



National Cable & Telecommunications Association  
25 Massachusetts Avenue, NW, Suite 100  
Washington, DC 20001-1431  
(202) 222-2300

Michael K. Powell  
President & Chief Executive Officer

(202) 222-2500  
(202) 222-2514 Fax

October 21, 2011

The Honorable W. Craig Fugate  
Administrator  
Federal Emergency Management Agency  
U.S. Department of Homeland Security  
500 C Street, S.W.  
Washington, D.C. 20472

Re: **National Test of the Emergency Alert System Scheduled for November 9, 2011**

Dear Administrator Fugate:

As you know, on November 9, 2011, the Federal Emergency Management Agency (FEMA), in conjunction with the Federal Communications Commission (FCC), has scheduled the first-ever test of the Presidential Emergency Action Notification (EAN) of the Emergency Alert System (EAS). The purpose of this letter is to express the cable industry's concern with proceeding with the national EAS test on that date. While we support the government's desire to test the reliability and effectiveness of the national alert, and have been working with the FCC and FEMA in preparation for November 9, we are concerned that a great number of cable households will not see an onscreen message that "this is only a test." This raises the possibility that some viewers, particularly the deaf and hard-of-hearing, could mistakenly believe that the test is an actual national emergency. That risk is exacerbated by the fact that this will be the first time in the over-fifty years of the EAS system (and its predecessors) that the government has ever issued a national, Presidential alert.

During the test on November 9, cable customers' devices will be force-tuned to a channel on which the audio feed will advise them that it is only a test, but – as a result of the way the EAN event code was designed – the onscreen message will not. Instead, the onscreen text will simply state: "This is an Emergency Action Notification," and in some cases, "for the United States" or "for the District of Columbia" depending on the equipment.<sup>1</sup> This EAN message is prescribed by the federal government and system participants are required to simply pass it

---

<sup>1</sup> Broadcasters may be able to superimpose a message that it is only a test because they have the necessary production equipment in place at each station. Cable headends, by contrast, generally do not have such equipment in place and the EAS messages are processed automatically. Similarly, to the extent satellite providers can include a textual overlay, it is because of their centralized distribution structure compared to cable's decentralized system, which has a variety of EAS equipment in place at thousands of cable headends, hubs and other locations across the country.

through to their viewers. Thus, EAS participants who pass through the EAN message on November 9 without adding an indication that “ it is only a test” are doing exactly what the system is designed to do and what the law requires.

The limitations of the current EAS system described above are well known. Indeed, the FCC expressly addressed these shortcomings earlier this year when it adopted rules establishing the November 9 test.<sup>2</sup> At the time, the Maine State Emergency Communications Committee, among others, urged the FCC to test the National Periodic Test (NPT) code rather than the EAN.<sup>3</sup> The NPT code was specifically designed as a national system test and includes an onscreen message telling viewers that it is only a test. The Commission, however, declined to use the NPT code, stating “we believe that the first EAS test needs to duplicate actual Presidential alert conditions as closely as possible. Accordingly, we will use the EAN Event Code for the first national test.”<sup>4</sup> In its Order, the FCC suggested that the potential for public confusion could be addressed through consumer outreach and other steps in planning the test message. In this regard, NCTA has worked with stakeholders in both the government and the private sector to develop plans for consumer outreach in advance of the November 9 test.<sup>5</sup> Nevertheless, we remain concerned about the potential for public confusion due to the lack of an onscreen message indicating that the alert is a test, particularly for those citizens who may not be reached by the outreach efforts.

In light of these concerns, the cable industry has continued to explore potential means for providing an onscreen “this is only a test” overlay during the live EAN alert. Most recently, two

---

<sup>2</sup> *Review of the Emergency Alert System*, Third Report and Order, EB Docket No. 04-296, rel. Feb. 3, 2011 at ¶¶ 22-25.

<sup>3</sup> See Comments of Maine SECC at 2 (use “of EAN or any other ‘live code’ has the potential to create public confusion and panic[:] under the current EAS schema, the ‘text crawl’ of an EAS message that appears on a television set includes only the ‘digital burst’ information contained in the header codes of an EAS message” and thus “does not contain any information from the audio portion of the message,” including the information that “this is only a test”). See also Comments of Trilithic and Sage (favoring use of the NPT for national testing rather than the EAN).

<sup>4</sup> *Id.* at ¶ 25. See also, *id.* at ¶ 23. “Use of any event code other than EAN will not replicate the actual promulgation of a presidential level message and thus would not provide us with an accurate assessment of how the national EAS would actually function in the event of a true presidential alert.”

<sup>5</sup> Specifically, NCTA has: (1) provided our member companies with suggested language to notify customers about the test for use on cable bills and invoices; (2) provided talking points about the test for companies to use to educate their customer care representatives and to share with other internal and external constituencies; and (3) provided links to FCC and FEMA resources about the test for use in customer-facing material.

Most recently, we were provided with the FCC public service announcements featuring Admiral Jamie Barnett, Chief of the FCC Public Safety and Homeland Security Bureau. Those PSAs are now available on the NCTA website and were uplinked via satellite to our member companies on October 18. We have urged our member companies to begin running the PSAs as frequently as possible through November 9. Throughout this process, we have briefed our state cable association leaders, the Cable Industry Customer Care Committee, and other cable organizations on the national test and related issues.

In addition, NCTA has collaborated with the National Association of Broadcasters (“NAB”) to ensure that messaging among broadcast stations, cable systems, and cable programming networks is consistent for the benefit of consumers. NCTA has scheduled further meetings with public affairs executives to discuss the status of the test and assess progress on consumer education efforts.

leading EAS equipment vendors, Monroe and Trilithic, reported that they had developed software "patches" that could permit cable operators to provide such an overlay to their customers. Those cable operators that have been given access to the patches have been working through the testing process to assess whether and how the patches can be deployed in the field.

However, no new piece of software can be deployed without adequate testing – particularly in the area of emergency alerts. Rushing to test, evaluate and deploy new software patches across the country on thousands of pieces of EAS equipment poses a host of risks, including creating side effects, additional points of failure, and other unintended consequences.<sup>6</sup> If patches were deployed, there are hundreds of EAS entry and dissemination points that would need to be addressed, managed and monitored during the test.<sup>7</sup> Moreover, some operators use EAS equipment manufactured by companies other than Trilithic or Monroe, for which no software patches are available.

While we continue to do everything we can to mitigate the risks, the extent to which the software patches can be deployed for the upcoming test will not be known until we get closer to November 9.<sup>8</sup> At this juncture, it appears that a significant number of cable systems will not be able to deploy the patches given the amount and variety of equipment in the field. As a result, for many operators, there simply is not enough time remaining to responsibly test and deploy the new software.<sup>9</sup>

FEMA has developed the technical standards for the next generation EAS Common Alerting Protocol ("CAP"), which will enable EAS participants, including cable operators, to display additional text information once the technology is implemented. Indeed, in adopting CAP the Commission recognized that "CAP should facilitate the provision of functionally equivalent EAS alerts and warnings to persons with disabilities."<sup>10</sup> On September 16, 2011, the FCC extended the deadline for CAP deployment from September 30, 2011 to June 30, 2012. Thus, the flexibility provided by the CAP system will not be in place by November 9 but will be deployed by the middle of next year.

---

<sup>6</sup> For example, if the system locks and needs to be rebooted and set up again, the whole system could be compromised.

<sup>7</sup> Some of these dissemination points are in remote locations with no IP connections.

<sup>8</sup> In addition to the need for adequate testing, there are practical impediments to widely deploying the software patches. For instance, the patches must be activated as close to the actual time of the test as possible. Once the patches are activated, the next EAN message that is received – whether a real emergency or a test – will display a one-time "this is a test" message. Obviously, no cable operator would want to activate the patch before the last possible moment in case there were an actual emergency. This last-minute activation would be especially challenging for those operators with numerous EAS devices – some companies literally have hundreds – in the field.

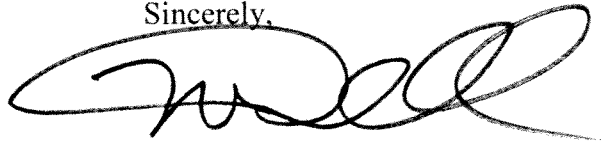
<sup>9</sup> Indeed, the FCC recently extended CAP implementation because it recognized, among other things, that EAS participants needed adequate time to conduct tests in order to ensure that new technology functions properly. *Review of the Emergency Alert System*, Fourth Report and Order, EB Docket No. 04-296, rel. Sept. 16, 2011 at ¶ 19.

<sup>10</sup> *Review of the Emergency Alert System*, Second Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, rel. July 12, 2007 at ¶ 37.

In light of the circumstances described above, the most prudent course would be to postpone the national test until better functionality exists in the EAS system to visually indicate that it is a test. We understand the effort that has gone into the test and the desire for national test data. But given that the national alerts have not been tested for decades, we believe that the benefits of conducting the test on November 9 are outweighed by the risk that some consumers – particularly in the deaf and hard-of-hearing community – will mistakenly believe that the emergency is real.

Thank you for your attention to these issues. We look forward to continuing to work with you to ensure that the EAS system remains an effective and powerful tool for protecting the American people.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Powell', with a large, sweeping flourish extending to the right.

Michael K. Powell

cc: Manny Centano, EAS Test Program Manager, FEMA  
The Honorable Julius Genachowski, FCC  
The Honorable Michael J. Copps, FCC  
The Honorable Robert M. McDowell, FCC  
The Honorable Mignon Clyburn, FCC  
James Barnett, Jr., Chief, PSHSB, FCC