devices mandated for EAS Participants."²¹

The CSRIC report also stated that other "factors the commission must consider are how long it will take EAS participants to implement the following:

- Obtaining IP connectivity to receive the CAP EAN
- Equipment procurement, installation, and testing."²²

7. On October 21, 2010, a number of broadcast and cable entities filed a petition for expedited extension of the 180-day CAP compliance deadline (the Petition).²³ The Petition reiterates many of the foregoing commenters' concerns, such as insufficient time for budgeting, manufacturing,

¹⁶ See FEMA, "FEMA Announces Adoption Of New Standard For Emergency Alerts," available at <http://www.fema.gov/news/newsrelease.fema?id=52880> (last visited Oct. 1, 2010).

¹⁷ See FEMA, "FEMA Announces Adoption Of New Standard For Emergency Alerts," available at <http://www.fema.gov/news/newsrelease.fema?id=52880> (last visited Oct. 1, 2010).

¹⁸ See CSRIC, Working Group 5A, CAP Introduction, Final Report (*CSRIC Report*)

¹⁹ *CSRIC Report* at 3.1.

²⁰ *CSRIC Report* at 5.1. 360 days would fall on September 25, 2011, a Sunday. Under the Commission's rules, the actual deadline would thus fall on the next business day, Monday, September 26. See 47 C.F.R. § 1.4.

²¹ *CSRIC Report* at 5.1.

²² *CSRIC Report* at 5.1.

²³ See Petition for Expedited Extension of the 180-Day "CAP" Compliance Deadline of Named State Broadcasters Associations, National Association of Broadcasters, National Cable and Telecommunications Association, Society of Broadcast Engineers, American Cable Association, Association for Maximum Service Television, National Public Radio, Association of Public Television Stations, and the Public Broadcasting Service (filed in EB Docket 04-296, Oct. 21, 2010) (Petition).

acquisition, and testing of encoder/decoders fulfilling the CAP reception requirement, as well as uncertainty regarding conformance testing and certification.²⁴ The Petition also expresses concern regarding further revisions to our Part 11 rules which also might affect the CAP reception requirement.²⁵ Accordingly, the Petition seeks “at least an additional six months to September 30, 2011” for coming in to compliance with the CAP reception requirement, or “other appropriate relief, including, but not limited to, a longer extension as well as holding the deadline in abeyance until the FCC has completed its own CAP-related equipment certification process and has resolved its anticipated rulemaking proceeding concerning modifications to Part 11 of the Commission’s rules necessary to reflect the implementation of CAP.”²⁶

III. DISCUSSION

8. The Commission may, on its own motion, waive its rules for good cause shown.²⁷ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule.²⁸ Based on the events subsequent to the Commission’s 2007 adoption of section 11.56, the CSRIC’s Working Group 5A report, the comments filed in response to the Bureau’s *Part 11 PN*, and the Petition, we conclude that a waiver of the CAP reception rule is appropriate until September 30, 2011. We believe that this waiver is justified due to unique and unusual factual circumstances which make strict compliance with the rule inconsistent with the public interest, and provide this limited waiver relief in a manner that will not undermine the policy of the rule, but rather will help ensure the rapid and efficient development an effective state-of-the-art alerting system.

9. Our decision today is consistent with prior instances where the Commission has temporarily waived rule requirements where, *inter alia*, “licensees have demonstrated that they faced factors beyond their control, including difficulties in obtaining viable, affordable equipment.”²⁹ In this case, we are concerned that licensees would face difficulties in obtaining viable equipment within 180 days of FEMA adopting CAP due to the design and manufacturing factors brought up by commenters to the *Part 11 PN*. We believe that these difficulties would be exacerbated by the material changes to the EAS CAP landscape, some of which are quite recent, that have occurred since the Commission adopted section 11.56 in the 2007 *Second Report and Order*. For example, FEMA has only recently indicated that it would require CAP conformance testing,³⁰ thus triggering the novel issue of the relationship between the FEMA CAP conformance testing and the Commission’s Part 11 certification requirement.³¹ Even more recently, FEMA recognized the need for a translation guide for CAP alerts to the current Specific

²⁴ Petition at 4-6.

²⁵ Petition at 5.

²⁶ Petition at 3.

²⁷ 47 C.F.R. § 1.3. *See, also Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“FCC has authority to waive its rules if there is “good cause” to do so.”).

²⁸ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

²⁹ *See Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service, Memorandum Opinion and Order*, 23 FCC Rcd. 5894, 5905 ¶ 24 (2008) (granting a limited extension of time to permit licensees to continue to build out their licenses).

³⁰ The conformance testing of Emergency Alert System (EAS) equipment to the CAP v1.2 USA IPAWS Profile v1.0 (Profile) began on June 1, 2010. *See* FEMA, Industry Outreach, *available at* <http://www.fema.gov/emergency/ipaws/outreach.shtm> (last visited Oct. 29, 2010).

³¹ *See* 47 C.F.R. § 11.34.

Area Message Encoding (SAME) EAS alerts, and, in its September 30 announcement, adopted a “CAP to EAS Implementation Guide” for this purpose.³² Under these circumstances, we believe that it is reasonable to provide additional time so that manufacturers and vendors may respond to these changed circumstances within their product development cycles. Commenters also indicate that there is a lack of clarity regarding the need for, and requirements of, Commission certification of CAP compliant equipment, an issue we discuss below.³³ Taken collectively, we conclude that these factors would make full adoption of the CAP reception rule unduly burdensome; to the extent it is even possible, within 180 days of FEMA’s September 30, 2010 adoption of CAP.

10. Given the foregoing factors, we believe that a waiver is warranted. It is in the public interest to provide EAS Participants with enough time to correctly and efficiently implement the requirements for a Next Generation EAS. We are concerned that retaining the 180-day deadline would lead to an unduly rushed, expensive, and likely incomplete process. On the other hand, our decision to waive the deadline for a period not to extend beyond September 30, 2011 will not undermine the policy of the CAP reception requirement, but will rather enhance parties’ ability to “further[] the prompt development of a state-of-the-art, next-generation *national* EAS.”³⁴

11. We also note that we intend to revisit the issue of CAP acceptance by EAS Participants, in an upcoming notice of proposed rulemaking undertaking a comprehensive review of the impact of CAP on our Part 11 rules, including the CAP reception rule and the issue of Commission certification under its Part 11 rules of CAP compliant equipment. We anticipate that the upcoming notice will review the issues of Commission certification of EAS devices, as well as current FEMA testing of such devices, and that a subsequent order will provide clarity on these issues. As such, the notice should fully address the concerns raised in the Petition. We further anticipate that we will complete that rulemaking prior to the expiration of the waiver period granted in this Order. Under these circumstances, we do not contemplate any further waivers of the CAP reception rule. In that notice, however, we will seek comment on whether the extension for CAP acceptance by EAS Participants granted in this waiver order is sufficient, and reserve the right to further extend the date for CAP reception in any new rule we may adopt.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, THIS ORDER in EB Docket No. 04-296 IS ADOPTED, and

³² One commenter to the *Part 11 PN* noted: “since FEMA is not adopting the Implementation Guide, they are likewise not testing in their Conformance Lab for equipment adherence to this Implementation Guide. It would seem then, since non-adherence could result in lack of detection of duplicate messages in the Commission’s legacy EAS network, that the FCC should then require equipment conformance testing to the Implementation Guide criteria.” Timm Comments at 8-9. We note that FEMA has in fact adopted the Implementation Guide so this concern has been mooted.

³³ See, e.g. Sage Comments at 7.

³⁴ *Second Report and Order*, 22 FCC Rcd at 13288 ¶ 26 (emphasis added).

13. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Petition for Expedited Extension of the 180-Day "CAP" Compliance Deadline is granted in part as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

RE: *Review of the Emergency Alert System*, EB Docket No. 04-296

I am pleased to support today's decision to extend the deadline for implementing the new Common Alerting Protocol associated with our nation's forthcoming next-generation Emergency Alert System. Our action today provides the necessary flexibility for handling the pragmatic, nuts-and-bolts challenges associated with this substantial undertaking.

I applaud the broad range of parties – at the Commission and from public safety and industry groups – that are closely collaborating on this important project. I also thank the Chairman for his leadership in this area. By extending the deadline, we are providing a clearer path toward smooth and effective compliance.