
The FCC Proposes National Emergency Alert System Testing Rules

by Richard R. Zaragoza and Paul A. Cicelski

Comments are due by March 1, 2010 and Reply Comments are due March 30, 2010 to the FCC's proceeding to implement national emergency alert testing at least once a year and to collect station data from such tests.

In a Second Further Notice of Proposed Rulemaking ("NPRM") concerning updating of the nation's Emergency Alert System ("EAS") to meet modern security concerns, the FCC proposes to require testing of the EAS on a nationwide basis. To date, the EAS has never been used to deliver a **national** EAS alert. While Part 11 of the FCC's rules requires periodic testing of state and local EAS alerts by all radio and television EAS participants, no national test of the EAS has ever been conducted, and the current rules do not require such testing. As a result, it is not known whether the system would in fact function as required should the President issue a national alert. Accordingly, the FCC proposes to require EAS participants to take part in national EAS testing, as well as continue a modified schedule of the weekly and monthly EAS already in effect.

As part of the new testing process, the FCC is proposing to require all EAS participants to record and submit detailed documentation to the Commission within 30 days after each national test, and is asking whether or not to make the results of the tests available to the public. The FCC is specifically proposing that all EAS participants provide to the Commission the following test-related diagnostic information from each message source monitored at the time of the national test:

- whether the reporting station received the alert message during the designated test;
- whether the reporting station retransmitted the alert; if the reporting station was not able to receive and/or transmit the alert, its 'best effort' diagnostic analysis regarding the cause or causes for such failure;
- a description of the reporting station's identification and level of designation (Primary Entry Point (PEP), primary (LP-1) and secondary (LP-2) assignments);
- the date/time of receipt of the Emergency Action Notification (EAN) message, the date/time of PEP station acknowledgement of receipt of the EAN to FEMA, the date/time of the initiation of actual broadcast of the Presidential message, and the date/time of receipt of the Emergency Action Termination (EAT) message;

- what sources were being monitored at the time of the test; and
- the make and model number of the EAS equipment utilized.

The FCC is seeking comment on its proposal that EAS participants should be given at least 60 days advance notice prior of any national test and that each national test should replace the monthly test for all EAS participants in the month in which it occurs. The NPRM also asks for comments regarding the Encoder/Decoder (ENDEC) equipment used to retransmit EAS codes, which differ depending on the manufacturer, and whether those differences may impact the ability of ENDECs to properly relay national EAN event codes.

Should you have any questions regarding the FCC's EAS NPRM, or wish to submit comments to the FCC concerning it, please contact any of the attorneys in the Communications Section.

As a further note, although the national testing requirement is only a proposal at this point and likely will not go into effect for several months at the earliest, it seems clear from the NPRM that the FCC is convinced that some form of national testing of EAS should be adopted. This is largely because the FCC believes the “daisy chain structure” upon which the EAS is designed makes the EAS “potentially vulnerable to ‘single point of failure’ problems, *i.e.*, where failure of a participating station results in system-wide failure for all points below that station on the daisy chain.” In fact, problems with the EAS were recently discovered in the State of Alaska when FEMA and the FCC, along with State of Alaska officials and the Alaska Broadcasters Association, conducted a live test code of a Presidential alert. According to Bryan Fisher of Alaska's Homeland Security agency, officials “found a few anomalies with equipment and programming, as expected.”

Given the experience of Alaska broadcasters during their recent national EAS testing, all EAS participating radio and television stations should **immediately** conduct appropriate reviews of their EAS policies, systems and equipment to ensure that their personnel know what to do and that their EAS equipment is functioning properly (on all audio and video streams). In short, given the fact that national EAS testing is highly likely, now is the time to resolve any problems.

The FCC suspended enforcement actions against participants whose stations failed the national test in Alaska. Of course, it would be reasonable for the FCC to suspend such enforcement in connection with the first nationwide EAS test. However, there is no assurance that it will do so, and in any event, it is unlikely that such suspensions will be granted going forward. We know that the Enforcement Bureau of the FCC has historically levied substantial fines against broadcasters for EAS violations so this NPRM should be used as a reminder to all stations that they should re-double their efforts to insure continuous full compliance with the FCC's EAS regulations.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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