

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

In the Matter of
Amendments to Part 11 of the Commission's Rules
Regarding the Emergency Alert System
PS Docket No. 15-94

ORDER

Adopted: November 28, 2023

Released: November 28, 2023

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) addresses the joint request filed by REC Networks (REC) and the National Association of Broadcasters (NAB) on November 14, 2023, requesting an extension of time to comply with the requirement that Emergency Alert System (EAS) Participants prioritize the Common Alerting Protocol (CAP)-formatted version of an EAS message when it receives both a legacy version and a CAP-formatted version of the same alert. EAS Participants must comply with this requirement by December 12, 2023. REC and NAB explain that additional time is necessary to account for an unexpected delay in the delivery of a firmware update by an EAS equipment vendor. For the reasons discussed below, the Bureau grants the request to extend the compliance deadline by 90 days, i.e., until March 11, 2024, but only for those EAS Participants that are customers of this equipment vendor.

II. BACKGROUND

2. Overview of the EAS. The EAS is a national system used to disseminate public warnings of impending emergencies over broadcast, cable, and satellite networks to consumers' radios, televisions, and other audio and video devices. Both the Federal Communications Commission (Commission) and the Federal Emergency Management Agency (FEMA) jointly oversee the EAS. Authorized alert originators may transmit EAS messages to EAS Participants (for distribution to the public) either over FEMA's Internet-based platform known as the Integrated Public Alert and Warning System (IPAWS) using the CAP format, or over the so-called "legacy" EAS distribution system, a broadcast-based process in which messages are transmitted via audio channels and relayed from one EAS Participant to another

1 REC Networks (REC) and the National Association of Broadcasters (NAB) Request for Extension of Compliance Deadline, PS Docket No. 15-94 (filed Nov. 14, 2023) (Extension Request).

2 Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, PS Docket No. 15-94, Report and Order, FCC 22-75 (2022) (2022 Part 11 Report and Order).

3 47 CFR § 11.55(c)(2).

4 Id. See 47 CFR § 11.2(b) (defining "EAS Participants").

5 See 47 CFR § 11.31 (describing "EAS Protocol"); see also FEMA, Alerting Originators, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities#:~:text=An%20Alert%20Originator%20is%20an,composing%20and%20issuing%20the%20alert (last updated June 26, 2023).

throughout a geographic area.⁶ EAS Participants typically receive legacy EAS messages by monitoring audio transmissions from other EAS Participants or other sources. EAS Participants receive IP-based messages transmitted over IPAWS by periodically checking an Internet-connected server (a process known as “polling”) for messages from alert originators in CAP format.⁷ Alert messages transmitted over the legacy EAS are encoded in the Specific Area Message Encoding (SAME) protocol format (developed by the National Weather Service for weather alerts) and consist of audible tones that convey header codes, a two-tone attention signal, an audio stream (typically no longer than two minutes of a person’s voice), and an end-of-message signal.⁸ The header codes identify the type of event covered by the alert, the originator of the message, and the relevant times, locations, and geographic areas. CAP-formatted alerts disseminated over the IPAWS platform can convey considerably more information than legacy EAS-based alerts in the SAME format. For example, CAP alert messages may include detailed directions on how the public should respond to the specific emergency, information in languages other than English, picture and video files, and URLs. This information cannot be relayed when CAP alerts are converted into legacy alerts for distribution over the legacy EAS;⁹ all data other than the header codes are lost in this conversion process.

3. On September 30, 2022, the Commission took measures to promote clarity and accessibility of alerts and to maintain public confidence in the EAS as a reliable source of emergency information.¹⁰ Among other actions, the Commission adopted new rules to increase the proportion of alerts distributed to the public that include enhanced information.¹¹ With a few enumerated exceptions, the Commission requires EAS Participants, upon receiving a legacy EAS alert message, to check whether a CAP version of the same alert is available by polling the IPAWS feed for CAP-formatted EAS messages.¹² If a CAP version is available, the EAS Participants must transmit the CAP version rather than the legacy version. EAS Participants may not transmit an alert in legacy format until at least 10 seconds after receiving its header codes unless they confirm by polling the IPAWS feed that no matching

⁶ In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant’s local audience, but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert the sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity’s audience, but also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and have delivered it to the public.

⁷ See 47 CFR 11.52(e)(2); Federal Emergency Management Agency (FEMA), *EAS Participants*, <https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/broadcasters-wireless/emergency-alert-system-participants> (last updated July 28, 2021).

⁸ See 47 CFR § 11.31.

⁹ For example, if enhanced text is included in a CAP alert, a video service EAS Participant (such as a TV broadcaster or cable system) that receives it will generate a visual message that includes not only the header code data (as is the case with legacy EAS alerts) but also that enhanced text, which might include remedial actions to avoid hazards potentially posed by the emergency event.

¹⁰ *2022 Part 11 Report and Order* at 1-2, paras. 1-3 and at 4-5, para. 10.

¹¹ *2022 Part 11 Report and Order* at 6, para. 14.

¹² This requirement applies only to valid alert messages relating to event categories and locations for which the EAS Participant normally transmits such alerts pursuant to the State EAS Plan. The requirement does not apply to national emergency messages (i.e., alerts with the EAN event code), messages associated with national tests of the EAS (bearing the NPT code), or required weekly test messages (bearing the RWT code).

CAP version of the message is available.¹³ EAS Participants must comply with this requirement, codified at Section 11.55(c)(2) of the Commission’s rules, by December 12, 2023.¹⁴

4. *REC and NAB Joint Extension Request.* REC Networks (REC)¹⁵ and the National Association of Broadcasters (NAB)¹⁶ submitted a joint request for a 90-day extension of the deadline to comply with the CAP polling requirement. REC and NAB point out that one of the major EAS encoder-decoder manufacturers, Sage Alerting Systems (Sage), will not be able to release the firmware update necessary to make the Commission’s promulgated changes until shortly before the December compliance deadline.¹⁷ REC and NAB conclude that “a considerable number of EAS Participants will be unable to implement the firmware update by December 12th due to the delayed release of this manufacturer’s firmware update” and state “it is already too late for many EAS Participants to meet the current deadline.”¹⁸ They further argue this issue is “exacerbated” since multiple EAS Participants must update their firmware by the same deadline which is “further complicated by the upcoming holidays.”¹⁹ Referencing Section 1.3 of the Commission’s rules, the Extension Request argues that the circumstances present good cause for a waiver and request an additional 90 days to comply with the CAP prioritization requirement.²⁰ REC and NAB conclude that this extension is justified due to “the unexpected delay of the necessary firmware update—beyond the control of EAS Participants” and state that this extension will “serve the public interest” to ensure the “proper update of EAS equipment by qualified personnel.”²¹ Finally, the Petition concludes that this extension “will not reduce EAS functionality because EAS participants will continue to be able to process EAS messages as they do today, without any disruption or impairment.”²²

III. DISCUSSION

5. A provision of the Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²³ The Commission may find good cause to extend a waiver “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁴ Based on the unique circumstances presented here, we conclude there is good

¹³ 2022 Part 11 Report and Order at 5, para. 11.

¹⁴ See 47 CFR § 11.55(c)(2).

¹⁵ REC Networks describes itself as an unincorporated entity that provides regulatory advocacy before the Federal Communications Commission focusing on small radio stations, especially the Low Power FM (LPFM) radio service as well as on initiatives that will help radio remain relevant through diverse access to the airwaves and fostering innovation in the medium. REC is also a FEMA approved developer of products that interact with the IPAWS-OPEN system. Extension Request at note 1.

¹⁶ The National Association of Broadcasters (NAB) describes itself as a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts. Extension Request at n. 2.

¹⁷ The Extension Request identifies the equipment vendor at issue as Sage Alerting Systems (Sage) in a footnote. See Extension Request at 2, note 9.

¹⁸ Extension Request at 2; see also 2, note 9.

¹⁹ Extension Request at 2-3.

²⁰ Extension Request at 1 and 3.

²¹ Extension Request at 3.

²² *Id.*

²³ 47 CFR § 1.3.

²⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

cause to grant the Extension Request to the extent that we afford EAS Participants that are customers of Sage Alerting Systems an additional 90 days to comply with the requirement to prioritize CAP messages.

6. We are persuaded that Sage's delay in delivering the necessary update is beyond the control of EAS Participants and will impede its customers' ability to meet the December 12, 2023 deadline.²⁵ As of November 14, 2023 (the date on which REC and NAB filed this Extension Request), Sage had not yet released the necessary update.²⁶ The Extension Request observes that Sage serves "a significant market share of both low power and full-power FM stations" as well as "numerous television and multiple video programming distributor EAS Participants."²⁷ The Extension Request observes that "[m]any radio and television stations, especially low power and small full-power stations" rely on contract engineers, but that "in many areas, there are few such engineers qualified to ensure the proper implementation of this firmware update," such that "it would be difficult for stations to obtain the necessary service by the current deadline," particularly considering that "hundreds, if not thousands, of EAS Participants must update their firmware by the same deadline."²⁸ The Bureau recognizes that multiple parties requesting simultaneous updates to their systems – particularly where "some radio and television groups have dozens or even hundreds of EAS boxes that must be updated, including boxes that are located at remote locations" – will account for a high volume of urgent requests, making it impracticable for all EAS Participants to comply by the original timeline.²⁹ We also agree that difficulty in scheduling these services may be compounded by the upcoming holiday season.³⁰ Our decision also takes into consideration that the public will continue to receive EAS messages throughout this extension period; this additional time only affects EAS Participants' ability to prioritize the delivery of CAP-based messages.

7. We deny, however, the Extension Request to the extent it requests a waiver on behalf of all EAS Participants. We provide an additional 90 days for compliance with Section 11.55(c)(2) only to those EAS Participants that are customers of Sage and thus affected by the delay in delivery of the firmware update. The Extension Request does not provide a basis for granting a blanket waiver to all EAS Participants, nor do we believe it would serve the public interest to extend the deadline where circumstances do not warrant it. Accordingly, we expect all other EAS Participants to comply with the December 12, 2023 deadline.³¹

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, section 11.55(c)(2) of the Commission's rules, 47 CFR § 11.55(c)(2), IS WAIVED, to allow those EAS Participants that are Sage Alert Systems customers an additional 90 days from the Order's original deadline of December 12, 2023, to comply with the Commission's September 2022 *Report and Order*. The Request for an Extension of Compliance Deadline is GRANTED IN PART to afford those EAS Participants that are customers of Sage Alerting Systems an

²⁵ See Extension Request at 1-2; see also Extension Request at 2, note 9.

²⁶ See Extension Request at 2, note 9; see also McLane, Paul, *Sage EAS Firmware Update Is Still Pending*, Radio World (Nov. 7, 2023), <https://www.radioworld.com/news-and-business/headlines/sage-eas-firmware-update-is-still-pending>.

²⁷ Extension Request at 2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ EAS Participants who are not covered by the scope of this decision and who may need additional time should file individual requests for waiver, which will be considered on a case-by-case basis.

additional 90 days to comply (or until March 11, 2024).

9. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.³²

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

³² See 47 CFR §§ 0.191 and 0.392.