

January 19, 2010

MEMORANDUM TO CLIENTS

Re: FCC Proposes to Mandate National EAS Testing

Comments Due: 30 Days After *Federal Register* Publication

Reply Comments Due: 60 Days After *Federal Register* Publication

The FCC has released a Notice of Proposed Rulemaking (“NPRM”) seeking comment on its proposal to require national testing of the Emergency Alert System (“EAS”). While the FCC’s rules require periodic tests of EAS on the state and local levels, no systematic national test has ever been conducted to determine whether the system will serve its intended purpose of enabling the President to issue a national alert in response to an emergency, nor do the FCC’s current rules require such testing.

Under the proposed rule, all “EAS Participants”¹ would be required to participate in national EAS testing on an annual basis. While the FCC does not propose to set an exact date for the tests, EAS Participants would be given two months advance notice to give them adequate time to prepare and notify the public that a national-level test is pending. To avoid redundancy, the national test would replace the required monthly test for the month in which it occurs. EAS Participants also would be required to submit detailed test results and related data to the Commission within thirty (30) days of national tests so that it can assess any failures or weaknesses in the system.

The FCC requests input on whether its proposal is the best approach to implement national EAS testing. The Commission also asks whether there are any concerns in making all national EAS test results publicly available, which would provide useful diagnostic information to federal, state, and local authorities in evaluating the performance and readiness of EAS. Finally, regarding a technical issue, the Commission notes that some encoders/decoders require a Federal Information Processing Standards (FIPS) location code to transmit emergency messages, which could prevent proper transmission of a national EAS message that does not have the appropriate code. The Commission seeks comment on what measures may be helpful to avoid such potential breaks in the EAS chain during a national-level EAS test.

¹ EAS Participants include analog AM, FM and television broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireless cables systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. *See* 47 C.F.R. § 11.1.

The FCC believes that national EAS testing is important to determine the effectiveness of the current national alerting system and to ensure it functions properly during the future transition to Next Generation EAS and until that system is fully operational. Next Generation EAS, which utilizes the Common Alerting Protocol (“CAP”) to provide enhanced messaging capabilities for emergency alerts, is currently under development by FEMA. As established in an FCC order issued in July 2007, EAS participants will be required to accommodate both Next Generation EAS and CAP within 180 days of FEMA’s adoption of relevant standards (see our “Memorandum to Clients” dated July 18, 2007). It is anticipated that FEMA will adopt CAP as early as the third quarter of 2010; its adoption of Next Generation EAS will presumably occur at a later time.

Comments and reply comments regarding national EAS tests will be due 30 and 60 days, respectively, after publication of the NPRM in the *Federal Register*. We would be pleased to respond to any questions regarding these matters.

FLEISCHMAN AND HARDING LLP