STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, DISSENTING IN PART

Re: 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; Randy Gehman Petition for Rulemaking, EB Docket No. 04-296.

While I will support the majority of this order, I do so with one reservation. This item requires that EAS participants report whether or not they are taking steps to provide EAS alerts in languages other than English. In doing so, it recognizes that there are significant impediments to providing multilingual alerts. While participants may fulfill the requirement by stating that no actions are being taken, I have learned that today's reporting requirements tend to miraculously morph into tomorrow's regulations, even if every entity complies. Although I understand the importance of all Americans being able to understand emergency alerts, I am unlikely to support any actions down the road that use EAS participants' legitimate disclosures that they are not implementing multilingual alerts as the sole basis for costly, burdensome rules.

Relatedly, I must dissent in part to the non-existent cost-benefit analysis contained in this item. Instead of an analysis, the item simply concludes that the anticipated costs will be minimal, so "the potential benefits of promoting the delivery of alerts to those who communicate in a language other than English or may have a limited understanding of the English language will far exceed those costs imposed."[1] It adds in a footnote that this analysis is "consistent with [the] principles articulated" in two Executive Orders and that any burdens will be reviewed as part of OMB's Paperwork Reduction Act (PRA) analysis.[2]

While it may be true that the costs of this reporting requirement may not be substantial, an analysis should still be done to show this is the case. In fact, the very Executive Orders cited in the order support such an undertaking. Executive Order 12866, signed by President Clinton, states that:

> In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.[3]

To ensure consistency with this regulatory philosophy, it continues to say that agencies "shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."[4] The Obama Administration reiterated these principles, in Executive Order 13563, stating that agencies must "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs" and that, in doing so, they should "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as

[1] *Supra* para. 26.

[2] *Supra* note 76.

[3] Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

[4] *Id*. at 51,736.

possible."[5] To the extent that some argue that independent agencies are not subject to these executive orders, even the Obama Administration, which this Commission seems keen on following in terms of direction, believes that such agencies should abide by the requirements.[6]

In order to properly balance all of the competing concerns and objectives, our items need to quantify the costs and benefits of any rules being proposed or adopted. This is the only way to make a *reasoned determination* that the benefits outweigh the burdens of regulation. Further, the PRA process is separate and apart from and does not obviate the Commission's obligation to determine whether regulation is justified. Cost-benefit information is needed to inform Commissioners as to the validity of particular rules as they consider and vote an item, not after the fact when the PRA paperwork is done.

In this instance, there is the cost to each EAS participant to create, review and submit a report detailing the steps taken – or not taken – to implement multilingual EAS alerts; states then have to incorporate the information from all participants into their EAS Plans, which will undoubtedly go through layers of review; and this process must be repeated if there is any change in efforts. The benefit is having information on hand about the state of multilingual alerting – whether this will promote these alerts is unproven. I realize that determining costs and benefits is not an exact science, but to not even attempt an analysis to justify our actions is incomprehensible, bad policy and sets dangerous precedent.

Therefore, I vehemently disagree with this cost-benefit analysis – or, more appropriately, lack thereof contained within – and the Commission's continued refusal to bother with such work until after burdens are already imposed.

[5] Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[6] Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 14, 2011); Memorandum from Cass R. Sunstein, Administrator, Executive Office of the President, Office of Management and Budget to the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies (Feb. 2, 2011), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf.