

FCC Adopts Rules for the First National Test of the Emergency Alert System

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In a [Third Report and Order](#) (Order) released earlier this month, the Federal Communications Commission (FCC) adopted rules to implement the first ever national test of the Emergency Alert System (EAS), which will affect all television and radio broadcast stations, cable systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Services (SDARS), and other wireline video services.

Background

EAS is the current public warning system designed to allow the President to issue an alert to the public during a national crisis. The current EAS relies upon broadcast messages through a “daisy chain” to radio, television, satellite, and cable operators to deliver messages to the public. While the current EAS is subject to weekly and monthly tests at the state and local level, the EAS has never delivered a national Presidential alert and the national EAS has never been tested from “top to bottom.” The FCC’s Part 11 rules have long provided for weekly and monthly tests of the EAS on the state and local levels, which the FCC believes may not reveal vulnerabilities in the nationwide alert system.

Summary of the Order

The Order amends the FCC’s Part 11 rules to establish national EAS testing and to require data collection of the test results as follows:

- **Required participation.** All EAS Participants must participate in the national EAS tests. Under the FCC’s rules, EAS Participants include television and radio broadcast stations, cable systems, wireless cable systems, DBS services, SDARS, and other wireline video services.
- **Timing.** The Order did not set a date for the first test. Instead, the FCC will issue a public notice to announce the date of the test. The FCC will schedule the national tests annually in consultation with the Federal Emergency Management Agency (FEMA) and will provide at least two months’ notice to EAS Participants prior to conducting the national test. The national test will replace the weekly and monthly tests for EAS Participants for the week and month in which the national test occurs.
- **Test-related data collection and submission.** EAS Participants must record test-related diagnostic data (including date and time of message receipt and transmission, “best efforts” diagnosis for any test failures, and make and model of equipment utilized) and submit these data to the FCC’s Public Safety and Homeland Security Bureau (Bureau) within 45 days after the test.
- **Confidentiality of test data.** The test data EAS Participants submit to the FCC is presumptively confidential, rather than being public as originally proposed. Still, the FCC may share the data with other federal agencies and state-level governmental emergency management agencies if those state-level agencies protect confidentiality at least as stringently as the Freedom of Information Act.
- **Event code, location codes, and other administrative procedures.** The first national test will use the live Emergency Alert Notification (EAN) event code to most closely simulate an actual emergency. The Bureau will determine administrative procedures, location codes, length of the test, and pre-test outreach. The FCC abandoned its proposal to require EAS Participants to relay the EAN regardless of which Federal Information Processing Standard (FIPS) code the EAN included.
- **Enforcement.** The FCC states that it will treat potential violations exposed by the national tests as “voluntary disclosures,” which the FCC has treated more leniently. The FCC notes, however, that repeated, egregious, or potential violations that are not promptly remedied might not receive “voluntary disclosure” treatment.

The FCC will not wait for implementation of FEMA's new Common Alerting Protocol (CAP) standard for emergency alerts to conduct national tests. Rather, the national EAS tests will take place using the current EAS system. CAP is an XML-based, interoperable, data interchange format that will collect and distribute emergency warnings and safety notifications to not only television stations, radio stations, and cable systems, but also cell phones, electronic highway signs, and other platforms. CAP compliance continues on a schedule independent of the national tests. The FCC requires all EAS Participants to be capable of receiving in CAP-formatted messages by Sept. 30, 2011, which may require equipment replacement.

If you would like to discuss how the new rules affect your business operations or any other matter raised by the Order, please contact us.

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