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

In the Matter of	)	
	)	
Amendment of Part 73, Subpart G,	)	FO Docket 91-301
of the Commission's Rules Regarding	)	FO Docket 91-171
the Emergency Broadcast System	)	

SECOND REPORT AND ORDER

Adopted: September 24, 1997 **Released: September 29, 1997**

By the Commission: Chairman Hundt issuing a separate statement.

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1. SUMMARY

1. By this Second Report and Order we modify the Emergency Alert System (EAS) as it applies to cable systems and address whether other video providers should be required to participate in the system. We decline to adopt an exemption from the requirements of the EAS based on the size of a cable system, because such an exemption would be inconsistent with our statutory mandate. We are, however, adopting rules that will permit certain small cable systems either to provide the national level EAS message on all programmed channels or to install EAS equipment. Additionally, we will provide a phase-in period to provide additional time for cable television operators to comply with these and other EAS requirements. Further, we adopt rules that address issues of concern to persons with hearing disabilities by requiring larger cable systems to provide both audio and video messages on all channels. Our decision in this matter reflects our effort to balance the important safety objectives of the statute against the adverse financial impact on some small cable systems which, if it were to result in failure of some cable systems, would mean loss of service and, therefore, loss of emergency information in those service areas. In summary, we are requiring:

a. all wired cable systems that serve 10,000 or more subscribers to install EAS equipment and provide EAS audio and video messages on all channels by December 31, 1998;

b. all wired cable systems that serve 5,000 or more, but fewer than 10,000, subscribers to install EAS equipment and provide EAS audio and video messages on all channels by October 1, 2002;

c. all wired cable systems that serve fewer than 5,000 subscribers either to provide the national level EAS message on all programmed channels--including the required testing--or to install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.

Further, we will require that wireless cable systems participate in the EAS on the same basis as wired cable systems. We decline, however, to require participation by Satellite Master Antenna Television (SMATV) and Open Video Systems (OVS) in the EAS at this time. We also clarify that requirements of existing local franchise agreements for special warning systems will not be preempted by the EAS as long as they do not conflict with EAS requirements under our rules.

II. BACKGROUND

2. We adopted rules replacing the Emergency Broadcast System (EBS) with the Emergency Alert System (EAS) in a *Report and Order and Further Notice of Proposed Rule Making* (*First R&O*),[1] released December 9, 1994. The EAS incorporates new equipment and procedures that provide an efficient digital signalling protocol and automation of many of the prior

[1] *Report and Order and Further Notice of Proposed Rule Making* (*First R&O*), Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket 91-171/91-301, 10 FCC Rcd 1786 (1994).

manual EBS functions. The *First R&O*, among other things, established rules to implement Section 624(g) of the Communications Act, as amended by the Cable Act of 1992.[2] Section 624(g) provides in pertinent part that "...each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system . . .."[3] The *First R&O*, accordingly, required all cable systems, irrespective of size, to participate in the EAS.[4] Specifically, the rules require cable systems to provide an audio and video EAS message on at least one programmed channel and a video interruption and an audio alert message on all programmed channels.[5] The audio alert message must state which channel is carrying the audio and video EAS message.[6] Additionally, we permitted cable systems either to provide a separate means of alerting persons with hearing disabilities to EAS messages, such as a box that displays EAS messages and activates other alerting mechanisms or lights, or to provide audio and video EAS messages on all channels. Under the *First R&O* all cable systems were required to comply with the EAS requirements by July 1, 1997.[7]

3. In the *First R&O*, however, we invited specific comment on whether an exemption or special waiver policy for small cable systems would be consistent with the statutory mandate of Section 624(g) and, if it were permissible, what the definition of a small cable system for purposes of an exemption might be. We also requested comment on whether to include other video services[8] such as

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2 *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §16(b), 106 Stat. 1460, 1490 (1992) (hereafter Cable Act of 1992). The Cable Act of 1992 required cable systems to participate in the EAS by adding subsection (g) to Section 624 of the Communications Act of 1934, 47 U.S.C. § 544(g).

3 Section 624(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 544(g). This provision remained unchanged by subsequent amendments to the Communications Act. *See generally* the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) revising the cable regulatory requirements but leaving requirements of § 624(g) unchanged.

4 *First R&O* at ¶ 58.

5 The complete requirements for the EAS, including cable television systems, are contained in Part 11 of the Commission's Rules, 47 C.F.R. Part 11.

6 "Video interrupt" means flashing a television picture with a blank screen. An "audio alert message" means an aural message stating which channel carries the EAS audio and video message. "Audio EAS message" means the aural emergency message as transmitted during an emergency EAS activation. "Video EAS message" means the visual message containing information that identifies the originator, the emergency, the location and the valid time period of an emergency EAS activation.

7 The Commission extended the effective date of July 1, 1997, until a new effective date is established by the Commission. *See Order*, FCC 97-196, 62 Fed. Reg. 33753 (1997).

8 Participation by satellite services, including the direct broadcast satellite (DABS) service, was considered in the

the Multipoint Distribution Service (MDS), Satellite Master Antenna Television (SMATV), and Open Video Systems (formerly Video Dial Tone (VDT)) in the EAS.[9]

4. Additionally, we received comments from representatives of the community of individuals with hearing disabilities. As discussed in greater detail below, these groups contend that the EAS requirements are inadequate to provide satisfactory emergency service to individuals with hearing disabilities.[10] In a *Memorandum Opinion and Order* (*MO&O*) that addressed petitions for reconsideration of the *First R&O,* we deferred consideration of the issues raised by individuals with hearing disabilities until this Second Report and Order.[11]

5. We also received an *ex parte* letter from the Small Cable Business Association (SCBA) regarding the requirement that small cable systems install EAS equipment.[12] SCBA contends that if a small cable system carries the national level EAS message on all programmed channels then the cable system meets the requirements of the EAS. Finally, we received an *ex parte* letter from the National Cable Television Association (NCTA), the National Association of the Deaf (NAD) and the Cable Telecommunications Association (CATA) stating that representatives from each organization had met to discuss proposals to implement the EAS systems. As a result, the parties provided the Commission with an agreement that addresses their mutual areas of concern.[13]

First R&O. The Commission decided that satellite participation and, in particular, DABS participation should be encouraged and permitted but not mandatory. *See First R&O* at ¶¶ 67-69.

9 In response to the *First R&O*, we received 89 comments, 9 reply comments and 10 *ex parte* or late filings. Appendix A lists those who submitted comments, Appendix B lists those who submitted reply comments, and Appendix C lists those who submitted *ex parte* or late filings.

10 *See* Comments of Self Help for Hard of Hearing People California, February 9, 1995; Comments of Self Help for Hard of Hearing People, Inc., February 21, 1995; and Comments of the National Association of the Deaf, Television for All, Telecommunications for the Deaf, Inc., and the National Center for Law and Deafness, February 20, 1995.

11 *Memorandum Opinion and Order*, 10 FCC Rcd 11494, n. 3 (1995).

12 *See* letter dated November 15, 1996, from SCBA to Chairman Hundt.

13 *See ex parte* letter dated March 13, 1997, from the National Cable Television Association (NCTA), the National Association of the Deaf (NAD) and the Cable Telecommunications Association (CATA) to Chairman Hundt. This letter, the details of which are set forth more fully in ¶ 0, describes the concerns of the deaf community that the previous rule did not contain an adequate means of alerting deaf cable subscribers. It also describes that concerns of the cable industry that additional time was needed to implement the increased obligations to address the means of alerting deaf subscribers and the requirements that would be imposed on systems serving fewer than 5,000 customers.

III. DISCUSSION

6. As we discuss in greater detail below, there are two issues regarding cable television systems addressed in this Second Report and Order: 1) the possible grant of an exemption to small cable television systems from the requirements of the EAS; and 2) the objection raised by representatives of persons with hearing disabilities to the option of a separate means of emergency alerting for individuals with hearing disabilities. These issues are interrelated, and our final decision affects both the implementation time and technical requirements of the EAS with which cable television systems must comply.

7. The following table summarizes the technical requirements and the effective dates we are adopting, which are discussed and explained below.

EAS Requirements for Cable Television Systems		
Cable Television Size	**Requirements**	**Effective Date**
Cable systems with fewer than 5,000 subscribers per headend must comply with either A or B	A. Provide the national level EAS message on all Programmed Channels--including the required testing--,OR	October 1, 2002
	B. Install EAS equipment that is capable of providing the Audio Alert Messages on all Programmed Channels; Video Interrupt[14] on all channels; and, Audio and Video EAS Messages on one Programmed Channel.[15]	
Cable systems with 5,000 or more, but fewer than 10,000 subscribers per headend.	Install EAS equipment that is capable of providing Audio and Video EAS Messages on all Programmed Channels.	October 1, 2002
Cable systems with 10,000 or more	Install EAS equipment that is capable of providing Audio and Video EAS Messages on all	December 31, 1998

[14] The video interruption must flash a blank or black television screen simultaneously with, and of the same duration as, the EAS message. The audio alert message must include a statement telling listeners on which channel the EAS video and audio message is displayed and be repeated for the duration of the EAS message. Should this method be used by small cable systems, the cable operator must provide materials to all subscribers, in addition to the audio alert message, informing them which channel will contain the full audio and video message. This material may be distributed in the form of public service announcements included with billing statements or other means available to the cable operator.

[15] The Commission will consider agreements reached by the cable industry and representatives of the deaf community on alternative means of implementing EAS messaging for cable systems serving fewer than 5,000 customers before the October 1, 2002, effective date. *See* ¶ 0.

subscribers per headend.	Programmed Channels.	

A. Small Cable System Exemption and Needs of the Hearing Impaired

8. *Exemption authority*. We sought comment in the *First R&O* on whether the Communications Act, as amended by the Cable Act of 1992, permits the Commission to exempt small cable systems from participating in EAS or to establish a special waiver policy for small cable systems. We requested comment on whether we should waive EAS requirements for certain cable systems on a case-by-case basis or whether there should be an exemption from those requirements for a defined class of small cable systems.[16] Additionally, we sought comment on whether, if we were to exempt a class of small cable systems, we should adopt the Small Business Administration (SBA) definition of small cable systems or whether the definition should be based on gross revenue figures, some other criterion, such as number of subscribers, or a combination of these criteria.[17] We requested specific comments on the costs and benefits of cable system participation in EAS relative to the size of a cable system. We also sought comment as to other factors that would be relevant to a waiver determination.

9. *Comments*. No commenters addressed the argument that the Cable Act of 1992 does not permit the Commission to exempt small cable systems from the requirements of the EAS. Numerous cable operators, however, request exemptions from the EAS for small cable systems on the grounds that the costs imposed by EAS would be too burdensome.[18] Specifically, many of these operators contend that the cost for EAS and related switching equipment estimated in the *First R&O* at $10,000 to $15,000 per headend would have an adverse impact on the finances of small cable systems.[19] Some commenters estimate that the cost for the installation of EAS equipment could exceed $100 per subscriber in a cable system that serves 50 or 100 subscribers.[20] The National Cable Television Association (NCTA) and the

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16 *First R&O* at ¶ ¶ 148-151.

17 In accordance with the Small Business Act, unless other statutory definitions are applicable, the Commission's regulations affecting small cable systems must be based on the small business definition created by the SBA. The SBA defines small businesses as those with annual gross revenues of less than $11 million. In the alternative, we may adopt small business size standards different from those developed by the SBA, subject to SBA approval. *See* 15 U.S.C. § 632.

18 Fifty-five comments supported exempting some cable system operators from EAS participation due to equipment costs.

19 Comments of Houston Cable Inc., January 23, 1995, at 1; Cable Communication of Willsboro Inc., January 23, 1995, at 2; Cascade Cable Systems, January 24, 1995, at 2; Hillcom Communications, Inc., January 30, 1995; WestStar Communications Inc., January 31, 1995, at 3; J&T Cable February 6, 1995, at 1; Rocky Mountain Cable Systems, February 15, 1995, at 1; Mountaineer Cablevision Inc, March 15, 1995, at 1. (The cost estimates for EAS equipment to which most of these comments refer is in the *First R&O*, *supra* note 1, at ¶ 124.)

20 Comments of Helicon Corporation, January 27, 1995, at 1; Comments of Heartland Cable, Inc., January 27,1995, at 1; Comments of Lake Champlain Cable Television February 13, 1995, at 1; Comments of Stephen Cable TV, Inc., February 15, 1995, at

Small Cable Business Association (SCBA) contend that the cost of participation in EAS will be fixed for all cable headends and that a headend with few subscribers, such as one serving a remote area, will not have the capital for EAS expenditures. By contrast, they argue, larger headends will be able to distribute the cost of participation in EAS more widely and avoid large increases in subscriber fees.[21] SCBA expresses concern that the cost will be so high for smaller systems that subscribers may drop services, which would increase the cost burden on the remaining customers.[22]

10. Commenters advocating an exemption from required participation in the EAS for small cable television systems suggest a wide range of size definitions for small cable systems,[23] from as low as 1,000 subscribers to as high as 34,000 subscribers. Most commenters recommend 5,000 subscribers or fewer as the proper definition of a small cable system.[24] SCBA suggests that for purposes of an EAS exemption, a small cable system be defined as one with fewer than 5,000 subscribers. (SCBA also requests relief for cable systems that serve 5,000 to 10,000 subscribers, but notes that the relief should be less than that afforded to those systems with under 5,000 subscribers).[25] SCBA asserts that, on a national basis, there would be an initial expenditure of approximately $100 million by systems with fewer than 5,000 subscribers, if those systems are included in EAS at this time.[26] SCBA states that this would result in only 13 percent of the cable subscribing population paying 82 percent of the national cost for cable participation in the EAS. SCBA concludes that the cost of including cable systems with fewer than 5,000 subscribers in EAS far outweighs the benefit.[27] NCTA and the Cable Telecommunications Association (CATA) also argue for an exemption at the 5,000 subscriber level, stating that eligibility for voluntary participation should be limited to systems serving 5,000 or fewer subscribers.[28] Additionally, NCTA points out that EAS costs are significant enough to make it difficult for small systems to rebuild and upgrade facilities and that affiliation with a multiple system operator (MSO)[29] would not lessen this cost burden.[30] NCTA suggests

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21 Comments of National Cable Television Association (NCTA), Inc. and Cable Telecommunications Association (CATA), Inc. February 22, 1995, at 3. Comments of the Small Cable Business Association, February 21, 1995, at 9.

22 Comments of the Small Cable Business Association, February 21, 1995, at 19.

23 Hillcom, *supra* note 19, at 3; Ashland Entertainment, Inc., January 30, 1995, at 1; Weary, Davis, Henry, Struebing & Troup, January 30, 1995, at 1.

24 Twenty comments included an economic or subscriber size definition.

25 *Id.* at 3.

26 *Id.* at 2.

27 *Id.* at 16,17.

28 Comments of NCTA/CATA, *supra* note Error! Bookmark not defined., at 7.

29 An MSO is a company that owns more than one cable system.

that if the Commission decides not to approve voluntary participation in the EAS for small systems, it adopt a waiver process. Further, NCTA advocates adopting less costly requirements--specifically that the Commission could permit eligible cable systems to purchase only the EAS receiver and determine the best way to disseminate emergency information in consultation with the franchising authority.[31] Alternatively, NCTA contends that because the cost of EAS equipment will probably decrease over time and make EAS participation more affordable, the Commission should permit qualified small systems to implement EAS over a longer phase-in period of five to seven years.[32] Finally, NCTA, NAD and CATA in joint *ex parte* comments provide an agreement they have reached recommending that the Commission expand the industry's EAS obligations from the current rule to one which would require audio and video EAS messaging on all channels in systems serving 10,000 or more customers effective December 31, 1998; expand the industry's EAS obligations from the current rule to one which would require audio and video EAS messaging on all channels in systems serving 5,000 to 10,000 customers effective October 1, 2002; and, work together to reach an agreement on a "best practices list" of how to implement EAS messaging in systems serving (fewer than) 5,000 customers before October 1, 2002.[33] Additionally, NCTA, NAD and CATA state that if they cannot arrive at an agreement regarding the "best practices" prior to the 2002 deadline, that the Commission's current rules requiring an audio EAS message and a video interrupt on all channels and an EAS message on one programmed channel should go into effect.[34]

11. Several commenters seeking relief from the EAS requirements for small cable systems also note that there are other services that provide emergency information, such as AM and FM radio stations and TV stations.[35] Others note that National Oceanic and Atmospheric Administration's NOAA Weather Radio service is provided in their areas.[36] Some who commented note that siren warning systems are an alternative source of emergency alerting.[37] They maintain that a siren system is more effective than EAS because the sirens can be heard at any time of day and can operate during power

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30 *Id.* at 8.

31 NCTA describes a scenario in which the cable operator would turn off all channels on the system except the local broadcast stations and would, through billing inserts, direct subscribers to turn to the local broadcast station in the event of an all-channel black-out. *Id.* at 8, n. 10.

32 Comments of NCTA/CATA at 9.

33 *Ex parte* comments of NCTA, NAD and CATA *supra* note 13.

34 *Id.*

35 The comments of Helicon, *supra* note 20, at 1 and Castle Cable TV, February 6, 1995, at 1 were typical.

36 Comments of Duncan Cable TV Service, February 21, 1995, at 1; Comments of Cable Communication of Willsboro, January 23, 1995, at 2.

37 Comments of Bye Cable, Inc., February 22, 1995, at 1; Comments of GWC Communication Company, January 27, 1995, at 1.

failures.[38] Satellite Cable Service states that several communities it serves have purchased equipment capable of providing override of the audio on all channels of its cable systems and expresses concern about having to replace this equipment with EAS equipment.[39]

12. Other comments, however, stress the importance of participation in EAS by all cable systems irrespective of size. The City of Virginia Beach opposes a blanket exemption for any cable system based on size or revenue as arbitrary and, therefore, a major disservice to the users who would be unable to receive EAS messages from their cable service.[40] HollyAnne Corporation expresses a similar concern.[41] HollyAnne argues that a regional radio or TV station may elect not to interrupt programming to activate the EAS if an emergency affects only a sparsely populated or fringe portion of its viewing audience. A small local cable company, however, may choose to transmit the emergency information to a rural audience in those fringe areas that may be overlooked by broadcasters.[42] Cadco Broadband Communications argues that any delivery system, such as satellite master antenna systems (SMATV), and multichannel multipoint distribution service (MMDS),[43] and smaller cable systems, for which a fee is charged should incorporate EAS, especially if the system serves rural or remote areas.[44]

13. HollyAnne Corporation also states that the cost of EAS equipment has been overestimated in some comments.[45] It asserts that the cost is not prohibitive and that many cable systems already have some of the needed equipment and switching capability for EAS participation. Albrit Technologies and Altronix Systems also comment that equipment costs are not high enough to warrant an exemption. They maintain that the relatively inexpensive equipment will contribute to safety. They further maintain that the cost of equipment can be defrayed in part because of its multipurpose capabilities.[46]

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38 Comments of Lakes Cable Systems, February 8, 1995, at 1.

39 Comments of Satellite Cable Service, Inc., December 5, 1994, at 1.

40 Comments of the City of Virginia Beach, February 28, 1995, at 1.

41 HollyAnne Corporation is an electronics company engaged in the business of manufacturing emergency alerting equipment, including EAS equipment.

42 Reply comments of HollyAnne Corporation, March 20, 1995, at 3.

43 SMATV are entities which serve multiple unit dwellings with multichannel video programming. The programming is generally delivered to a subject building's rooftop and then distributed *via* the building's master antenna system. MMDS in contrast uses terrestrial microwave to deliver multichannel video programming directly to subscribers.

44 Comments Cadco Broadband Communications, February 6, 1995, at 1-2.

45 HollyAnne, *supra* note Error! Bookmark not defined., at 2.

46 Comments of Altronix Systems Corporation, and Albrit Technologies Limited, February 22, 1995, at 5-6 and 9. Altronix and Albrit stated in their comments that their equipment may also be used to inject local and promotional messages.

They urge that small systems be required to participate and that systems with 1,000 or more subscribers provide video text on all channels.

14. *Needs of the Hearing-Impaired*. In comments and *ex parte* presentations, representatives from Gallaudet University and the National Association of the Deaf (NAD) express concern over notification methods established in the *First R&O* for hearing-impaired cable subscribers.[47] In the *First R&O*, the Commission adopted rules that require cable operators either to provide video and audio EAS messages on all cable television channels or to provide a video interrupt and an EAS audio alert on all channels and an EAS video message on one channel. In addition, the Commission required that if a cable company chose the latter, less expensive approach, it would be required to provide in-home alerting devices to members of the hard-of-hearing and deaf community that requested such devices.[48]

15. Organizations representing the hearing-impaired[49] contend that the option of a video interrupt and an in-home alerting device does not meet the alerting needs of the hearing impaired. They argue, for example, that the reliability and effectiveness of such devices is open to question because no such devices currently exist, and technology trials have failed.[50] They also express concerns that the in-home devices would not be portable and would not be required in every home or in other locations. As a result, access to emergency messages could be restricted for a hearing-impaired individual who is not at home.[51] Commenters also express concern regarding the distribution, repair, replacement and use of the devices.[52] These organizations thus urge the Commission to require video messages on all channels.[53] The hearing impaired community, however, recognizes that cost factors have to be taken into consideration in requiring small cable systems to provide all video messaging.[54] Accordingly, as noted

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47 Comments of Self Help for Hard of Hearing People, February 22, 1995, at 2. A transcript of a meeting held on October 12, 1995, attended by representatives from hearing-impaired and cable organizations has been entered into the record.

48 *See First R&O*, *supra* note 1, at ¶ 62.

49 Organizations representing the hearing-impaired include the National Association of the Deaf (NAD), Television for All (TVFA), Telecommunications for the Deaf, Inc. (TDI), the National Center for Law and Deafness, and Self Help for the Hard of Hearing (SHHH).

50 Comments of the National Association of the Deaf Telecommunications Subcommittee on Television and Cable Access at 2.

51 *Id.*

52 *Id.*

53 *Id.* NAD reiterated this request in *ex parte* meetings held by Commission staff with representatives of organizations of the hearing-impaired and cable television representatives. NAD requests that cable systems provide alerts to the public in a manner that gives the hearing-impaired equal access to them, such as a video message on all channels.

54 *See generally*, transcript of *ex parte* meeting held on October 12, 1995, attended by representatives from hearing-

above, NAD and the cable industry have entered into an agreement that provides specific EAS alerting and a framework in which to improve the existing system if technology provides a more effective means of communications.

16. *Decision--Exemption Authority.* The Congressional mandate that all cable systems must carry emergency information to their subscribers is clear. The Cable Act of 1992 amended the Communications Act to provide that cable operators shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the Emergency Broadcast System.[55] The Emergency Broadcast System applies to all broadcast stations. Accordingly, under the language of the Communications Act, all cable systems are subject to the Commission's EAS requirements, which are the successor to the EBS requirements. Moreover, nothing in the statute suggests that Congress intended an exemption based on the size of cable systems, or on any other basis. Though the arguments of financial hardship for small cable systems in implementing the EAS are compelling, we find nothing in the comments filed in this proceeding that offers any legal basis for exempting any class of cable systems from the requirement established by Congress.

17. The comments offer no alternative means sufficient to assure that those who receive video programming through cable will receive the emergency alerting information they would have under the former EBS, now the EAS, if the Commission were to exempt a class of small cable systems from the EAS requirements. We are, therefore, bound by Congressional intent and cannot adopt an exemption for small cable systems. Moreover, there are significant policy reasons to reject an exemption. Cable systems play a significant role in disseminating information across the country. At least 64 percent of the television households in the U.S. have wired cable service,[56] and in many homes cable television is the principal source of information. Requiring all cable television systems, regardless of size, to participate in the EAS would provide emergency messages to larger portions of the U.S. population than was previously possible and would thus decrease loss of life and property damage in an emergency.

18. In light of the statutory requirement that all cable systems, regardless of size, participate in the EAS, we must reject alternatives proposed by commenters. NCTA's proposal to allow cable operators to purchase an EAS receiver only and consult with the franchise authority to determine how to disseminate emergency information would not satisfy the statutory requirement that cable subscribers be afforded the same emergency information as is afforded by the EAS. The fact that alternative sources of emergency information, including sirens, radio and television stations might exist does not by itself mitigate cable operators' obligation under Section 624(g) of the Communications Act to provide emergency information under the EAS.

19. While we decline to exempt small cable systems from the EAS, or to adopt a specific waiver policy, we wish to address the issue of individual waivers for cable systems raised by NCTA and SCBA. SCBA contends that: 1) the Commission will be overwhelmed by waiver requests from cable systems that serve fewer than 5,000 subscribers; and 2) the costs of preparing a waiver would be

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impaired and cable organizations at pages 53 to 55.

55 Section 624(g) of the Communications Act, 47 U.S.C. § 544(g).

56 *Television and Cable Factbook*, Warren Publishing, Inc., at table I-18 (1996).

prohibitive--SCBA estimates that waiver requests could cost the small cable industry in excess of $34 million.[57] NCTA argues that if the Commission does not exempt small cable systems we should provide a waiver process similar to that which the Commission has authorized in the broadcast area.[58]

20. As we noted in the *First R&O,* the Commission has granted broadcasters' waiver requests on a case-by-case basis and will continue to grant waivers of the EAS requirements in appropriate circumstances upon sufficient showing of need.[59] Further, we believe that economic harm should be a mitigating circumstance in our decision whether we will grant a case-by-case waiver and will consider that factor along with the availability of other sources of emergency alerting capability to make a final determination. SCBA's contention that waivers could cost as much as $4,000 each is not persuasive. We have granted waivers of the EBS to broadcasters based on a simple one-page letter prepared by the station manager.[60] While we appreciate SCBA's concern that Commission staff will be overwhelmed by waiver requests, we believe that the phase-in period will allow sufficient advance planning time to allow the Commission to act on such requests in a timely manner. Finally, we note that there is potential for financial hardship for small cable systems even with an extended phase-in period. Therefore, we will continue to provide waivers on a case-by-case basis.

21. Finally, in an *ex parte* letter, SCBA contends that Congress only intended cable subscribers to receive national EAS messages. Additionally, SCBA argues that the majority of cable programmers and all off-air broadcasters provide national EAS messages. SCBA concludes that the Commission should exempt small cable systems that carry national level EAS messages as part of their programming from the requirements to install a stand-alone EAS system.[61] As we noted in the *First R&O,* cable systems are only required to carry Presidential EAS messages and may on a voluntary basis carry state and local EAS messages.[62] In other words, cable systems are required to provide the same

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57 SCBA calculates this cost based on a waiver request costing $4,000 and all cable systems with fewer than 5,000 subscribers--8,506--requesting a waiver. Comments of SCBA at 20-21.

58 Comments of NCTA at 9.

59 *First R&O*, 10 FCC Rcd at 1830. The request must be made in writing to the FCC's EAS office, Compliance and Information Bureau, Washington, D.C. 20554, and must contain at least the following: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the entity, such as a balance sheet and income statement for the previous two years (audited, if available); (3) the number of other entities that serve the requesting entity's coverage area and that are expected to install new EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience. *Id.*

60 *See*, for example, letter dated September 6, 1994, from Robert H. Butts to Chief, Field Operations Bureau and letter dated October 20, 1994, from Beverly G. Baker, Chief, Field Operations Bureau (now the Compliance and Information Bureau) to Mr. Robert H. Butts, Moody Broadcasting Network.

61 *See* letter dated November 15, 1996, from SCBA to Chairman Hundt.

62 *First R&O* at ¶ 58.

emergency information as broadcast stations.[63] We concluded in the *First R&O* that cable systems must install EAS equipment to meet the requirements of the EAS because, *inter alia*, it would protect the American public during emergencies regardless of their activity, special language needs, or individual impairments.[64] We agree, however, with SCBA's contention that, if a small cable system chooses not to provide state or local emergency warning information and only provides programming that itself carries the national level EAS message (including the required testing), then that cable system will meet the national level EAS requirements. The cable system must have the capability to provide a national level EAS message and required testing. We also note that this decision does not affect the franchising authority's power to require state and local emergency alerting as part of a franchise agreement. We also stress that a cable television system must be capable of providing the national level EAS message on all programmed channels, at all times to meet this requirement. Because the national level EAS message is critical to the nation's security and well-being and is to be used only in the event of a national emergency, the Commission will take appropriate enforcement action against any cable system that falsely claims to provide the national level EAS message on all programmed channels in lieu of installing EAS equipment.

22. *Decision--Needs of the Hearing Impaired.* We agree that the concerns raised by organizations representing persons with hearing disabilities regarding the potential inadequacies of our EAS alerting requirements for cable operators are valid, and we are, therefore, eliminating the option for a cable television system to provide a separate in-home alerting device in lieu of audio and video emergency messages on all channels. We require that cable television systems must place EAS messages consisting of audio and video on all programmed channels. We believe this requirement will help to ensure that EAS messages are as accessible to persons with hearing disabilities as possible. At the same time, however, based on the comments in the record, we recognize that these requirements could pose a financial challenge to some small cable operators. Numerous commenters seeking an exemption from EAS requirements based on size urge the Commission to define a small cable system as one serving 5,000 or fewer subscribers. In light of this evidence, we will not require cable systems that serve fewer than 5,000 subscribers to provide video EAS messages on all channels. Instead, cable systems that serve fewer than 5,000 subscribers will be required to provide a video interrupt and audio emergency alert message on all programmed channels and video and audio EAS messages on at least one programmed channel. Comments from persons with hearing disabilities indicate that this requirement will serve their needs.[65] Further, the Commission will consider agreements reached by the cable industry and representatives of the deaf community on alternative means of implementing EAS messaging for cable systems serving fewer than 5,000 customers before the October 1, 2002, effective date.[66] NCTA, NAD and CATA support this approach.[67] This modification will provide EAS messages to a wider audience and will give hearing-

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63 *Id.*

64 *First R&O* at ¶ 173.

65 *See generally*, transcript of *ex parte* meeting held on October 12, 1995, attended by representatives from hearing-impaired and cable organizations at pages 53 to 55.

66 In fact, the Society of Cable Telecommunications Engineers held a meeting during the 1997 Cable-Tec Expo to organize and begin to develop this "best practices" list.

67 Comments of NCTA, NAD and CATA *supra at* n. 13

impaired subscribers better access to emergency messages while at the same time taking into account the effects of this requirement on cable systems serving fewer than 5,000 subscribers.

23. *EAS Cable Television Cost Estimates.* In response to the Commission's request in the *First R&O* for detailed economic cost estimates to implement EAS for cable television systems, we received information with a wide variation in total cost. The estimates range from a low of $4,500 to $6,500 per headend submitted by HollyAnne Corporation to a high of $40,000 to $50,000 per headend claimed by NCTA.[68] The general range, however, of estimated costs to provide audio and video EAS messages on all channels submitted by small cable operators is between $15,000 and $20,000 per headend.[69] Assuming a cost of $15,000 to $20,000 for EAS equipment on a per headend basis, the cost per subscriber for a 10,000 subscriber system would be approximately three cents per month over a seven-year period. The total cost would be substantially reduced for small systems serving fewer than 5,000 subscribers that are required to provide an audio and video EAS message on only one channel. Based on an approximate cost of $15,000 to $20,000 for a cable system to provide audio and video EAS messages on all programmed channels, we believe that the total cost to provide a cable system with the capability to provide an audio and video EAS message on one channel along with an audio alert message and a video interrupt would be approximately $6,000 to $10,000.[70] Assuming a cost of $6,000 to $10,000 for EAS equipment on a per headend basis: the cost per subscriber for a 4,000 subscriber system would be approximately three cents per month over a seven year period; the cost per subscriber for a 1,000 subscriber system would be approximately twelve cents per month over a seven year period; and, the cost per subscriber for a 100 subscriber system would be approximately $1.20 per month over a seven year period.[71]

24. *Technical/Phase-in Relief.* We believe that relief from the requirement to provide audio and video EAS messages on all programmed channels should be limited to those cable systems serving fewer than 5,000 subscribers. Cable systems with fewer than 5,000 subscribers must, among other things, install EAS equipment capable of providing a video EAS message on at least one programmed channel or, alternatively, provide the national level EAS message on all programmed channels. We believe this action

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[68] See comments of NCTA made during a recorded meeting with the Disabilities Issues Task Force on Emergency Access Systems, October 12, 1995, p. 44. See also comments of HollyAnne Corporation, March 20, 1995.

[69] See comments filed by Cascade Cable Systems projecting a cost of $15,000 per headend filed January 20, 1995 p. 2; comments filed by Weststar on January 31,1995 p.1 indicating a basic cost of $15,000 and under certain circumstance up to $35,000 per headend; comments filed by Avenue TV Cable Services Inc. and Thompson Cable Vision Co. on February, 22, 1995 p.1 estimate a cost of $14,000 per headend; and comments filed by Heartland Cable, Inc. on January, 27, 1995 p.1 estimate a $15,000 cost per headend.

[70] See, for example, *ex parte* filing from TCI estimating the cost of EAS equipment to be $9,105 for cable systems serving fewer than 5,000 subscribers, *and ex parte* filing from Fanch Communications estimating the cost of EAS equipment to be $8,500 for cable systems serving fewer than 5,000 subscribers. The reduced total cost to comply with the EAS for cable systems serving fewer than 5,000 subscribers compared to larger cable systems is due to the greater complexity in providing visual information on multiple channels compared to one channel.

[71] We have assumed the maximum costs and rounded up in calculating the per subscriber costs.

satisfies Congressional intent to provide wider dissemination of emergency information and provide financial relief to small cable systems.

25. SCBA also asks for relief for systems that serve 5,000 to 10,000 subscribers and suggests a special waiver process for systems based on, among other things, financial inability to acquire EAS equipment or lack of financing.[72] We agree with SCBA that systems serving 5,000 to 10,000 subscribers may need financial relief, although we do not think a special waiver process is necessary. While these systems will not be as adversely affected by EAS requirements as are systems serving fewer than 5,000 subscribers, they may still may need additional time to obtain the capital to purchase required EAS equipment. NCTA, in supporting a phase-in period of an additional five to seven years for smaller systems, notes that the cost of equipment is likely to decrease in time.[73] Additionally, the cost of switching equipment permitting all channel video messaging appears to be decreasing.[74] A delay in the implementation time should allow small cable operators to benefit from anticipated equipment cost reductions resulting from the mass manufacturing of EAS equipment used by larger systems. We will allow an additional period to comply with the requirements to provide an audio and video EAS message on all channels for cable systems that serve 5,000 or more, but fewer than 10,000 subscribers from a single headend. We shall delay the implementation of EAS for these systems until October 1, 2002.

26. Our decision in this regard is a balance between the potential financial hardship imposed on certain small operators and our determination that the hearing-impaired require a video EAS message on all channels for cable systems that serve 5,000 or more subscribers as soon as possible.[75] We also think that 10,000 or less subscribers is the proper delineation. In the *Sixth Report and Order and Eleventh Order on Reconsideration* (*Sixth Report and Order*)[76] the Commission afforded streamlined

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72 Comments of SCBA at 21.

73 Comments of NCTA at 9.

74 See note Error! Bookmark not defined. and note Error! Bookmark not defined. *infra*.

75 As noted in ¶ 0 cable systems that carry national level EAS messages on all programmed channels do not have to install EAS equipment.

76 *Sixth Report and Order and Eleventh Order on Reconsideration* (*Sixth Report and Order*), Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266/93-215, 10 FCC Rcd 7393 (1995). In the *Sixth Report and Order*, the Commission established a streamlined cost of service rate regulation methodology for cable systems serving fewer than 15,000 subscribers so long as they are not affiliated with cable companies serving more than 400,000 subscribers. In addition to easing the administrative burden, the small system cost of service methodology is tailored to account for the disproportionately higher costs faced by smaller operators in the provision of cable services. This relief will facilitate the accumulation of funds by the most economically endangered smaller systems, those that are unaffiliated with larger companies. In addition, Congress recently passed legislation which allows for greater rate deregulation for small cable operators, defined as operators that directly or through an affiliate, serve in the aggregate fewer than 1 percent of all subscribers in the United States and are not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. Telecommunications Act of 1996 ("1996 Act"), Pub. L. No. 104-104, §301(c), 110 Stat. 56, approved February 8, 1996; Communications Act, §623(m), 47 U.S.C. §543(m). Pursuant to this amendment, the rate regulation requirements of Sections 623(a), (b) and (c) do not apply to a

rate relief to small cable systems. That relief was afforded to systems serving 15,000 or fewer subscribers that are unaffiliated with companies serving more than 400,000 subscribers throughout all of their systems. In the *Sixth Report and Order*, we found that these systems likely had more difficulty attracting capital, and did "not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies."[77] We do not think that the distinction of affiliation with large companies that we made with respect to streamlined rate relief should be adopted and applied in the EAS context. First, EAS obligations do not encompass the broad long term impact on revenues and administrative responsibilities that rate regulation entails. The capital required to comply with our EAS rules, while not insignificant, is not a recurring cost. Second, we recognize the record contains information indicating that significant discounts do not accrue for volume purchasers, a circumstance that would benefit small systems affiliated with a larger company.[78] We will not delineate between cable systems affiliated with large cable companies and those without an affiliation for purposes of the additional phase in period. This is consistent with the rules we implemented in our Report and Order addressing *Closed Captioning and Video Description of Video Programming,*where we did not distinguish between distributors owned by large entities and other small distributors.[79]

27. As NCTA notes as support for a phase-in period of an additional five to seven years for smaller systems, the cost of equipment is likely to decrease in time.[80] Additionally, the cost of switching equipment that will permit all channel video messaging appears to be decreasing.[81] The delay in the implementation time should also allow small cable operators to benefit from anticipated equipment cost reductions resulting from the mass manufacturing of EAS equipment used by larger systems.

28. In the First R&O we tentatively concluded that the costs of complying with the EAS requirements should be accorded "external cost" treatment for cable rate regulation purposes, but we decided to resolve the matter in a separate proceeding.[82] Cable operators have supported this suggestion,

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small cable operator with respect to "(A) cable programming services, or (B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994," in areas where the operator serves 50,000 or fewer subscribers. *Id.*

77 *Id.* at 7407.

78 See Letter of Francis M. Buono, Willke Farr & Gallagher on behalf of Tele-Communications, Inc. ("TCI"), to William F. Caton, dated February 25, 1997, with accompanying information, stating that any discounts received by TCI for volume purchases of EAS equipment would be *de minimis*. But cf. Letter of Charles S. Walsh, Fleischman and Walsh, on behalf of Falcon Cable, to Suzanne Toller, Legal Advisor to Commissioner Chong, dated March 14, 1997, with accompanying information, stating that the EAS costs enumerated assume Falcon's ability to receive a 30% discount on equipment purchases.

79 *Report and Order, Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176,62 Fed. Reg. 48487 (1997).

80 Comments of NTCA at 9.

81 See note Error! Bookmark not defined. and note Error! Bookmark not defined. *infra*.

82 10 FCC Rcd 1832 (1995).

requesting that the rules allow EAS costs to be directly passed through to subscribers. Subsequent to the commencement of this proceeding, the Commission adopted revisions in the rate regulation process for small cable operators[83] and for small systems[84] that are intended to facilitate accounting for cost increases without the use of the external cost mechanism. Based on these changes and our conclusion that the costs involved here are not sufficiently different from other costs of regulatory compliance to warrant this extraordinary treatment, we have decided not to give further consideration to changes in the rate rules at this time. As was noted in the First R&O, a large number of systems already have emergency information capabilities as a consequence of local franchise agreements.[85] Moreover, it also seems likely that existing rate structures, developed based on industry rates and costs in place subject to these requirements, to some extent already account for such costs.[86] The provisions in the rules for external cost treatment relate only to a limited number of carefully defined categories, such as regulatory fees and programming cost increases,[87] whereas costs of system improvements or to fund regulatory obligations more generally are not permitted pass through treatment under the benchmark regulation process, but may be allowable subject to regulatory approval.[88] EAS expenses are likely to be only a nominal amount on a per subscriber basis for most large system operators, but in those situations where they are not, they appear to us to fit more generally in the category of system upgrades and regulatory requirement expenses that must be accounted for and justified separately.

29. In summary, cable television systems that serve fewer than 5,000 subscribers must either provide the national level EAS message on all programmed channels--including the required testing--or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS

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83 *Order and Notice of Proposed Rulemaking* in CS Docket 96-85, 11 FCC Rcd 5937, paras. 23-32 (1996) (implementing provisions of 1996 Telecommunication Act applicable to small cable operators).

84 *Sixth Report and Order and Eleventh Order on Reconsideration* in MM Docket Nos. 96-266 & 93-215, 10 FCC Rcd 7393 (1995).

85 10 FCC RCD at 1840, para. 153 ("Over 4,000 cable systems . . . have local emergency announcement requirements in their franchises.")

86 The process whereby the "benchmark" rate regulation process was developed is described in the Commission's *Report and Order* in Docket 92-266, 8 FCC Rcd 5631 (1993). Under this process, costs of the type accounted for in the establishment of the initial benchmark levels are not subject to separate pass through treatment. Because, as a general matter, system operators are subject to changes that both increase and decrease costs, the circumstances in which increases are allowed without consideration of balancing decreases have been carefully circumscribed.

87 External costs, as defined in Section 76.922(f) include 1) state and local taxes applicable to the provision of cable television service; 2) franchise fees; 3) costs of complying with franchise requirements, including costs of providing public , educational, and governmental access channels as required by the franchising authority, 4) retransmission consent fees and copyright fees incurred for the carriage of broadcast signals, 5) other programming costs; and 6) Commission cable television system regulatory fees imposed pursuant to 47 U.S.C.§159.

88 See *e.g.*, Section 76.922(i) (cost-of-service rate setting) and Section 76.934(h) (small system cost-of-service methodology).

audio and video messages on at least one programmed channel by October 1, 2002.[89] Cable systems that serve 5,000 or more subscribers will be required to provide EAS messages both in audio and video on all channels. We believe that implementation of EAS will not have an adverse impact on cable systems with 10,000 or more subscribers due to their large subscriber base, thus these systems will be required to comply by December 31, 1998. Systems with fewer than 10,000 subscribers will be required to meet their respective full requirements by October 1, 2002. This phase-in period will allow such cable systems time to integrate acquisition of equipment to support the EAS into their regular replacement and upgrade plans and to budget for the purchase and installation cost of the necessary equipment. Rules for cable system participation are detailed in Appendix D of this document.[90]

B. Preemption of State and Local Standards

30. We requested comment about whether requirements in local franchising agreements for emergency alerting conflict with the federal objective of maintaining EAS nationwide alert capabilities and should be preempted.[91] We noted in the *First R&O* that over 4,000 cable systems have franchise agreements that require a capability to transmit local emergency announcements.[92]

31. The Small Cable Business Association (SCBA) argues for a preemption of state and local emergency alerting requirements. SCBA expresses concern that franchising authorities will require the inclusion of our EAS standards in franchise renewals or, within the term of the franchise, through ordinances.[93] Time Warner comments that a conflict could arise if a national message reaches the cable system's override equipment at the same time that a local official attempts to access the equipment.[94] NCTA/CATA expresses concern over maintaining a uniform, national emergency notification system and urges preemption of any local requirements. Additionally, they desire the preemption of state or local regulations that are more stringent than or inconsistent with the federal guidelines.[95] Cablevision Systems Corporation asks that, in addition to preempting state and local standards, we reapportion the EAS local areas to match entire counties or Areas of Dominant Influence (ADI) in order to minimize conflicting federal and local regulation. Cablevision states that in many cases small villages or towns would impose

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89 Programmed channels do not include channels used for the transmission of data such as interactive games.

90 See ¶ 0 and accompanying table for a complete summary.

91 *First R&O*, at ¶ 153.

92 *First R&O*, *supra* note 1, at ¶ 153.

93 SCBA, *supra* note 22 at 23.

94 Comments of Time Warner Entertainment Company, L.P., February 22, 1995, at 6-7.

95 NCTA/CATA, *supra* note Error! Bookmark not defined., at 11-12.

their own conflicting local rules on cable systems, turning the operation of a cable system into a complex, "daunting regulatory patchwork."[96]

32. Other comments oppose preemption of state or local regulation related to emergency alerts. The National Association of Telecommunications Officers and Advisors (NATOA), which represents more than 650 franchising authorities, states that there is no evidence that local requirements have interfered with the operation of EBS and that the new EAS rules contain nothing that would require a preemptive action. NATOA comments that there is no federal requirement that obligates EAS participants to transmit state or local alerts, but many franchise provisions do require announcements of emergencies to cable subscribers. NATOA states that, without local requirements, operators would be free to ignore requests from local officials regarding emergency announcements.[97] The City of Virginia Beach opposes the preemption of local authority because EAS participation is not required at the state and local level by the federal government.[98]

33. *Decision*. We see no reason to preempt existing franchise agreements that require emergency alerting for local conditions specific to a community such as proximity to nuclear power plants or locations on flood plains. We believe that franchising officials are most familiar with local conditions and threats to their communities as well as the types of emergency information needed to respond to such threats. They are also best suited to work within their communities to develop state and local emergency alerting plans. However, as we discuss in ¶¶ 0 and 0, *infra*, we are concerned about possible conflict between requirements of local jurisdictions and federal regulations regarding the EAS rules. Consequently, we will not preempt a local jurisdiction's ability to negotiate for higher EAS standards in the franchising or franchise renewal process. Should any local jurisdiction's EAS requirements conflict or interfere with those adopted by the Commission, however, the local jurisdiction's requirements will be preempted.[99] Additionally, we will permit the use of EAS header codes to be included in franchise agreements.[100] Further, although we encourage local authorities to use the EAS to alert the public of emergency situations through cable systems and encourage cooperation between local officials and the local cable operators for this purpose, we note that there is no Federal mandate that unilaterally imposes requirements to install EAS equipment before the dates established by the Commission.

34. Finally, an issue has been raised regarding the impact of EAS messages on cable channels carrying broadcast programming. For example, the Commission's Compliance and Information Bureau has received a letter from the National Association of Broadcasters (NAB) regarding Cable Television

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96 Comments of Cablevision Systems Corporation, February 22, 1995, at 5.

97 Comments of National Association of Telecommunications Officers and Advisors (NATOA), February 22, 1995, at 2 and 4-6.

98 Virginia Beach, *supra* note 40, at 1-2.

99 *See Louisiana Service Comm'n v FCC*, 476 U.S. 355, 368-69 (1986).

100 The EAS header code contains the digital information that identifies the originator, event, location, time and date of the emergency.

EAS Override of Local Television Stations.[101] NAB reiterates its concern that cable television systems will interrupt with an EAS message more detailed emergency information programming that broadcast stations provide as part of their normal broadcast programming. NAB is primarily concerned because providing emergency information is a key component of most broadcast stations, and cable television operators may not provide emergency information that is as useful to the viewer during an emergency as broadcasters provide.[102]

35. In response to these concerns, we have modified our rules to clarify that a cable operator (upon written agreement with the broadcaster) may elect not to interrupt the programming of a broadcast station carrying news or weather related information.[1] In addition, we believe that the potential disruption of broadcast emergency information by voluntary local EAS cable messages warrants further investigation.[1] Therefore, the Commission will promptly issue a Further Notice of Proposed Rulemaking focused on whether the Commission's rules are adequate to permit broadcasters to provide their audiences with important local emergency information without interruption by EAS messages provided by cable systems.[1] We are particularly interested in comments addressing how best to encourage voluntary cable participation in the local emergency system without diminishing or adversely affecting emergency coverage by broadcast stations. We will seek comment on issues such as the types of equipment that might selectively permit the carriage of broadcast emergency information, the cost of such selective override equipment and its installation, and the appropriateness of the broadcast information in specific circumstances, *e.g.*, cable systems remote from the center of broadcast service areas. We will also seek comment on the extent to which franchising authorities have imposed requirements for local cable emergency information, whether such franchise requirements would be inconsistent with a requirement that broadcast emergency information be made available, and whether such requirements enhance or diminish emergency information in those franchise areas.

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101 *See* letter dated May 21, 1997, to Beverly G. Baker, Esq., from National Association of Broadcasters.

102 NAB additionally states that the Commission has misconstrued the Congressional intent of the Cable Act and that Congress only intended non-broadcast video programming to carry EAS programming. The Commission's determination in the *First Report and Order* and again in this *Second Report and Order* is that cable television systems must provide the national level EAS message to viewers of cable television programming without discriminating between non-broadcast and broadcast programming.

103 Our rules previously provided simply that the EAS message itself could not be interrupted.

104 *See* letter dated September 8, 1997, from Billy Tauzin, Chairman, Subcommittee on Telecommunications, Trade, and Consumer Protection to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission.

105 In its *Order* adopting rules for the closed captioning of video programming, the Commission noted its concern that emergency programming provided by video programming providers be accessible to persons with hearing disabilities. The Commission indicated its intent to initiate a proceeding to further examine what specific requirements might be appropriate for emergency programming such that it would be accessible to persons with disabilities. The Commission also noted its expectation that methods, such as open visual scrawls, open captioning, and slides, be used to the extent that closed captions are not required. See *Report and Order* in MM Docket No. 95-176, Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility, FCC 97-279, adopted August 7, 1997. In actions regarding the provision of emergency programming, the Commission will continue to be mindful to consider carefully the needs of

C. EAS Participation by Other Services

36. In the *First R&O* we identified broadcasting and cable as mandatory participants in EAS and encouraged the voluntary participation of satellite, DABS, telephone and cellular carriers, public service providers and other services such as Digital Audio Radio and HDTV as they came on line.[106] The Commission recognized that the voluntary participation of such video program providers could provide important information related to the safety of life and property. As a result, the *First R&O* sought comment about whether we should include additional video programming providers such as wireless cable, Video Dial Tone (VDT) now Open Video System (OVS) and Satellite Master Antenna Television (SMATV) in the EAS.

37. *Wireless Cable*. The Wireless Cable Association International (WCAI) states that it supports wireless cable participation in EAS under the timetable we proposed in the *First R&O*,[107] provided small wireless cable systems are afforded the same relief as small cable systems.[108] WCAI expresses concern that the cost of implementation for wireless cable will be twice as much as a standard hardwired cable system. WCAI also points out that wireless cable systems have a smaller subscriber base and thus a smaller cash flow to fund EAS participation when compared to traditional cable systems.[109] WCAI expresses concern about imprecise use of terminology in using "MDS system" and "wireless cable system" interchangeably and states that the system operator, who obtains programming, maintains equipment, bills customers and markets the service, should be responsible for installing and maintaining EAS equipment and not the licensee of the MDS or MMDS station.[110] WCAI contends that MDS and ITFS licensees that passively provide a transmission service to wireless cable operators should not be required to purchase, install, or maintain EAS equipment.[111] Finally, WCAI notes that it will seek changes to the Commission's EAS Rules as technology changes from analog to digital in wireless cable systems.[112]

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persons with hearing disabilities.

106 *First R&O* at ¶ 152.

107 *First R&O*, *supra* note 1, at ¶ 169.

108 Comments of Wireless Cable Association International (WCAI), February 22, 1995, at 2.

109 WCAI estimated that there were 170 wireless cable systems serving 700,000 home in 1994 and that the subscriber base would double by the end of 1995. *Id.*

110 *Id.* at 5-6.

111 *Id.*

112 WCAI notes that wireless cable is changing from a purely analog service to one that combines analog and digital elements and that it is impossible to predict the effects of that transition on the industry's participation in the EAS. As a result, WCAI states that it will seek changes to the EAS rules as may be necessary. *Id.* at n. 5.

38. *Decision*. Our goal is to provide emergency alerts to receivers of video programming. We believe that it is important to provide emergency information to as many people as possible through different means of delivery and that including a wide variety of multichannel video providers such as wireless cable could provide important safety information to viewers. The WCAI gives its qualified support to this proposition. As discussed in the *First R&O* in this proceeding,[113] our authority to impose EAS requirements, outside of the cable television context, stems from Section 303(r) and 706 of the Communications Act. Section 303(r) is a general grant of rulemaking authority to the Commission. Section 706 grants specific, communications-related powers to the President in time of war or national emergency. We conclude, using this authority, that wireless cable entities that own or lease facilities and channels that transmit programming to the public via ITFS, MDS, or MMDS channels must participate in the Emergency Alert System on the same basis as cable systems.[114] We will require wireless cable systems with 5,000 or more subscribers per fixed station transmission site or headend to participate in the EAS and to obtain EAS equipment by October 1, 2002.[115] For those systems, emergency alerts and warnings must be presented to subscribers both visually and aurally on all programmed channels. Programmed channels do not include channels used primarily for the transmission of data services such as Internet services. We will require wireless cable systems with fewer than 5,000 subscribers per fixed station transmission site or headend to participate in the EAS and to obtain EAS equipment by October 1, 2002. For those systems, emergency alerts and warnings must be presented to subscribers aurally on all programmed channels and visually on at least one programmed channel with video interrupt on all channels that do not carry the EAS message. Programmed channel means a channel carrying video programming. Channels not used for video programming are not required to carry EAS messages or alerts. Alternatively, as we provided for small cable systems, wireless cable systems that provide only programming that itself carries the National EAS message and the required testing will not be required to install EAS equipment. As "wireless cable system" is an undefined term in our rules, we will define it for purposes of the EAS to be the aggregate of MDS, MMDS, or ITFS channels used to provide video programming to subscribers in a community. Finally, we will require that the wireless cable system operator be responsible for complying with the EAS requirements. MDS and ITFS licensees that passively provide a transmission service to wireless cable operators will not be required to purchase, install, or maintain EAS equipment for leased channels, nor will licensees that are not involved in a wireless cable system.

39. *Open Video Systems*. The Telecommunications Act of 1996 created a new regulatory category, the Open Video System (OVS). The service formerly referred to as Video Dial Tone (VDT)

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113 *First R&O*, 10 FCC Rcd at para. 5.

114 See Section 11.11 of the Commission's Rules, 47 C.F.R. § 11.11, for the requirements of wireless cable systems to comply with the Emergency Alert System.

115 We proposed that wireless cable systems only be required to install an EAS Decoder. See *First R&O* at ¶ 160. There are, however, no separate EAS Decoders or EAS Encoders manufactured or type accepted. EAS equipment manufacturers have only requested type acceptance of a combination EAS Encoder and Decoder because the incremental cost is insignificant to manufacture a combination unit compared to a separate unit. If EAS Decoders are type accepted we will consider a rule change.

has been replaced by OVS.[116] OVS providers expressed interest in participating in EAS, but cite several reasons for not participating at this time. Bell Atlantic states that we should not mandate EAS participation until technical solutions to EAS implementation on OVS networks can be developed.[117] Bell Atlantic contends that the OVS network provider is not the source of the video signal and that insertion of visual or aural EAS messages present technical challenges.[118] Additionally, because of the use of digital transport technologies, program interruption becomes problematic.[119] Ameritech expresses concerns that some of the signals they will deliver to customers will be transmitted to a wide variety of terminating devices and that the technology to facilitate connections to these devices for EAS purposes has not been designed.[120] BellSouth comments that all signal processing and assembly will occur outside of the common carrier network at the programmer or customer level.[121] BellSouth[122] and Bell Atlantic[123] express concern over legal issues regarding the interruption or modification of a signal carried by a common carrier service. All of the OVS exemption proponents indicate that an industry-wide field test should occur to determine the best method of delivery of EAS messages over an OVS network.[124]

40. Other comments argued that OVS should be required to participate in EAS. Time Warner comments that all multichannel video programming distributors should have EAS rules applied on a neutral basis without regard to competition and technology.[125] Time Warner also notes that the technical difficulties that the local telephone companies cite with respect to implementing EAS are common to all multichannel video programming distributors that will soon deploy digital compression and transmission

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116 OVS rules are currently being drafted by the Commission.

117 Comments of Bell Atlantic, February 22, 1995, at 1.

118 *Id.* at 2.

119 Bell Atlantic stated that programming stored in digital servers does not have real time audio encoding and this makes it difficult for VDT (OVS) providers to insert an audio message. *Id.*

120 Comments of Ameritech, February 22, 1995, at 4. Ameritech stated that an emergency signal transmitted over its VDT (OVS) platform must be able to present an audio or text alert to all termination devices, such as television receivers, or computers using an interactive application.

121 Comments of BellSouth, February 22, 1995, at 4.

122 *Id.* at 8.

123 Bell Atlantic, *supra* note 117, at 5.

124 *Id.* at 3; Ameritech, *supra* note 120, at 4; BellSouth, *supra* note 121, at 3.

125 Time Warner, *supra* note 94, at 1.

technologies and that these providers need to work together towards a solution.[126] The U.S. Small Business Administration (SBA) urges the participation of all services in EAS. SBA raises concerns over competition fairness stating that the absence of EAS requirements may allow a temporary price advantage for services that are exempted.[127] The National Association of Telecommunications Officers and Advisors (NATOA) also supports the inclusion of OVS in EAS because it may provide those who do not subscribe to cable or receive over the air broadcast signals a way of receiving timely emergency information.[128]

41. *Decision*. We recognize that services provided via OVS may serve similar subscriber levels as other competitors offering multichannel programming. At this time, however, OVS service has a very small market penetration. We also note the technical concerns in the comments of the OVS operators, and we are aware that EAS delivery methods have not been developed. We believe that the industry should, as it grows and evolves, make full EAS participation a part of its design. We encourage all multichannel video service providers to develop a standard method of EAS message delivery to their customers. As OVS serves more customers, its impact and contribution to public safety and welfare will be greatly enhanced by EAS participation. Accordingly, the participation of OVS providers in EAS will be voluntary at this time. We shall continue to monitor this industry to determine whether it would be appropriate to require OVS to participate in the EAS.

42. Satellite Master Antenna Television (SMATV) providers retransmit programming to subscribers in apartment complexes and other areas. They are not under direct FCC regulation, but we sought comments regarding their participation in the EAS. Very few comments were filed. We shall continue to monitor this industry to determine whether we should require SMATV participation in the EAS. SMATV's participation in EAS will, therefore, continue to be voluntary.

D. Other matters.

43. We received comments concerning the participation in EAS of cellular telephone and wired telephone services. The Diedrich Company of St. Louis outlines a strategy for the transmission of EAS codes via cellular telephone networks.[129] Packaging Concepts Corporation suggests incorporating a proprietary system of notification using current and developing phone technologies to improve upon the EBS/EAS.[130] While we encourage voluntary participation of these services and initiatives suggested by Diedrich and Packaging concepts, provided they adhere to applicable EAS regulations, we decline to adopt regulations mandating participation by cellular and other Commercial Mobile Radio Service providers as being outside the scope of this proceeding and our statutory mandate.

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126 Reply Comments of Time Warner Entertainment Company L.P., March 24, 1995, at ii.

127 Comments of SBA, *supra* note 25, at 7.

128 NATOA, *supra* note 97, at 7.

129 *Ex parte*/late filing of The Diedrich Company of Saint Louis, July 3, 1995, at 1.

130 *Ex parte*/late filing of Packaging Concepts Corp., July 18, 1995, at 1.

44. The Commission also recognizes that advances in technology will allow new video transmission technologies and services, e.g. Local Multipoint Distribution Service, to be deployed in the future. We encourage the developers and providers of these services to incorporate EAS capabilities in their equipment and systems, but we will not mandate participation in the EAS at this time. Participation by such new services will be voluntary. The Commission will continue to monitor the development of these new video services to determine whether it would be appropriate to require them to participate in the EAS in the future.

45. Commenters have raised concerns regarding implementing EAS in a digital environment. NCTA points out that the new EAS digital technology is inter-operable and fully adaptable to a wide range of technologies.[131] NCTA further states that there is no reason to exclude any video programming distributer on the grounds that its participation is technically infeasible, and cost considerations provide no basis for exemption, except with regard to small operators.[132] Time Warner urges the Commission to apply its rules in a competitively neutral and technology neutral fashion.[133] TFT Incorporated comments that there are several ways that the current EAS protocol can be integrated into new digital broadcasting services.[134] Hollyanne Corporation states that addressing digital insertion under the present rulemaking may be a premature step due to recent developments regarding digital transmissions and that the only technology available across the board today are the devices used to alert hearing-impaired cable customers.[135]

46. In 1993, as part of the EAS rulemaking, the Commission conducted field tests to verify that the EAS digital protocol would be a reliable means of transmitting emergency alert information. These tests included utilizing the EAS protocol with other digital equipment in order to insure that the protocol would work in the upcoming digital environment.[136] These tests demonstrated that the EAS signaling technique can be digitally encoded and decoded for use in a cable headend. During the western field test EAS messages were sent by a variety of transmission means including UHF radio, standard telephone lines, and satellite transmissions. These messages were successfully received by various receive sites, including a TCI headend in Denver Colorado.[137] Additional digital testing was performed in

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131 NCTA, *supra* note Error! Bookmark not defined. at 13.

132 *Id.*

133 Time Warner, *supra* note 94 at 3.

134 Late/*ex parte* comments of TFT Incorporated (TFT) April 30, 1997, at 1.

135 Late/*ex parte* comments of HollyAnne Corporation May 6, 1997, at 2.

136 *See* Western Field Tests of Proposed Parameters for the Modernization of the Emergency Broadcast System, FO Docket 91-171/91-301; Eastern Field Tests of Proposed Parameters for the Modernization of the Emergency Broadcast System, FO Docket 91-171/91-301.

137 *Id.* at 307.

the Eastern test later that year. These tests demonstrated that the EAS protocol can be transmitted using digital techniques by a variety of communication services.[138]

47. The Commission recognizes that developments in digital technology are occurring rapidly. Broadcasters and cablecasters continue to advance the various technologies used in their respective industries. Although current indications show that the EAS system will be effective in the years to come, the Commission encourages the developers of new transmission techniques to provide for emergency messaging in new equipment in order to prevent loss of life and property and to insure that the messages can be delivered in a manner that is economical for the participants of EAS.

IV. PROCEDURAL MATTERS

48. *Paperwork Reduction Act of 1995 Analysis*. The requirements adopted in the Second Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget ("OMB") as prescribed by the 1995 Act. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this Second Report and Order as required by the 1995 Act.[139] OMB comments are due 60 days from date of publication of this Second Report and Order in the Federal Register. Comments should address (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

49. Written comment by the public on the proposed and/or modified information collections are due on or before 30 days after publication of the Second Report and Order in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Second Report and Order in the Federal Register. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov. For additional information concerning the information collections contained herein contact Judy Boley at 202-418-0214 or via the Internet at jboley@fcc.gov.

50. *Regulatory Flexibility Analysis*. The analysis pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 608, is contained in Appendix E.

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138 *Id.* at 200.

139 Pub. L. No. 104-13.

V. ORDERING CLAUSES

51. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 4(i) and (o), 303 (r), 624 (g), and 706 of the Communications Act of 1934, as amended, 47 U.S. C. Sections 151, 154(i) and (o), 303 (r), 544 (g), and 606, that Parts 11 and 76 of the Commission's Rules, 47 C.F.R. Parts 11 and 76, ARE AMENDED as set forth in ATTACHMENT D.

52. IT IS FURTHER ORDERED that the provisions in this Second Report and Order will be effective 60 days after publication in the FEDERAL REGISTER.

53. IT IS FURTHER ORDERED that a copy of this Second Report and Order shall be sent to the Chief Council for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachments

APPENDIX A

COMMENTS FOR FO DOCKET 91-301/91-171

1) **Satellite Cable Service INC.**, De Smet, South Dakota.
2) **Houston Cable Inc.,** Houston, Missouri.
3) **Cable Communication of Willsboro, Inc.,** Willsboro, New York.
4) **Cross Cable Television**, Warner, Oklahoma.
5) **Cascade Cable Systems,** The Dalles, Oregon.
6) **King Communications, Inc.,** King North, Carolina.
7) **Heartland Cable, Inc.,** Minonk, Illinois.
8) **Semo Communications Corporation**, Sikeston, Missouri.
9) **GWC Communication Company,** Atlanta, Georgia.
10) **Springcom, Inc.**, Springport, Michigan.
11) **Black Rock Cable, Inc.,** Bellingham, Washington.
12) **Helicon Corp.**, Englewood Cliffs, New Jersey.
13) Almon Clegg, Consultant, **Denon**, Cumming, Georgia.
14) David Fricker, Waco Operational Chair, Lorena, Texas.
15) **Hillcom Communications, INC.,** Lincoln, Nebraska.
16) **Nutmeg Broadcasting Company,** Willimantic, Connecticut.
17) **Ashland Entertainment, Inc.,** Broadus, Montana,
18) **Skyview TV, Inc.,** Broadus, Montana,
19) **Belleville Cable TV**, Belleville, Kansas.
20) **Weary, Davis, Henry, Struebing & Troup**, Junction City, Kansas.
21) **WestStar Communications Inc.,** Rancho Cordova, California.
22) **Somerset Communications Inc**., Bellavue, Washington. .
23) **Lakes Cable Systems,** Spirit Lake, Iowa.
24) **Mountain Cablevision,** Frazier Park, California.
25) **Coast Communication Co. Inc.**, Ocean Shores, Washington.
26) **Castle Cable TV**, Alexandria Bay, New York.
27) **Owner, J & T Cable**, Rocky Ford, Colorado.
28) **CADCO Broadband Communications**, Garland, Texas.
29) **Western Cabled Systems,** Foster City, California,
30) **Lakes Cable Systems**, Spirit Lake, Iowa.
31) **Ketner Electronics & Stellavision, Inc.,** Stella, Nebraska.
32) **Satellite Cable Services, Inc.**, Sioux Falls, South Dakota.
33) **Grove Cable Co.**, Marquette, Michigan,
34) **Comstar Cable TV, Inc.,** Beatrice , Nebraska.
35) **Self Help for Hard of Hearing People**, Martinez, California.
36) **Lake Champlain Cable Television, Richmond Cable Television**, Milton, Vermont.
37) **Keene Valley Video**, Keene Valley, New York.
38) **Mountain Cablevision,** Frazier Park, California.
39) **Rocky Mountain Cable Systems**, Albuquerque, New Mexico.
40) **Stephen Cable TV, Inc**, Stephen, Minnesota.
41) **Cline's Cable TV, Inc.,** Baisden, West Virginia.
42) **H&R Cable TV Inc.**, Baisden, West Virginia.
43) **Summit Communications, INC.** Bellavue, Washington.
44) **Net Cable Inc.**, Pulaski, Wisconsin.

45) **Duncan Cable TV Service**, Wilmington, Vermont
46) **Information Age Systems, Inc**., Salt Lake City, Utah.
47) **Bell Atlantic Telephone Companies,** Arlington, Virginia.
48) **Self Help for Hard of Hearing People,** Bethesda, Maryland.
49) **National Association of Broadcasters,** Washington, D.C.
50) **Small Cable Business Association**, Kalamazoo, Michigan.
51) **Time Warner Entertainment Company, L.P.,** Washington D.C.
52) **Altronix Systems Corporation,** Denville, New Jersey, **Albrit Technologies Limited**, New York, New York.
53) **Rigel Communications INC**. Sherman, Connecticut.
54) **Ameritech**, Hoffman Estates, Illinois.
55) **Bellsouth Telecommunications INC.**
56) **Bye Cable, Inc.**, Crosby, Minnesota.
57) **United States Small Business Administration,** Washington D. C.
58) **Waterville Cable TV**, Waterville, Kansas.
59) **The American Radio Relay League, Incorporated**, Washington D. C.
60) **Cablevision Systems Corporation.** Washington D. C.
61) **Blackshear TV Cable**, Baxley, Georgia.
62) **Avenue TV Cable , Thompson Cable Vision Co.,** Washington, D.C.
63) **United States Telephone Association,** Washington, D. C.
64) **Cable Vue T.V., Inc.**, Baxley, Georgia.
65) **Mountain Zone Television Supply**, Alpine, Texas.
66) **Southwest Missouri Cable TV, Inc.** Carthage, Missouri.
67) **Phenix Cable,** Phenix City, Alabama.
68) **National Cable Television Association, Inc.,** Washington D. C.
Cable Telecommunications Association, Inc. Fairfax, Virginia.
69) **Fanch Communications INC**., Denver, Colorado.
70) **Coast Cablevision Inc.**, San Jose, California.
71) **S&S Cable Systems**, Montrose, Colorado.
72) **National Association of the Deaf Telecommunications Subcommittee on Television and Cable Access**, Silver Spring, Maryland.
73) **Wireless Cable Association International, INC**. Washington D. C.
74) **National Association of Telecommunications Officers and Advisors**, Washington, D. C.
75) **Moody Bible Institute of Chicago**, Washington D.C.
76) **National Telephone Cooperative Association,** Washington D. C.
77) **Glide Cablevision**, Glide, Oregon.
78) **Cable Services, Inc.**, Jamestown, North Dakota.
79) **Tomoka Cable TV**, Ormond Beach, Florida.
80) **Bowen Cablevision, Inc.**, Wilkinson, West Viginia.
81) **City of Virginia Beach**, Virginia Beach, Virginia.
82) **Mountaineer Cablevision, INC.**, Mullens, West Virginia.
83) **Monroe Area Communictions, Inc**., Monroe, Oregon.
84) **FinCom Corporation**, Canton Ohio.
85) **Jim's Radio and TV**, Kimball, West Virginia.
86) **HFU TV**, Coleville California.
87) **Pine Island Telephone Co.**, Pine Island, Minnesota.

88) **Pennsylvania Cable Television Association (PCTA)**, Harrisburg, Pennsylvania.
89) **Glass Antenna Systems, INC**., Greencastle, Indiana.

APPENDIX B

Reply Comments FO Docket 91-171/91-301

1) **HollyAnne Corporation**, Greeley, Nebraska.
2) **DIRECTV**, Inc., Washington, D.C.
3) **Ameritech**, Hoffman Estates, Illinois,
4) **Bell Atlantic,** Arlington VA.
5) **National Association of Telecommunications Officers and Advisors**, Washington, D.C.
6) **National Cable Television Association**, Washington D.C.,
   Cable Telecommunications Association, Inc., Fairfax, Virginia.
7) **Time Warner Entertainment Company, L.P.** Washington, D.C.
8) **B. H. Custer**, Washington D.C.
9) **Georgia Emergency Management Agency**, Atlanta Georgia.

APPENDIX C

Ex parte and Late Filings FO Docket 91-171/91-301

1) **HFU TV, Cable Television Systems**. March 27, 1995
2) **National Cable Television Association (NCTA)**. May 8, 1995
3) **National Cable Television Association (NCTA)**. November 22, 1996
4) **National Cable Television Association (NCTA)**. December 4, 1996
5) **National Cable Television Association (NCTA)**. January 9, 1997
6) **National Cable Television Association (NCTA)**. March 13, 1997
7) **Wireless Cable Association International, INC. (WCAI)**. May 16, 1995
8) **TFT, Incorporated.** August 11, 1995.
9) **TFT, Incorporated.** August 15, 1995
10) **TFT, Incorporated.** February 14, 1997
11) **TFT, Incorporated.** May 1, 1997
12) **Texas Wired Music, INC. and Taft Broadcasting Company**. June 19, 1995
13) **WM Diedrich Co. of Saint Louis, INC.** June 19, 1995
14) **Sage Alerting Systems, INC.** June 23, 1995
15) **Self Help For Hard of Hearing People or (SHHH)**. June 26, 1995
16) **The National Center for Law and Deafness**. August 15, 1995
17) **Information Age Systems.** August 29, 1995
18) **Information Age Systems.** January 18, 1996
19) **PCA Information Systems, INC.** August 31,1995
20) **National Association of Broadcasters (NAB)**. December 1, 1995
21) **Megahertz**. March 8, 1995
22) **Calafornians for Television Access.** March 28, 1996
23) **Independent Cable & Telecommunications Association (ICTA).** November 7, 1996
24) **Fanch Communications, INC.** December 9, 1996
25) **Small Cable Business Association.** November 15, 1996
26) **Country Cable, INC.** February 3, 1997
27) **Tele-Communications, INC.** February 12, 1997
28) **Tele-Communications, INC.** February 14, 1997
29) **Tele-Communications, INC.** February 25, 1997
30) **Kentucky Cable Telecommunications Association.** February 10, 1997
31) **House Enterprises**. February 19, 1997
32) **Cable Telecommunication Association.** March 4, 1997
33) **Falcon Cable TV**. March 14, 1997
34) **Galaxy Telecom, L.P.** April 9, 1997
35) **Safety Alert Monitor.** May 17 1997
36) **Gerald Dominick.** January 12, 1995

APPENDIX D

Parts 11 and 76 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 11--EMERGENCY ALERT SYSTEM (EAS)

The authority citation for Part 11 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (o) , 303(r), 544(g) and 606.

*** * * * ***

A.. Section 11.11 is amended by revising paragraph (a); revising the timetable charts for broadcast stations and cable systems; adding a chart for wireless cable systems; deleting the EAS timetable and requirement charts; redesignating paragraph (c) as paragraph (e); adding new paragraphs (c) and (d); and removing the note at the end of § 11.11 to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; wireless cable systems which may consist of Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), or Instructional Television Fixed Service (ITFS) stations; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE

BROADCAST STATIONS				
REQUIREMENT	AM & FM	TV	FM CLASS D	LPTV[1]
Two-tone encoder[2,3]	Y	Y	N	N
Two-tone decoder[4,5]	Y	Y	Y	Y
EAS decoder	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
EAS encoder	Y 1/1/97	Y 1/1/97	N	N
Audio message	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
Video message	N/A	Y 1/1/97	N/A	Y 1/1/97

1/ LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.
2/ Effective July 1, 1995, the two-tone signal must be 8-25 seconds.
3/ Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.
4/ Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3-4 seconds duration.

5/ Effective January 1, 1998, the two-tone decoder will no longer be used.

EAS REQUIREMENTS CABLE SYSTEMS			
A. Cable systems serving fewer than 5,000 subscribers from a headend must either provide the national level EAS message on all programmed channels--including the required testing--by October 1, 2002, or comply with the following EAS requirements. All other cable systems must comply with B.			
B. EAS Equipment Requirement			
	System size and effective dates		
	≥ 10,000 subscribers	≥5,000 but < 10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device[1]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Two-tone decoder	N	N	N
EAS decoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels;[2] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

1/ Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8-25 seconds in duration.
2/ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
NOTE: Programmed channels do not include channels used for the transmission of data such as interactive games.

Wireless Cable Systems (MDS/MMDS/ITFS STATIONS)		
A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the national level EAS message on all programmed channels--including the required testing--by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.		
B. EAS Equipment Requirement		
	System size and effective dates	
	≥ 5,000 subscribers	< 5,000 subscribers
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 10/1/02	N
Video interrupt and audio alert message on all channels;[2] Audio and Video EAS message on at least one channel	N	Y 10/1/02

1/ Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8-25 seconds in duration.
2/ The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.
NOTE: Programmed channels do not include channels used for the transmission of data services such as Internet.

(c) For purposes of the EAS, Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) stations operated in accordance with Subpart K of Part 21 and Instructional Television Fixed Service (ITFS) stations operated as part of wireless cable systems in accordance with Subpart I of Part 74 are defined as follows:

(1) a "wireless cable system" is a collection of channels in the MDS, MMDS, or ITFS used to provide video programming services to subscribers. The channels may be licensed to or leased by the wireless cable system operator.

(2) a "wireless cable operator" is the entity that has acquired the right to use the channels of a wireless cable system for transmission of programming to subscribers.

(d) Local franchise authorities and cable television system operators may enter into mutual agreements that require the installation of EAS equipment before the required dates listed above. Additionally, local franchise authorities may use any EAS codes authorized by the FCC in any agreements.

*** * * * ***

B.. Section 11.13 is amended by revising paragraphs (a) and (b) to read as follows:

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAN has terminated.

*** * * * ***

C.. Section 11.15 is amended to read as follows:

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at broadcast stations, cable systems and wireless cable systems, and other participating entities upon receipt of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

*** * * * ***

D.. Section 11.17 is amended by revising the fourth sentence of the introductory text to read as follows:

§ 11.17 Authenticator Word Lists.

* * * LPTV stations and cable systems and wireless cable systems do not receive authenticator lists.

*** * * * ***

E.. Section 11.19 is amended by revising the text to read as follows:

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to broadcast station licensees and cable systems and wireless cable systems. It states that the licensee, cable operator or wireless cable operator has agreed to go off the air or in the case of cable discontinue programming on all channels during a national level EAS message. For Broadcast licensees this authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified or withdrawn by the Commission.

* * * * *

F.. Section 11.21 is amended by revising the first sentence of the introductory text and paragraph (a) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by broadcast and cable personnel, emergency officials and National Weather Service (NWS) personnel to activate the EAS.

* * * * *

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and broadcast and cable personnel to transmit emergency information to the public during a State emergency using the EAS.

*** * * * ***

G.. Section 11.31 is amended by revising the last sentence of paragraph (b); revising the last sentence of paragraph (c): revising the third and fifth sentences of paragraph (c) which defines the PSSCCC- code; and revising the first sentence of the paragraph which defines the LLLLLLLL- code to read as follows:

§ 11.31 EAS protocol.

* * * * *

(b) * * *FM or TV call signs must use a slash ASCII character number 47 (/) in lieu of a dash.

(c) *** Examples are provided in FCC Public Notices.

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PSSCCC- *** The Location code uses the Federal Information Processing Standard (FIPS) numbers as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication FIPS PUB 6-4. * * * Each county and some cities are assigned a CCC number.

* * * * *

LLLLLLLL- This is the identification of the broadcast station, cable system, MDS/MMDS/ITFS station, NWS office, etc., transmitting or retransmitting the message.

*** * * * ***

H.. Section 11.35 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 11.35 Equipment operational readiness.

(a) Broadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, broadcast stations and cable systems and wireless cable systems must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a)(1) and (2). Appropriate entries must be made in the broadcast station log as specified in § 73.1820 and § 73.1840 of this chapter, cable system record as specified in § 76.305 of this chapter, MDS/MMDS station records as specified in § 21.304 of this chapter, indicating reasons why any tests were not received.

(b) If the EAS Encoder or EAS Decoder becomes defective, the broadcast station, cable system or wireless cable system may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system or wireless cable system station records showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the broadcast station, cable system or wireless cable system is located for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

*** * * * ***

I.. Section 11.41 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 11.41 Participation in EAS.

(a) All broadcast stations and cable systems and wireless cable systems specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be a Non-Participating (NN) sources.

(b) A broadcast station and cable system and wireless cable system may submit a written request to the FCC asking to be a Non-Participating National (NN) source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) A station or system that is a Non-participating National (NN) source under § 11.18(f) of this part that wants to become a Participating National (PN) source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of broadcast station and cable system and wireless cable system management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook. They should contact the FCC to ensure that they are on the FCC EAS mailing list. Broadcast stations must also have a current copy of the Red Envelope Authenticator List.

*** * * * ***

J.. Section 11.46 is amended by revising the first sentence to read as follows:

§ 11.46 EAS public service announcements.

Broadcast stations, cable systems and wireless cable systems may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public.

*** * * * ***

K.. Section 11.51 is amended by revising paragraph (b), and replacing paragraph (e) and all subsequent paragraphs with paragraphs (e) through (m) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(b) When relaying EAS messages, broadcast stations and cable systems and wireless cable systems may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Television stations, cable systems and wireless cable systems should ensure that pauses in video programming before EAS message transmission do not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

* * * * *

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and low power TV stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31 of this part.

(f) Broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other broadcast stations and cable systems and wireless cable systems alerts them that the EAS is being activated or tested at the National, State or Local

Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in
§ 11.32(a)(4) of this part, shall modulate the transmitter at no less than 80% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(g) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention Signal may be produced from a storage device. Additionally, cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Provide a video interruption and an audio alert message on all channels. The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Cable systems and wireless cable systems shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(h) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend and wireless cable systems with 5,000 or more subscribers; shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, after the dates indicated, these cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate cable subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) The above cable systems and wireless cable systems shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) The above cable systems and wireless cable systems shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31 of this part. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(i) If manual interrupt is used as authorized in paragraph (k) of this section, EAS Encoders must be located so that broadcast station, cable system or wireless cable system staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(j) Broadcast stations, and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or cable systems or wireless cable systems with one EAS Encoder. The requirements of
§ 11.32 must be met by the combined facility.

(k) Broadcast stations and cable systems and wireless cable systems are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL- code which identifies the broadcast station, cable system, wireless cable system, or other entity retransmitting the message. See § 11.31(c) of this part. If an EAS source originates an EAS message with the above Event codes, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, broadcast stations and cable systems and wireless cable systems shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or cable system or wireless cable system community or city. Other location codes may be included upon approval of broadcast station, cable system or wireless cable system management. EAS messages may be transmitted automatically or manually.

(1) Automatic interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 15 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(l) Broadcast stations and cable systems and wireless cable systems may employ a minimum delay feature, not to exceed 15 minutes, for automatic interrupt of EAS codes. However, this may not be used for the EAN Event which must be transmitted immediately.

(m) Either manual or automatic operation of EAS equipment may be used at broadcast stations and cable systems and wireless cable systems that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. Broadcast stations and cable systems and wireless cable systems may change back and forth between automatic and manual operation.

* * * * *

L.. Section 11.52 is amended by revising the third sentence of paragraph (a), paragraphs (b) through (d)(2), and the introductory sentence of paragraph (e) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) * * *The effective dates for cable and wireless cable systems to install and operate EAS equipment are set forth in § 11.11. * * *

(b) If manual interrupt is used as authorized in § 11.51(j)(2) of this part, decoders must be located so that operators at their normal duty stations at broadcast stations and cable systems and wireless cable systems can be alerted immediately when EAS messages are received.

(c) Broadcast stations and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) Broadcast stations and cable systems and wireless cable systems must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) Broadcast station and cable system and wireless cable system management shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) Broadcast stations and cable systems and wireless cable systems are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

*** * * * ***

M.. Section 11.53 is amended by revising paragraphs (a)(2) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) * * *

(1) * * *

(2) Cable networks and program suppliers to cable systems, wireless cable systems and subscribers.

*** * * * ***

N.. Section 11.54 is amended by revising paragraph (b); adding a new paragraph (b)(8); renumbering existing paragraph (b)(8) as (b)(9) and likewise renumbering subsequent paragraphs; revising existing paragraphs (b)(10), (b)(11) and (b)(14); and revising paragraphs (c) and (d) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, broadcast stations and cable systems and wireless cable systems must:

* * * * *

(8) Cable systems and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h) of this part.

* * * * *

(10) Broadcast stations may transmit their call letters and cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and EAS Local Area identifications must also be given as provided in State and Local Area EAS plans.

(11) All broadcast stations and cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

* * * * *

(14) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by broadcast stations in their logs (as specified in § 73.1820 and § 73.1840 of this chapter), by cable systems in their records (as specified in § 76.305 of this chapter), and by subject wireless cable systems in their records (as specified in § 21.304 of this chapter).

(c) Upon receipt of an Emergency Action Termination Message, broadcast stations and cable systems and wireless cable systems must follow the termination procedures in the EAS Operating Handbook.

(d) Broadcast stations and cable systems and wireless cable systems originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by Section 325(a) of the Communications Act of 1934, 47 U.S.C.
§ 325(a), to other participating broadcast stations, cable systems and wireless cable systems.

*** * * * ***

O.. Section 11.55 is amended by revising the first sentence of paragraph (a), revising paragraphs (c), (c)(4) and (c)(7) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by broadcast stations, cable systems and wireless cable systems at their discretion for day-to-day emergency situations posing a threat to life and property. * * *

(b) * * *

(c) Immediately upon receipt of a State or Local Area EAS message, broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must do the following:

* * * * *

(4) Broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area Plans. Television stations must comply with § 11.54(b)(7) and cable systems and wireless cable systems must comply with § 11.54(b)(8). Broadcast stations providing foreign language programming shall comply with § 11.54(b)(9) of this part.

* * * * *

(7) The times of the above EAS actions must be entered in the broadcast station, cable system or wireless cable system records as specified in § 11.54(b)(14) of this part. FCC Form 201 may be used to report EAS activations to the FCC.

*** * * * ***

P.. Section 11.61 is amended by revising paragraph (a)(1)(ii); adding new paragraphs (a)(1)(iii) and (a)(1)(iv); revising the existing paragraph (iii) and redesignating it (v); revising paragraph (a)(2)(ii)(B); adding new paragraphs (a)(2)(ii)(C), (a)(2)(ii)(D), (a)(2)(ii)(D)(1), (a)(2)(ii)(D)(2), (a)(2)(ii)(E), (a)(2)(ii)(E)(1), (a)(2)(ii)(E)(2) and (a)(2)(v); and, revising paragraphs (a)(6) and (b) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *
(1) * * *
(i) * * *
(ii) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend.
(iii) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend.
(iv) Effective October 1, 2002, all wireless cable systems.
(v) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from EAS Local or State Primary sources. The time of the test and script content will be developed by State Emergency Communications Committees in cooperation with affected broadcast stations, cable systems, wireless cable systems, and other participants. Script content may be in the primary language of the broadcast station. These monthly tests must be transmitted within 15 minutes of receipt by broadcast stations and cable systems and wireless cable systems in an EAS Local Area or State. Class D non-commercial educational FM and LPTV stations are required to transmit only the test script.
(2) * * *
(i) * * *
(ii) * * *
(A) * * *
(B) Effective December 31, 1998, cable systems with 10,000 or more subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(C) Effective October 1, 2002, cable systems serving fewer than 5,000 subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel.

(D) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(1) Cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and,

(2) Wireless cable systems with 5,000 or more subscribers.

(E) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel:

(1) Cable systems with fewer than 5,000 subscribers per headend; and,

(2) Wireless cable systems with fewer than 5,000 subscribers.

(iii) * * *

(v) TV stations, cable television systems and wireless cable systems are not required to transmit a video message when transmitting the required weekly test.

* * *

(6) EAS activations and special tests. The EAS may be activated for emergencies or special tests at the State or Local Area level by a broadcast station, cable system or wireless cable system instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for a weekly test of the Attention Signal in paragraph (2)(i) of this section, activation must include transmission of the Attention Signal and emergency message. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (2)(ii) of this section, activation must include transmission of the EAS header and EOM codes. Television stations and cable systems and wireless cable systems shall comply with the aural and visual message requirements in § 11.51 of this part. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in broadcast station and cable system and wireless cable system records as specified in § 11.54(b)(14) of this part concerning EAS tests received and transmitted.

*** * * * ***

PART 76--CABLE TELEVISION SERVICE

Q.. Section 76.5 is amended by revising paragraph (qq) to read as follows:

*** * * * ***

§ 76.5 Definitions.

* * * * *

(qq) Emergency Alert System (EAS). The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations**;** cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

APPENDIX E

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act,[140] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order and Further Notice of Proposed Rule Making (First R&O)* in this proceeding.[141] The Commission sought written public comments on the proposals in the *First R&O* including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Second Report and Order conforms to the RFA.[142]

I. Need For and Purpose of this Action:

A.. The Commission, in compliance with the Cable Television Consumer Protection and Competition Act of 1992, Pub L. No. 102-385, §16(b), adopted rules in the *First R&O* that, among other things, required cable television systems to comply with the emergency alert requirements of the Emergency Alert System (EAS). We concluded in the *First R&O* that cable systems, irrespective of size, must provide EAS alerts to subscribers. We also concluded that requiring cable systems to participate in the EAS could provide emergency messages to larger portions of the U.S. population than was previously possible, and could also decrease loss of life and property damage in an emergency. Because compliance with these rules may impose a significant hardship on small cable television systems, we sought comment in the *First R&O* on whether small cable television systems should be exempt from participating in the EAS and, if so, what size standard the Commission should adopt in defining small systems for purposes of an exemption and, whether additional requirements imposed by local franchising authorities should be preempted.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA):

B.. No comments were filed in direct response to the IRFA. Comments on the *First R&O*, however, raised several issues that could affect small cable systems operators and wireless cable operators. Over 50 cable operators requested exemptions from the EAS for the smaller cable systems. In particular, many small cable systems operators argued that requiring small cable systems to install EAS equipment at a cost of $10,000 to $20,000 would have an adverse impact on their financial situation.[143] Some comments estimated that the cost of installation of EAS equipment could exceed $100

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140 *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended 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).

141 *Report and Order and Further Notice of Proposed Rule Making* (*First R&O*), Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FO Docket 91-171/91-301, 10 FCC Rcd 1786 (1994) at ¶¶ 175-183.

142 *See* 5 U.S.C. § 604.

143 Comments of Houston Cable Inc., January 23, 1995, at 1; Cable Communication of Willsboro, Inc., January 23, 1995 at 2; Cascade Cable Systems, January 24, 1995, at 2; Hillcom Communications, Inc. January 30, 1995; WestStar Communications Inc., January 31, 1995, at 3; J&T Cable February 6, 1995, at 1; Rocky Mountain Cable Systems, February 15, 1995, at 1;

per subscriber in a cable system that serves 50 to 100 subscribers.[144] The National Cable Television Association's (NCTA) comment that the cost of participation in EAS will be fixed for all cable headends and that a headend with few subscribers, such as ones serving remote areas, will not have the capital to meet these expenditures. By contrast, larger headends will be able to distribute the cost more widely and avoid large increases in subscriber fees.[145] The Office of Advocacy of the SBA expresses that "each customer would receive a one-time charge of five or six dollars to fund installation of the EAS." Even though a one-time charge may not seem that large, it might be an incentive for many customers to abandon the service and seek other alternatives, such as wireless cable or direct broadcast satellite.[146] The Wireless Cable Association International (WCAI) states that it will cost approximately two times what cable television systems have to spend--$20,000 to $30,000--to install EAS equipment and participate in the EAS.[147]

Mountaineer Cablevision Inc., March 15, 1995, at 1; (The cost estimates for EAS equipment to which most of these comments refer is in the *First R&O, supra* note 2 at ¶ 124.)

144 Comments of Helicon Corporation, January 17, 1995, at 1; Comments of Heartland Cable, Inc., January 27, 1995, at 1; Comments of Lake Champlain Cable Television February 13, 1995, at 1; Comments of Stephen Cable TV, Inc., February 15, 1995 at 1.

145 Comments of National Cable Television Association (NCTA), Inc. and Cable Telecommunications Association (CATA), Inc. February 22, 1995, at 3.

146 Comments of the United States Small Business Administration (SBA), February 22, 1995, at 6-7.

147 Comments of Wireless Cable Association International (WCAI) February 22, 1995, at 4.

C.. Commenters suggested a wide range of size definitions for small cable systems,[148] from as low as 1,000 subscribers to as high as 34,000 subscribers. Most suggestions recommended 5,000 subscribers or fewer as the proper definition of a small cable system.[149] The Small Cable Business Association (SCBA) stated that a cable system with 100,000 subscribers will spend the same amount per headend implementing EAS as will a system with 100 subscribers.[150] SCBA also commented that because the cost of EAS and related switching equipment per headend is fixed, customers on headends with few subscribers will incur a greater percentage of the EAS expenditure than customers of large systems. SCBA expresses concern that the cost will be high enough on smaller systems to cause subscribers to drop services, thus increasing the cost burden on the remaining customers.[151] SCBA concludes that the cost of including systems with fewer than 5,000 subscribers far outweighs the benefit.[152] SCBA suggests that for EAS purposes a small cable system be defined as one with fewer than 5,000 subscribers. SCBA also requests relief for cable systems that serve 5,000 to 10,000 subscribers, but notes that the relief should be less than that afforded to those systems with under 5,000 subscribers.[153] The NCTA and the Cable Telecommunications Association (CATA) also argue for an exemption at 5,000 subscriber level, stating that eligibility for voluntary participation should be limited to systems serving 5,000 or fewer subscribers.[154] NCTA also points out that EAS costs are significant enough to make it difficult for small systems to rebuild and upgrade facilities and affiliation with a multiple systems operation (MSO) would not lessen this cost burden.[155]

D.. Several commenters seeking relief from the EAS requirements for cable systems note that there are other services that provide emergency information, such as AM and FM radio stations and TV stations.[156] Others note that National Oceanic and Atmospheric Administration's (NOAA) Weather Radio service is provided in their areas.[157] Some who commented note that siren warning systems are an

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148 Hillcom, *supra* note 13, at 3; Ashland Entertainment, Inc., January 30, 1995, at 1; Weary, Davis, Henry, Struebing & Group, January 30, 1995, at 1.

149 Twenty comments included an economic or subscriber size definition.

150 Comments of the Small Cable Business Association, February 21, 1995, at 9.

151 *Id.* at 19.

152 *Id.* at 16,17.

153 *Id.* at 3.

154 NCTA/CATA, *supra* note 15, at 7.

155 *Id.* at 8.

156 The comments of Helicon, *supra* note 14, at 1 and Castle Cable TV, February 6, 1995 at 1 were typical.

157 Comments of Duncan Cable TV Service, February 21, 1995, at 1; Comments of Cable Communication of Willsboro, January 23, 1995, at 2.

alternative source of emergency alerting.[158] They maintain that a siren system is more effective than EAS because the sirens can be heard at any time of day or night and can operate during power failures.[159] Satellite Cable Service expressed concern about operators of cable television systems with audio or video override equipment already in place because these operators wish to avoid duplication of interrupt equipment.[160] SCBA additionally contends that the statutory requirement for cable systems only requires that small cable systems provide the national level EAS message and that the Commission should not require small systems to install EAS equipment if a cable operator provides the national level EAS message on all programmed channels. WCAI requests a phase-in to afford wireless cable operators the same advance notice as was provided to cable television operators.[161] The Commission carefully considered each of these comments in reaching the decisions set forth in this Second Report and Order.

III. Description and Estimate of Number of Small Businesses to Which Rules Will Apply:

E.. The RFA generally defines "small entity" as having the same meaning as the terms "small business", "small organization", and "small governmental jurisdiction" and "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 for its activities.
15 U.S.C. § 632.[162] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[163] The Small Business Enforcement Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.[164]

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158 Comments of Bye Cable, Inc., February 22, 1995, at 1; Comments of GWC Communication Company, January 27, 1995, at 1.

159 Comments of Lakes Cable Systems, February 8, 1995, at 1.

160 Comments of Satellite Cable Service, Inc., December 5, 1994, at 1.

161 Comments of WCAI at 4.

162 Regulatory Flexibility Act (RFA), 5 U.S.C. § 601(3)(1980) (incorporating by reference the definition of "small business concern" in 5 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(s) in the Federal Register."

163 Small Business Act, 15 U.S.C. § 632 (1996).

164 Small Business Enforcement Fairness Act (SBREFA), 15 U.S.C. § 601(5). For example, there are 85,006 governmental entities in the United States of which 37,566 have populations of less than 50,000. United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments (1992 Census)*.

F.. The SBA has developed a definition of small entities for cable and wireless cable which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators and wireless cable systems operators. According to the Census Bureau, there were 1,439 such cable and wireless cable systems generating less than $11 million in revenue that were in operation for at least one year at the end of 1995.

G.. The Commission has developed its own definition of a small cable systems operator for the purposes of rate regulation. Under the Commission's rules a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[165] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[166] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission has no definition of small wireless cable operator. WCAI states that there are 170 wireless cable systems in the United States serving approximately 700,000 homes.[167] Consequently, we estimate that there are fewer than 1,423 small cable systems operators and 170 wireless cable operators that may be affected by the guidelines explained in the Second Report and Order.

H.. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceed $250,000,000."[168] The Commission has determined that there are 61,700,000 cable television subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[169] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[170] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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165 47 C.F.R. § 76.90(e). The Commission developed this definition based on its determination that a small cable system operation is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

166 Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

167 Comments of WCAI at 2.

168 47 U.S.C. § 543(m)(2).

169 47 C.F.R. § 76.1403(b).

170 Paul Kagan Associates, Inc. *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

I.. We are, however, able to estimate the number of small cable systems that serve fewer than 5,000 subscribers--9,894; serve 5,000 or more, but fewer than 10,000 subscribers--658; and, serve 10,000 or more subscribers--1,205.[171] Thus we can estimate that there are 11,126 cable systems and 170 wireless cable operators subject to the Commission's EAS rules.[172]

J.. *Other pay services.* Other pay television services are also classified under SIC 4841, which includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

K.. In order to implement the statutory mandate of the Cable Act of 1992, and the subsequent amendments to the Communications Act, as well as the rules proposed in the *Second Report and Order*, the Commission is adopting Rules to ensure that viewers of the television systems and wireless cable television systems receive the same information as they would receive over the air through what was then the Emergency Broadcast System. Compliance with these requirements will require engineering, technical, operations, and administrative skills. These rules will impose reporting, recordkeeping and other compliance requirements on small businesses, including:

1. All cable television systems that serve 5,000 or more subscribers, will be required to install EAS equipment at an estimated cost of $15,000 to $20,000. Cable television systems that serve fewer than 5,000 subscribers and do not provide the national level EAS message on all programmed channels will be required to install EAS equipment at an estimated cost of $10,000 to $15,000.

2. Cable systems with more than 10,000 subscribers per headend, must install the EAS equipment by December 31, 1998, and provide audio and video EAS messages on all programmed channels.

3. Cable systems with 5,000 or more, but less than 10,000 subscribers per headend must install the EAS equipment by October 1, 2002, and provide audio and video EAS messages on all programmed channels.

4. Cable systems serving fewer than 5,000 subscribers per headend must either provide the national level EAS message on all programmed channels--including the required testing--or, install the EAS equipment by October 1, 2002, and provide an audio EAS message and a video interrupt on all programmed channels as well as an audio and video EAS message on at least one programmed channel.

5. Wireless cable systems with 5,000 or more subscribers per headend must install the EAS equipment by October 1, 2002, and provide audio and video EAS messages on all programmed channels.

6. Wireless cable systems serving fewer than 5,000 subscribers per headend must either provide the national level EAS message on all programmed channels--including the required testing--or, install the

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171 *Television and Cable Factbook*, Warren Publishing, Inc., at table I-81 (1996).

172 The discrepancy in the total number of cable television systems and the number of cable television systems in each category is due to 631 cable television systems that do not have the number of subscribers listed in the *Television and Cable Factbook*. Such systems will, however, be required to comply with the Commission's EAS Rules.

EAS equipment by October 1, 2002, and provide an audio EAS message and a video interrupt on all programmed channels as well as an audio and video EAS message on at least one programmed channel.

V. Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives:

L.. Based on the record in this proceeding the Commission has determined that it has no authority to exempt cable systems from the EAS requirements. We have also determined that requiring small cable systems and wireless cable systems to comply with the EAS immediately could have adverse economic effect on their operations. We have, therefore, adopted alternatives which minimize burdens placed on small entities. The EAS requirements for small sized cable systems and all wireless cable systems will be phased-in over the next five years. This approach eliminates the need for small entities to invest $10,000 to $15,000 in 1997. This action provides an additional amount of time for small cable systems to raise capital and reduces unnecessary economic and administrative burdens for cable television providers that are also small businesses.

M.. Additionally, cable systems and wireless cable systems having fewer than 5,000 subscribers will be permitted to comply with the EAS requirements by carrying only programming that in turn provides the national level EAS message or provide video messaging capability on one video channel rather than on all video channels. This elimination of the all channel video messaging requirement and the phase-in of the EAS requirements will significantly reduce such systems' EAS costs.[173] Further, NCTA , CATA and NAD have agreed to work cooperatively to determine if there exists a better means of alerting hard-of-hearing cable customers prior to the October 1, 2002, deadline. We encourage this cooperative effort and will fully consider their suggested alternatives. Finally, we will consider, on a case-by-case basis, waivers of the EAS requirements for small cable systems.

N.. The Commission's action in the *Sixth Report* and adopted legislation will substantially mitigate the financial impact on small cable operators from EAS. In the *Sixth Report*, the Commission established a streamlined cost of service rate regulation methodology for cable systems serving fewer than 15,000 so long they were not affiliated with cable companies serving more than 400,000 subscribers. In addition to easing the administrative burden, the small system cost of service methodology is tailored to account for the disproportionately higher costs faced by smaller operators in the provision of cable services. Because of these findings, the Commission limited rate relief to small cable systems, defined as those serving 15,000 or fewer subscribers, that are unaffiliated with companies serving 400,000 or more subscribers. We are, however, concerned in this proceeding with ensuring that cable television subscribers receive emergency information, a concern different in nature--and we would agree more compelling-- than the concern underlying streamlined rate relief. Therefore, we do not believe that the framework for streamlined rate relief which represented a more expansive category of systems eligible for relief is appropriate in this context.

O.. The Commission rejected the alternative of requiring that all cable television systems comply with the EAS requirements by July 1, 1997, because it was determined that the potential economic harm for small cable systems was significant and that such a procedure would not further safety. The Commission also rejected adopting an exemption that would eliminate the requirements to install EAS equipment for small cable systems because as we concluded in the *First R&O* requiring all cable television systems, irrespective of size, to participate in the EAS would provide emergency messages to larger portions of the

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173 We estimate that the cost of installing EAS equipment for small systems to be $6,000 to $8,000.

U.S. population than was previously possible, and would also decrease loss of life and property damage in an emergency. Further, we are extending the proposed date by which wireless cable systems must comply with the EAS rules.

P.. Lastly, cable operators have requested that EAS costs be allowed to be directly passed through to their subscribers. We conclude that EAS costs are not of the nature that should be afforded such treatment. The EAS program is federally mandated program aimed at insuring the safety of the American public. We do not believe that the one-time costs incurred by operators are exceptional as was the case where we allowed the pass-through of cable regulatory fees. For small systems, those serving 10,000 or fewer subscribers on a headend basis, that are affiliated with operators serving 400,000 or more subscribers, the financial impact of our EAS rules will be mitigated by their greater ability to access capital as well as their ability to submit cost of service showings. As for small systems which are unaffiliated with operators serving 400,000 or more subscribers, our streamlined cost of service procedures contained in the Sixth Report will mitigate the impact of our EAS rules. As noted above, Congress amended Section 623 of the Communications Act to allow greater deregulation for "small cable operators." This too should mitigate the impact of our EAS rules on small systems.

Q.. Finally, we believe that amendment of our rules promotes the national policy goals set forth in Section 257 of the Communications Act by enabling the small cable systems to comply with the Emergency Alert System (EAS) requirements by allowing them an extended period of time to install the EAS equipment.

VI. Commission's Outreach Efforts to Learn of and Respond to the Views of Small entities pursuant to SBREFA 5 U.S.C. §609:

Report to Congress: The Commission will send a copy of this Second Report and Order, including this Final Regulatory Flexibility Analysis, along with this Second Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. § 801(a)(1)(A). A summary of the Second Report and Order and this FRFA will also be published in the Federal Register. *See* 5 U.S.C. § 604(b) and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Separate Statement of Chairman Reed E. Hundt

The Commission's decision today ensures that the deaf community's need for emergency information is met, while permitting small systems flexibility in meeting that goal. I write separately to express a difference with the Commission's decision today on one point.

While I support the measures of relief for small systems, I do not believe that this assistance should be afforded across the board to systems that, while "small," are affiliated with large multiple system operators (MSO's).

The decision today involves the provision of critical safety information during times of emergency, as directed by Congress. Our rules permit small systems a longer period to implement the Emergency Alert System (EAS) than is given to larger systems and require video crawls on only one channel, to ease the difficulty and expense of compliance.

But I am not convinced that the case has been made that across-the-board relief, to all small systems, is necessary. At least in some circumstances, benefits of scale enjoyed by large systems also flow to these systems' affiliated small systems. As one example, I note that in Exhibit A, Emergency Alert System Cost Data by Headend, attached to an ex parte letter from Fleischman and Walsh on behalf of Falcon Cable TV, details an assumption that "Falcon will be able to get a 30% volume discount on all equipment purchased." Bulk discounts, a lower cost of capital, and the like are the sort of economies of scale that redound to the benefit of affiliated systems.

At the end of the transition period, all cable systems -- of whatever size -- must comply with EAS requirements. The question here is whether such compliance appropriately comes sooner or later. Where the public's safety is concerned, I believe that our answer should be *sooner*, unless a compelling case is made why swift action is not practicable. I do not believe that such a case was made here.