



Updated Listing of FCC Proceedings in which NDBA Jointly Participated

2016

1. *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System and Wireless Emergency Alerts*, (PS Docket No. 15-91, PS Docket No. 15-94), Notice of Proposed Rulemaking, 31 FCC Rcd 594 (2016). Motion for Extension of Deadlines for Filing Comments and Reply Comments filed April 29, 2016. (*Granted in part*)

2. *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System and Wireless Emergency Alerts*, (PS Docket No. 15-91, PS Docket No. 15-94), Notice of Proposed Rulemaking, 31 FCC Rcd 594 (2016). Joint Comments filed June 8, 2016. In their Joint Comments, the participating State Associations reminded the FCC of their long and active experience in helping to manage the process of developing State EAS Plans for submission to the Commission for review and approval. They also emphasized the leading role that they played in a five-year effort to authorize IPAWS in federal law. (Prior to the bill's enactment earlier this year, IPAWS had existed only as the result of a Presidential order. Importantly, the new law calls for the creation of an advisory group of federal and state partners and EAS stakeholders to work on improvements to our nation's warning system. It also calls for FEMA to incorporate EAS/IPAWS training in the National Incident Management System, ensuring that communication to the public will remain part and parcel of emergency managers' incident response.) While complimenting the FCC for its very hard work and insightful treatment of the subject of EAS by the Commission and its staff, as evidenced by the scope of the NPRM, the State Associations expressed concern that some approaches proposed or being considered by the Commission would place unreasonable burdens on State Emergency Communications Committees, which typically consist of volunteer members, and/or would impose "one size fits all" type regulations on matters which are better left to the states, which can tailor approaches more suitable to their respective individual needs. The matters of concern identified by the State Associations included the development of a State EAS Plan template, the inclusion of certain information, such as SECC governance structures and local area EAS plans, in State Plans, and some of the security measures and related reporting obligations proposed by the Commission. The State Associations expressed their belief, in particular, that the Commission's security proposals are over-reaching and would chill full participation in the EAS network. The State Associations also opposed the proposal that State EAS Plans include platforms such as social media which are not part of the EAS network. They pointed out the unreliability of social media as an alert platform, the large number of people who use social media only infrequently or not at all, and the rapid developments in social media technology and applications that make these sort of non-broadcast/cable platforms unsuitable for inclusion in State EAS Plans. The State Associations also pointed out that the pace of those technological advances, and the evolution of social media generally, would make it extremely difficult to address the role of social media in EAS Plans and to keep Plans updated. The State Associations supported the proposal that EAS Participants have the ability to conduct live code tests at their discretion without the need for a waiver, and supported the proposal that EAS tones be permitted in PSAs, subject to monitoring to assure that such tones do not inadvertently trigger alerts. They also stated that the use of WEA tones should be permitted in bona fide news reports to educate the public as to WEA. As a general matter, the State Associates stated that

certain decisions are best left to state and local entities, as those entities are in the best position to make determinations in which key factors which will differ from place to place. In accordance with that concept, they stated that EAS Participants and governmental entities should have the discretion to determine the languages in which PSAs and other EAS related programs should be broadcast. Finally, the State Associations called for the use of selective override to address the problem of cable force tuning, which results in television viewers being deprived of critical emergency information at the times they most need it. (*Proceeding pending*)

3. *In the Matter of Revisions to Public File Requirements -- Broadcaster Correspondence File and Cable Principal Headend Location, Notice of Proposed Rulemaking*, MB Docket No. 16-161, FCC 16-62 (released May 25, 2016). Joint Comments filed July 22, 2016. In their Joint Comments, the participating State Associations strongly supported the FCC's proposal to eliminate the rule which requires broadcasters to maintain letters and e-mails from the public in their public files. We made the following points: (i) In light of the accessibility of other means by which the public can communicate with broadcast stations, including on social media where such communications typically are preserved and publicly accessible, the requirement that stations retain letters and e-mails is outdated. (We also noted that numerous broadcasters associations have made this point to the FCC in the past, so the elimination of the requirement now is, at a minimum, timely.) (ii) because the public correspondence portion is the final vestige of the public file required to be maintained in a paper format, elimination of the requirement would enable stations to dedicate staff resources to more productive uses as well as to provide a more secure and safe work environment for their staff; (iii) while radio stations outside the top 50 markets and those with fewer than 5 full-time employees are not required to move their public files online until 2018, the elimination of the final aspect of the physical public file may encourage them to do so earlier; and (iv) because commercial broadcasters are the only entities required to maintain correspondence from the public in their public files, elimination of the requirement would provide for regulatory parity with other FCC-regulated businesses. (*Proposed Rule Change Adopted*)

4. *In the Matter of Alternative Broadcast Inspection Program*. Freedom of Information Act Request filed on December 29, 2016. The Request was filed to obtain a list of persons with whom the FCC's Enforcement Bureau has entered into ABIP Program Agreements under which such persons are authorized to conduct ABIP Inspections and grant Certificates of Compliance outside the ABIP Programs established by the Bureau and operated by the State Broadcasters Associations. (*Request Granted*)

2017

1. *In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, Petition for Rulemaking*, MB Docket No. 16-410. Joint Comments filed January 30, 2017. The participating Associations filed in strong support of a proposal to change the FCC's EEO Rule to permit broadcast stations to rely solely on Internet-based recruiting to meet their obligation to "use recruitment sources for each vacancy sufficient in [a licensee's] reasonable, good faith judgment to widely disseminate information concerning the vacancy." The same unified group of State Broadcasters Associations had first requested this change in 2002, at which time the FCC indicated that the Internet was not yet sufficiently available to minority and rural populations to permit broadcasters to rely exclusively on Internet recruiting. In these Comments, we made the following points: (1) Whether the Internet is broadly available to all segments of the U.S. population is beyond question in 2017, and the FCC needs to conform its rules and policies to that reality; (2) Because the EEO Rule itself does not expressly prohibit relying solely on Internet recruiting, the FCC need not conduct a formal rulemaking to implement the change, but could instead issue a declaratory ruling or clarification to that effect, which

would speed implementation of it; (3) Had the Internet been available when the EEO Rule was created, it certainly would have been the FCC's preferred avenue of recruitment, as it is universally available, free (via public WiFi or libraries and schools), instantaneous, and flexible, providing not only an avenue for job seekers to learn about an opening, but to apply for it as well; (4) Government and businesses have uniformly moved their recruiting to the Internet, and job seekers, being aware of this, do their job hunting on the Internet; (5) Broadcasters need to be able to focus their recruiting resources where it will be most effective, and for a young population that relies heavily on the Internet for information, including for job hunts, requiring use of "traditional" recruiting mechanisms is inefficient; (6) As most broadcast stations today have digital operations, stations are looking for applicants with digital skills, including the knowledge of how best to utilize social media and other Internet platforms, and the ideal place to find such applicants is on the Internet. (*Declaratory Ruling Issued Granting Relief*)

2. *Request for Informal, Nonbinding Advisory from the FTC's Mailbox* (<mailto:endorsements@ftc.gov>) filed March 17, 2017. NASBA sought an informal, nonbinding guidance from the Federal Trade Association on this question: if a radio or television station were to participate in a State Broadcasters Association's PEP Program and, pursuant to that program, voluntarily "retweeted" the PEP participant's public service Twitter message or voluntarily "shared" the PEP participant's public service Facebook post via the station's own social media accounts, are those station social media post subject to the FTC's Endorsement Guidelines and, if so, are the stations required to add "#Ad" or "Sponsored" or any other information, to each shared post and retweeted message? In prompt response to the request, the FTC stated the following: *"As you describe it, the posting of public service announcements on the social media channels of local broadcasters does not appear to involve commercial speech and would therefore not be subject to FTC jurisdiction. Even when someone writes to me about endorsements that might not be subject to our jurisdiction, I generally recommend transparency. In the situation that you describe, there appears to be sufficient transparency. The stations are reposting the original messages, so that viewers will know the source of the messages, and there does not appear to be any material connection between the stations and anyone else that would affect the weight or credibility that viewers give to any endorsement of the messages."* (*Request Granted*)

3. *In the Matter of Modernization of Media Regulation Initiative*, MB Docket No. 17-105. Joint Reply Comments filed August 4, 2017. The participating Associations filed extensive Joint Reply Comments in this proceeding, which is aimed at modernizing inefficient and unduly burdensome FCC rules. The Joint Reply Comments requested that the FCC modify its rules to allow broadcasters the flexibility to provide required public notices online rather than in newspapers or on-air, and to provide private notices like cable and satellite must-carry elections electronically rather than by certified mail. The Joint Reply Comments also asked the FCC to (1) eliminate the annual filing of FCC Form 317, the Ancillary and Supplementary Services Report, for stations that have not provided such services in the past year; (2) eliminate the requirement that stations file FCC Form 397, the EEO Mid-Term Report, which has become redundant with information already available in a station's online public file; (3) no longer require the filing of various contracts with the FCC; and (4) reexamine the Form 398 Children's Television Programming Report requirement to simplify or eliminate the quarterly collection of such detailed information. Finally, the Joint Reply Comments discussed the FCC's EEO Rule and various ways to reduce the paperwork and regulatory burdens imposed by the rule without affecting its underlying intent, including eliminating or streamlining the FCC's annual random EEO audits, eliminating the posting of annual EEO Public File Reports on station websites as they are already available in stations' online public files, and eliminating the requirement that stations upload their responses to random EEO audits to their online public files. (*The FCC has since launched proceedings aimed at making several of the changes proposed in the NASBA filing, all of which remain pending*)

