

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

In the Matter of)	
)	
Review of the Emergency Alert System)	EB Docket No. 04-296
)	
Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief)	
)	
Randy Gehman Petition for Rulemaking)	

FOURTH REPORT AND ORDER

Adopted: September 15, 2011

Released: September 16, 2011

By the Commission:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	7
A. Extension of Current CAP Compliance Deadline	7
B. Status of Intermediary Devices Under the Current Part 11 Rules	22
IV. PROCEDURAL MATTERS	23
A. Accessible Formats	23
B. Regulatory Flexibility Analysis	24
C. Paperwork Reduction Act Analysis	25
D. Congressional Review Act	26
E. Effective Date of Rule	27
V. ORDERING CLAUSES	28
APPENDIX – Final Rules	

I. INTRODUCTION

1. This *Fourth Report and Order* is one of two orders in which we will take additional steps to integrate the Common Alerting Protocol (CAP)¹ into our Part 11 rules governing the Emergency Alert System (EAS).² In this *Order*, we amend section 11.56 of the Commission’s EAS rules to require EAS Participants to be able to receive CAP-formatted EAS alerts as required by Part 11 no later than June 30,

¹ See *infra* note 12 for a detailed description of CAP.

² See *infra* para. 3 for a detailed description of the EAS.

2012. We anticipate that we will adopt the CAP-based revisions to our Part 11 EAS rules in a subsequent order stemming from our *Third Further Notice of Proposed Rulemaking* (hereinafter “*Third FNPRM*”) in this docket sufficiently in advance of June 30, 2012, to allow EAS Participants ample time to comply with the new Part 11 rules.³ In this subsequent order, we will also address the many remaining non-CAP related issues raised in our *Third FNPRM*.

II. BACKGROUND

2. As we stated in greater detail in the *Third FNPRM* in this docket, the current EAS is a national public warning system that requires broadcasters, cable systems, and other service providers (“EAS Participants”) to provide communications capabilities that enable the President to address the public in national emergencies.⁴ EAS Participants also distribute, on a voluntary basis, alerts issued by state and local governments, as well as the National Weather Service (NWS).⁵ The Commission, the Federal Emergency Management Agency (FEMA), and NWS implement the EAS on the federal level. The Commission adopts, administers, and enforces the technical rules for the EAS.⁶

3. The present-day EAS is a hierarchical alert message distribution system in which a message originator at the local, state, or national level must format a message in the EAS Protocol,⁷ a format identical to the Specific Area Message Encoding (SAME) digital protocol utilized by NWS (hereinafter, “EAS Protocol” and “SAME” are used interchangeably).⁸ The alert initiator then sends the SAME-formatted alert to specially-designed equipment at designated broadcast stations, known as Primary Entry Point (PEP) stations,⁹ which then broadcast the alert to their listeners. Other EAS Participants monitor the PEP stations for EAS alerts. When these other EAS Participants receive the EAS alert, they, in turn, broadcast it to their listeners or viewers. This group of EAS Participants may in turn

³ See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, ET Docket No. 04-296, *Third Further Notice of Proposed Rulemaking*, 26 FCC Rcd 8149 (2007) (*Third FNPRM*).

⁴ See *id.*, 8152-53, para. 3. The history of EAS is summarized in the first Notice of Proposed Rulemaking in this docket. See Review of the Emergency Alert System, EB Docket No. 04-296, *Notice of Proposed Rulemaking*, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, an overview of the present organization and functioning of the EAS system is included in the *Second Report and Order*. See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, ET Docket No. 04-296, *Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

⁵ See *Third FNPRM*, 26 FCC Rcd 8149, 8152-53, para. 3.

⁶ See *Memorandum*, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995).

⁷ See 47 C.F.R. § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (these codes contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) message; and (4) preamble and “end of message” (EOM) codes. See *id.* § 11.31(a). Although the EAS Protocol specifies that the message can be audio, video, or text, in practice, only audio is sent.

⁸ See *Third FNPRM*, 26 FCC Rcd 8149, 8154, para. 5.

⁹ See 47 C.F.R. § 11.2(a). PEP stations are designated by FEMA and tasked with receiving and transmitting “Presidential Level” messages initiated by FEMA.

be monitored by other EAS Participants who will, upon receipt of the EAS alert, re-broadcast it to their listeners or viewers.¹⁰

4. In 2007, the Commission adopted the *Second Report and Order* in this docket,¹¹ which revised the Commission's Part 11 EAS rules to lay the foundation for a state-of-the-art, next-generation national EAS (Next Generation EAS). To ensure that the Next Generation EAS would be transmitted in an efficient, rapid, and secure manner over a variety of formats (including text, audio, and video) and via different means (broadcast, cable, satellite, and other networks), the Commission required that EAS Participants: (1) be capable of receiving CAP-formatted alert messages no later than 180 days after FEMA publicly publishes its adoption of the CAP standard;¹² (2) adopt Next Generation EAS delivery systems no later than 180 days after FEMA publicly releases standards for those systems;¹³ and (3) transmit state and local EAS alerts originated by governors or their designees no later than 180 days after FEMA publishes its adoption of the CAP standard,¹⁴ provided that the state has a Commission-approved State Area EAS Plan that provides for delivery of such alerts.¹⁵ On September 30, 2010, FEMA published the technical standards and requirements for CAP-formatted EAS alerts, triggering the 180-day clock for EAS Participants to be able to receive CAP-formatted alerts.¹⁶ This would have made the deadline for compliance March 29, 2011.

5. On November 18, 2010, the Commission adopted the *Waiver Order*, which extended the 180-day deadline for EAS Participants to meet the CAP-related obligations we adopted in the *Second*

¹⁰ This process of relaying EAS messages from station to station is often referred to as the "daisy chain." A detailed description of this process is set forth in the *Third FNPRM*. See *Third FNPRM*, 26 FCC Rcd 8149, 8155-56, paras. 6-7.

¹¹ See *Second Report and Order*, *supra* note 4.

¹² See *Second Report and Order*, 22 FCC Rcd 13275, 13288, para. 26. As explained in the *Third FNPRM*, CAP is an open, interoperable standard that incorporates a language developed and widely used for web documents, which permits links to voice, audio, or data files; images; multilingual translations of alerts; and links providing further information. CAP's standardized fields provide flexibility that facilitates interoperability between and among devices. CAP is also backwards-compatible with SAME to the extent that it can be used to relay SAME data. Although CAP and SAME both convey data, the two protocols function in entirely different ways. CAP essentially represents an envelope in which data is packaged according to predetermined fields and packetized for transmission over various IP-based mediums, such as the Internet. The SAME protocol is distributed by modulating the various codes associated with the SAME protocol, representing certain basic information associated with the alert, and an audio message onto an RF signal using the audio frequency-shift keying (AFSK) modulation scheme to open an audio channel in EAS decoders. See *Third FNPRM*, 26 FCC Rcd 8149, 8157-59, paras. 11-14.

¹³ See *Second Report and Order*, 22 FCC Rcd 13275, 13291, para. 32.

¹⁴ The Mayor of the District of Columbia, as well as the Governors of the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and Guam, are also required to have this capability. See 47 U.S.C. § 153(58) ("The term 'state' includes the District of Columbia and the Territories and possessions.").

¹⁵ See *Second Report and Order*, 22 FCC Rcd 13275, 13300, para. 55.

¹⁶ See FEMA, "FEMA Announces Adoption Of New Standard For Emergency Alerts," available at <http://www.fema.gov/news/newsrelease.fema?id=52880> (last visited Oct. 1, 2010). The three documents defining the FEMA Integrated Public Alert and Warning System (IPAWS) technical standards and requirements for CAP and its implementation are: (1) the OASIS CAP Standard v1.2; (2) an IPAWS Specification to the CAP Standard (CAP v1.2 IPAWS USA Profile v1.0); and (3) a CAP to EAS Implementation Guide. See *id.*

Report and Order until September 30, 2011.¹⁷ The Commission based its decision on concerns raised by various EAS stakeholders that licensees would face difficulties obtaining the appropriate equipment to receive CAP-formatted alerts within the 180 day deadline.¹⁸ The Commission also explained that it would seek comment on whether the extension of the deadline granted in the *Waiver Order* is sufficient and reserved the right to further extend the deadline.¹⁹

6. On May 25, 2011, the Commission adopted the *Third FNPRM*, in which it sought comment on a wide range of tentative conclusions and proposed revisions to the Part 11 rules that would more fully delineate and integrate into the Commission's Part 11 rules the CAP-related mandates adopted in the *Second Report and Order*.²⁰ Among other things, the *Third FNPRM* sought comment on whether the current September 30, 2011, deadline for CAP-compliance is sufficient or whether the Commission should extend or modify it so it would be triggered by some action other than FEMA's adoption of CAP.²¹ The Commission received 30 comments and 12 reply comments in response to the *Third FNPRM*. The majority of commenters requested a further extension of the deadline.

III. DISCUSSION

A. Extension of Current CAP Compliance Deadline

7. As a threshold matter, in the *Third FNPRM* the Commission sought comment on what action or event, if any, should trigger the time period for compliance with the obligation for EAS Participants to process CAP-formatted messages.²² The Commission asked, for example, whether, if it must implement new certification rules to ensure that all EAS devices process CAP-formatted messages in a consistent and standardized manner, the time period for CAP compliance should be triggered by the effective date of any new certification requirements that we may adopt in this proceeding.²³

8. The majority of comments responding to the CAP compliance deadline issue in the *Third FNPRM* supported an extension of the CAP deadline.²⁴ The National Association of Broadcasters

¹⁷ See Review of the Emergency Alert System, Order, EB Docket No. 04-296, 25 FCC Rcd 16376, para. 1 (2010) (*Waiver Order*).

¹⁸ See *id.* at 16379-80, para. 9.

¹⁹ See *id.* at 16380, para. 11.

²⁰ See *supra* note 3.

²¹ See *Third FNPRM*, 26 FCC Rcd 8149, 8190-91, paras. 109-111.

²² See *id.* at 8191, para. 110.

²³ See *id.*

²⁴ See, e.g., National Cable & Telecommunications Association Comments, EB Docket 04-296 (filed July 20, 2011) at 4 (NCTA Comments); National Association of Broadcasters Comments, EB Docket 04-296 (filed July 20, 2011) at 25-27 (NAB Comments); The Broadcast Warning Working Group Comments, EB Docket 04-296 (filed July 19, 2011) at 43-44; American Cable Association Comments, EB Docket 04-296 (filed July 20, 2011) at 4-7 (ACA Comments); Comments of the Association of Public Television Stations and the Public Broadcasting Service, EB Docket 04-296 (filed July 20, 2011) at 5 (Public Television Comments); Named State Broadcasters Associations Comments, EB Docket 04-296 (filed July 20, 2011) at 12-15 (NSBA Comments); Prometheus Radio Project Comments, EB Docket 04-296 (filed July 20, 2011) at 2 (Prometheus Comments); Verizon Comments, EB Docket 04-296 (filed July 20, 2011) at 3 (Verizon Comments); Joint Comments of the Houston Christian Broadcasters, Inc., the Moody Bible Institute of Chicago, Augusta Radio Fellowship Institute, Inc., Big River Public Broadcasting Corporation, Life on the Way Communications, Inc. and the Sister Sherry Lynn Foundation Inc., EB Docket 04-296 (filed July 20, 2011) at 6; TFT, Inc. Comments, EB Docket 04-296 (filed July 20, 2011) at 6-7 (TFT Comments); Adrienne Abbott-Gutierrez Comments, EB Docket No. 04-296 (July 18, 2011) at 1-2. We also note that forty-six (continued....)

(NAB), for example, advocated for an extension of the deadline on grounds that the potential new certification requirements, including testing for CAP conformance, have created regulatory uncertainty.²⁵

According to NAB, “Given this regulatory uncertainty, EAS Participants would need additional time to include review of these testing results before making their EAS equipment purchasing decisions.”²⁶ The Named State Broadcasters Associations (NSBA) noted similar concerns and argued that “[n]o EAS Participant should be required to purchase costly equipment not knowing whether it will be fully FCC compliant.”²⁷ The Association of Public Television Stations and the Public Broadcasting Service (collectively, Public Television) asserted that, “given the uncertainty introduced by this rulemaking (including as to whether intermediary devices are permissible) and the fact that a Final Order may be released with only a few weeks remaining until the deadline, Public Television believes that stations will need additional time to adapt.”²⁸

9. Prometheus Radio Project (Prometheus) argued, “Without an extension, [EAS] participants will be forced to buy equipment without a guarantee that it will meet future certification requirements,” adding that “[i]f the equipment is not in compliance with the eventual requirements, participants will have to buy replacement equipment.”²⁹ Prometheus further argued, “Without a deadline extension, some small [FM] stations may be unable to meet the compliance requirement in time and go off the air to avoid non-compliance fees, which will reduce the capacity of the legacy EAS system while failing to increase CAP compliance.”³⁰

10. The National Cable & Telecommunications Association (NCTA) argued that “testing of CAP equipment and software is fundamental before the technology is up and running on live cable systems.”³¹ According to NCTA, “While operators are currently working with vendors to purchase new
(Continued from previous page)

state broadcasters associations, NAB, NCTA, the Society of Broadcast Engineers, ACA, the Association for Maximum Service Television, National Public Radio, the Association of Public Television Stations, and the Public Broadcasting Service jointly filed a petition for extension of the 180-day CAP compliance deadline. *See* Petition for an Expedited Further Extension of the 180-Day “Cap” Compliance Deadline, EB Docket 04-296 (filed July 29, 2011) (Joint Petition). The Joint Petition generally reiterates arguments raised in the individual petitioners’ comments submitted in this proceeding and reflects the view that the issues under consideration in the *Third FNPRM* must be decided reasonably in advance of the CAP-compliance deadline to provide regulatory certainty to EAS Participants and EAS equipment vendors. The Joint Petition contends, for example, that given “the outcome of the rulemaking proceeding will undoubtedly have an impact on what CAP-compliant equipment will be deemed acceptable, it makes little sense that equipment be purchased before interested parties know the outcome of that rulemaking.” *Id.* at 6. The Joint Petition further asserts that “many vendors will require three to six months of actual testing of the new CAP-capable equipment before it can be relied upon.” *Id.* at 5. Because we are granting an extension of the CAP-compliance deadline by revising our Part 11 EAS rules, the Joint Petition is moot and accordingly, we dismiss it in this order below.

²⁵ *See* NAB Comments at 26-27.

²⁶ NAB Comments at 26. NAB further observed that, “if the Commission were to adopt any rules in this proceeding that would affect the basic structure or function of EAS equipment, such as rules concerning Ethernet ports or other connection-type aspects of an encoder/decoder box, then an extension would be needed to allow manufacturers to modify equipment, both still in development and already in the market.” *Id.* at 26-27. In this regard, NAB argued, “A further extension of the CAP-compliance deadline will enable EAS Participants to take into account any changes this proceeding brings to Part 11 before making their equipment purchasing decisions.” *Id.* at 27.

²⁷ NSBA Comments at 13.

²⁸ Public Television Comments at 5.

²⁹ Prometheus Comments at 2.

³⁰ *Id.*

³¹ NCTA Comments at 4.

equipment or upgrade their existing systems to be CAP compliant, they do not want a scenario to develop where they are deploying new patches on equipment in live systems during or after the compliance date (assuming manufacturers are able to provide timely updates in firmware and software to comply with the changes that may result from this rulemaking).³² NCTA added that “it is not yet known whether the CAP message will be distributed to cable operators via the Internet or through another mode of delivery” and that “a further complicating factor is that operators will be simultaneously testing and preparing existing cable plant for the national EAS test in early November, which does not involve CAP technology.”³³ As NCTA put it, “Rushing to meet an unnecessary September 30th deadline for a CAP implementation plan that is still a work-in-progress will not serve the federal government’s EAS goals,” while “[d]elaying the implementation of CAP until it is fully ready will not harm the public, which will continue to receive all emergency alerts.”³⁴

11. The American Cable Association (ACA) contended that an extension is necessary “to permit the orderly implementation of the new rules, the development of marketplace solutions, and compliance by EAS participants,”³⁵ and because “failure to grant additional time will result in an unnecessarily rushed, expensive and likely incomplete process that will fail to achieve the objectives of the program.”³⁶ ACA also observed that it “is uncertain whether the Commission will determine that use of intermediary devices is an acceptable means for compliance.”³⁷ ACA also asserted that the Commission should “extend the general deadline ultimately adopted by 12 months for cable operators with 1.5 million subscribers or fewer”³⁸ and that the Commission should grant a blanket exemption for small cable systems serving 500 subscribers or fewer and for any cable systems where Internet access is either not provided to subscribers or available at the cable headend.³⁹

12. Verizon argued, “Notwithstanding the diligence and best efforts of all stakeholders in quickly implementing the CAP, the short period of time since the current CAP standards were finalized has not been sufficient to get all of the pieces in place to require CAP compliance by [September 30, 2011].”⁴⁰ Verizon added that “many providers, including Verizon, are still awaiting delivery of the equipment that they will need to implement CAP on their systems” and that “[a]fter that equipment is delivered, it will take some time to properly install and test the equipment at relevant points around the country, and to ensure that the equipment is properly configured to receive and process CAP-based alerts.”⁴¹

³² *Id.*

³³ *Id.*

³⁴ NCTA Comments at 4-5.

³⁵ See American Cable Association Reply Comments, EB Docket 04-296 (filed Aug. 4, 2011) at 5-6 (ACA Reply Comments).

³⁶ *Id.* at 5.

³⁷ *Id.*

³⁸ *Id.* at 3.

³⁹ *Id.* at 10-14.

⁴⁰ Verizon Comments at 2. Verizon also observed that “final CAP equipment certification standards are not yet in place,” and that “most states and public safety officials have not yet defined the sources from which providers will receive CAP-based alerts.” *Id.* at 3. According to Verizon, “Given the necessity of this information for implementing CAP, full implementation by September 30[, 2011,] is unrealistic.” *Id.*

⁴¹ *Id.* at 2-3.

13. TFT, Inc. (TFT), an EAS equipment manufacturer, argued that because a “list of CAP servers that aggregate and distribute CAP encoded messages is not available” and “FEMA will not have IPAWS-OPEN⁴² operational until August-September 2011,” EAS Participants lack “ample time to install CAP receiving equipment and train personnel in their programming, operation, and maintenance.”⁴³ According to TFT, these circumstances warrant an extension of the deadline or issuance of waivers to EAS Participants unable to comply with the existing deadline.⁴⁴

14. Equipment manufacturers Monroe Electronics, Inc. (Monroe) and Sage Alerting Systems, Inc. (Sage) opposed any further extension of the CAP compliance deadline. Monroe asserted, “Information on the relevant standards and requirements have been available from FEMA and industry groups including the EAS-CAP Industry Group for months, and in cases for years” and that “[t]here are few, if any, outstanding [potential compliance issues] that we feel could not be resolved via software/firmware update, which may easily be accommodated by CAP EAS equipment in the field.”⁴⁵ Monroe further asserted, “We believe a suitable certification regime is already in place,” adding that “[n]umerous vendors have already designed, certified and marketed CAP-compliant EAS equipment.”⁴⁶ Monroe also questioned the “real benefits of any further extension(s) of the CAP deadline” on grounds that “CAP EAS equipment is currently manufactured by a number of vendors, meeting FCC Part 11, FEMA, OASIS and ECIG specifications,” and “[r]elevant certifications and conformity assessments have been completed by these manufacturers.”⁴⁷

15. Sage asserted, “We do not believe a further delay for hardware acquisition is desirable or justified.”⁴⁸ With respect to uncertainties raised by proponents of an extension, Sage asserted that “the majority of technical issues have been addressed, certainly in the area of the CAP protocol itself, the IPAWS use of that protocol to encode EAS messages, and in the technical descriptions of how to convert an IPAWS encoded CAP message and turn it into an EAS message for air.”⁴⁹ According to Sage, “[t]he majority of the uncertainties are regulatory, having to do with changes to Part 11 rules and possible certification requirements,” and “the actual technical changes from what is currently implemented and in the field are minor [and configurable via software].”⁵⁰ Sage observed that “the FEMA conformity assessment program did add testing for [the CAP-to-SAME conversion outlined in the ECIG Implementation Guide] in December 2010, and all equipment now on the market passed that test (though

⁴² IPAWS-OPEN functions as the alert aggregator for IPAWS. As FEMA describes it, “[IPAWS-OPEN] will collect and route IPAWS emergency alerts to and from emergency systems that serve the public.” See FEMA, “Open Platform for Emergency Networks (IPAWS-OPEN) or The Aggregator” (Aug. 18, 2011), available at <http://www.fema.gov/emergency/ipaws/projects.shtm#2>.

⁴³ TFT Comments at 6. See also TFT, Inc., Reply Comments, EB Docket 04-296 (filed Aug. 4, 2011) at 2 (agreeing with the Broadcast Warning Working Group that a 180-day extension could provide “volunteer and external emergency management warning stakeholders very much needed time” for coordinating with state and local emergency planning and would also “give EAS Participants more time to integrate CAP reception into their facilities and to train personnel in the proper configuration and operation of that equipment”).

⁴⁴ TFT Comments at 7.

⁴⁵ Monroe Electronics, Inc., Comments, EB Docket 04-296 (filed July 19, 2011) at 15-16 (Monroe Comments).

⁴⁶ *Id.* at 16.

⁴⁷ *Id.* at 16-17.

⁴⁸ Sage Alerting Systems, Inc., Comments, EB Docket 04-296 (filed July 20, 2011) at 17 (Sage Comments).

⁴⁹ Sage Alerting Systems, Inc., Reply Comments, EB Docket 04-296 (filed Aug. 4, 2011) at 1 (Sage Reply Comments).

⁵⁰ *Id.* at 2.

Intermediary Devices only used a subset of the test).⁵¹ Sage further stated that it “estimates at least half, possibly as much as 70 percent [of broadcasters]” have acquired or contracted for CAP-capable EAS equipment and that “[a]nother extension will simply delay orders until near the end of the new limit.”⁵² Sage recommended that “the FCC continue to require that stations be ready to receive CAP alerts equipment by the current deadline, but allow them to have 90 days after FEMA declares the broadcast distribution component for IPAWS 3.0 ready for use (or December 31, 2011, whichever is later), to actually begin receiving messages from the IPAWS server, and 90 days after a state plan is approved by the FCC to begin receiving State messages.”⁵³

16. FEMA’s IPAWS Program Management Office filed reply comments which did not take a position on whether the Commission should extend the existing CAP-compliance deadline but noted that the FEMA IPAWS/CAP interface will not be ready until the end of September and that the NWS (which issues the majority of state/local EAS alerts) will not be processing weather alerts in CAP for IPAWS until November 2011.⁵⁴ As a result, FEMA suggested, among other things, “that there be an allowance for a Period of Configuration of CAP-EAS device to commence on the established date for EAS participants to be able to receive CAP messages and extend for a period of 120 days.”⁵⁵

17. We agree with the majority of commenters that an extension of the current CAP compliance deadline is warranted. Although section 11.56 of the Commission’s rules mandates that “all EAS Participants must be able to receive CAP-formatted alerts,”⁵⁶ it is through the rulemaking initiated in this docket by the *Third FNPRM* that we will revise our rules to define what a “CAP-formatted alert” actually is and establish regulations to determine the manner in which EAS Participants must receive it. While we agree with Monroe and Sage that the CAP standard is well established and that there is equipment that has already been deployed that complies with that standard, we nonetheless agree with commenters that argue that until the Commission has completed its rulemaking process, it cannot meaningfully impose a deadline by which EAS Participants must “receive CAP-formatted alerts.”⁵⁷ No one can comply with section 11.56 yet, because the Commission has not finalized all the key technical specifics necessary for receiving CAP-formatted alerts. Without having these specifics, no EAS Participant can claim that it is currently capable of receiving CAP-formatted alerts, even if it has equipment that could receive such alerts under one or more of the technical specifications being considered by the Commission. It is unlikely that the Commission can address all of the issues raised in the *Third FNPRM* and ensure that the corresponding Part 11 rule amendments are adopted and effective prior to the current September 30, 2011 deadline. EAS Participants should “be allowed adequate time to evaluate the impact of any changes to Part 11 before being required to comply with regulations the full impact of which cannot yet be known.”⁵⁸ Accordingly, we conclude that a further extension of the CAP-compliance deadline is warranted.

⁵¹ *Id.* at 16.

⁵² *Id.* at 16-17.

⁵³ *Id.* at 17 (*footnote omitted*).

⁵⁴ See Reply Comments on Behalf of Federal Emergency Management Agency Integrated Public Alert and Warning System Program Management Office, EB Docket 04-296 (filed Aug. 3, 2011) at 2 (FEMA Reply Comments).

⁵⁵ *Id.*

⁵⁶ 47 C.F.R. § 11.56

⁵⁷ See, e.g., NSBA Comments at 13; Prometheus Comments at 2; ACA Reply Comments at 5.

⁵⁸ NSBA Comments at 13-14.

18. We do not agree with Monroe and Sage that a further extension of the CAP-compliance deadline is unjustified.⁵⁹ Regardless of the extent to which CAP-enabled EAS equipment has been assessed by the FEMA ICAP compliance program⁶⁰ and is commercially available, the Commission must still revise its Part 11 rules as a predicate to requiring that EAS Participants be able to receive CAP-formatted alerts. While we agree with Monroe and Sage that the purchase of integrated CAP-complaint devices is neither unreasonable nor particularly risky,⁶¹ their comments do not speak to whether the Commission should require such purchases at the current stage of this proceeding, when the regulatory framework remains somewhat fluid. Rather, we find that more regulatory certainty is warranted before we require EAS Participants to comply with regulations that may soon change and thereby necessitate additional and potentially avoidable expenditures.

19. We agree with commenters such as NAB that argue that any revision of section 11.56 must provide EAS Participants ample time to comply with any new rules that the Commission may ultimately adopt.⁶² Although it seems likely, based on the record, that integrated CAP-capable EAS equipment currently available will be capable of being updated via software or firmware to meet whatever requirements we may adopt pursuant to the *Third FNPRM*,⁶³ there are specific issues under consideration in the *Third FNPRM*, such as the manner in which EAS Participants must monitor CAP sources and whether the Commission should eliminate the Emergency Action Termination (EAT) event code and retain the EAS Handbook, that will remain in flux until the Commission completes its revisions of the Part 11 rules.⁶⁴ All EAS Participants, whether or not they have purchased and installed CAP-compatible EAS equipment, will require some time to review these requirements, conduct internal equipment compatibility testing, and train staff to ensure compliance with any future Commission requirements.⁶⁵ Further, the extent to which the Commission will require EAS equipment to be certified as compliant with its revised rules is an open issue in this docket that must be resolved in a manner that gives EAS Participants sufficient time to comply with whatever certification requirement the Commission may adopt. We note that the majority of commenters requested an additional six months from the effective date of the Commission's revised rules to complete this process.⁶⁶ We believe that June 30, 2012 is an

⁵⁹ See Monroe Comments at 15-19; Sage Reply Comments at 1-4.

⁶⁰ As explained in the *Third FNPRM*, unrelated to any Commission certification requirement, FEMA has implemented an IPAWS Conformity Assessment Program (ICAP) for CAP products intended to interoperate with the IPAWS system. See *Third FNPRM*, 26 FCC Rcd 8149, 8185, para. 91. Under this program, manufacturers submit software and/or hardware to FEMA's designated test laboratory for testing to ensure compliance with CAP v1.2 USA IPAWS Profile v1.0 and the ECIG Implementation Guide. See *id.*

⁶¹ See e.g., Sage Comments at 16, 17; Monroe Comments at 15-17.

⁶² NAB Comments at 27.

⁶³ See, e.g., Monroe Comments at 16; Sage Reply Comments at 2.

⁶⁴ For example, in the *Third FNPRM*, we tentatively concluded, based upon public statements issued by FEMA concerning its IPAWS system, that EAS Participants should be required to monitor FEMA's IPAWS Really Simple Syndication, version 2.0 (RSS) feeds for federal CAP-formatted messages. See *Third FNPRM*, 26 FCC Rcd 8149, 8167, para. 38. Several commenters pointed out, however, that FEMA recently changed its distribution mechanism for IPAWS alerts from RSS feeds to Atom Syndication Format (ATOM) feeds. See, e.g., Sage Comments at 7; Monroe Comments at 7. As described by the Atom Enabled Alliance, "[ATOM] is the name of an XML-based Web content and metadata syndication format, and an application-level protocol for publishing and editing Web resources." See Atom Enabled Alliance, "Atom Publishing Protocol – Introduction," available at <http://www.atomenabled.org/developers/protocol/>.

⁶⁵ See NSBA Comments at 13. See also TFT Comments at 6; Joint Petition at 4.

⁶⁶ NAB Comments at 27. See also, Named State Associations Comments at 13-15.

appropriate deadline because it will provide the requested 180 days plus an additional period of time for the Commission to complete its revisions to the Part 11 EAS rules resulting from the *Third FNPRM*. Accordingly, we revise section 11.56 to require that all EAS Participants be able to receive CAP-formatted EAS alerts as required by this part no later than June 30, 2012.

20. We also find that neither the public interest nor the interests of EAS equipment manufacturers will be harmed by our extending the CAP compliance deadline. As discussed above, based on the record, it appears likely that integrated CAP-capable EAS equipment already on the market will be capable of meeting whatever CAP-based requirements we may adopt with only minor modifications (via firmware or software updates) and possible updates to their existing FCC certifications.⁶⁷ Accordingly, our extension of the CAP compliance deadline should not prevent those that wish to purchase FCC-certified, integrated CAP-capable EAS equipment from doing so or otherwise hamper the marketing activities of manufacturers of such equipment. In addition, extending the CAP-compliance deadline will give the Commission adequate time to resolve the question of whether intermediary devices can comply with the Commission's CAP requirements.⁶⁸

21. Finally, as NCTA notes, extending the section 11.56 compliance date will not harm the public because EAS Participants will continue to be able to transmit emergency alerts under the current system. FEMA has also acknowledged that its IPAWS/CAP interface will not be ready until at least the end of September and that the NWS (which issues the majority of state/local EAS alerts) will not be processing weather alerts in CAP for IPAWS until at least November 2011.⁶⁹ To the extent that FEMA needs to work with EAS Participants to fine-tune its IPAWS system after it comes online, it may do so by working with EAS Participants that have already installed equipment.

B. Status of Intermediary Devices Under the Current Part 11 Rules

22. In the *Third FNPRM*, the Commission noted that some equipment vendors may be marketing equipment – intermediary devices – that connects in some fashion with previously certified EAS equipment to allow that equipment to receive CAP-formatted alerts in the legacy EAS format.⁷⁰ The Commission sought comment on a number of issues regarding these devices, including whether they must be certified under current EAS rules and whether they satisfy the Commission's 2007 CAP-related requirements. Although we intend to address these issues in our subsequent order, we note that, based on the record, it appears that some EAS Participants may have purchased such equipment. We remind EAS Participants that equipment that meets the definition of an encoder or a decoder under our rules must be certified under Section 11.34 of the Commission's current rules.⁷¹ In addition, equipment used to receive CAP-formatted EAS alerts must, at a minimum, comply with the CAP requirements the Commission adopted in the *Second Report and Order*.⁷² While we do not decide today whether intermediary devices comply with these requirements, it is unclear whether any equipment that does not meet these current baseline requirements will be able to satisfy any CAP-related rules we may adopt in the future. Consequently, we urge EAS Participants that have purchased or are considering purchase of any type of EAS equipment to verify with manufacturers and/or vendors that the equipment complies with current FCC rules.

⁶⁷ See e.g., Monroe Comments at 16.

⁶⁸ ACA Reply Comments at 5.

⁶⁹ FEMA Reply Comments.

⁷⁰ See *Third FNPRM*, 26 FCC Rcd 8149, 8171, para. 45.

⁷¹ See 47 C.F.R. § 11.34(a), (b).

⁷² See *supra* para. 4. See also 47 C.F.R. §§ 11.55(a), 11.56.

IV. PROCEDURAL MATTERS**A. Accessible Formats**

23. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Regulatory Flexibility Analysis

24. The Regulatory Flexibility Act (RFA)⁷³ requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”⁷⁴ In this *Fourth Report and Order*, we have revised the rules to extend the date by which EAS Participants must be able to receive CAP-formatted EAS alert to June 30, 2012. We hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities, because the action merely maintains the status quo regarding CAP compliance. The Commission will send a copy of this *Fourth Report and Order*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.⁷⁵ In addition, the *Fourth Report and Order* (or a summary thereof) and certification will be published in the Federal Register.⁷⁶

C. Paperwork Reduction Act Analysis

25. This document contains no modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

D. Congressional Review Act

26. The Commission will send a copy of this *Fourth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (“CRA”), *see* 5 U.S.C. § 801(a)(1)(A).

E. Effective Date of Rule

27. We also conclude that good cause exists to make this rule revision effective immediately upon publication in the Federal Register, pursuant to Section 553(d)(3) of the Administrative Procedure Act.⁷⁷ Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule.⁷⁸ No party will be prejudiced by an expedited effective date for this rule revision; rather, the expedited date is necessary to provide the parties with regulatory

⁷³ *See* 5 U.S.C. § 604. 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).

⁷⁴ 5 U.S.C. § 605(b).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ 5 U.S.C. § 553(d)(3).

⁷⁸ *Omnipoint Corporation v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996), *citing United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977).

certainty sufficiently in advance of the current September 30, 2011 deadline. There is also no information collection associated with this rule revision, so no OMB approval is required for the revised rule.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this Fourth Report and Order IS ADOPTED;

29. IT IS FURTHER ORDERED that Part 11 of the Commission's Rules, 47 C.F.R. Part 11, is amended as set forth in the Appendix. The Order shall become effective immediately upon publication in the Federal Register;

30. IT IS FURTHER ORDERED that the Joint Petition for Further Extension of the CAP Compliance Deadline is dismissed as moot;

31. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Fourth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. 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.

2. Amend Section 11.56 of Part 11 of Title 47 of the Code of Federal Regulations as follows:

§ 11.56 EAS Participants receive CAP-formatted alerts.

All EAS Participants must be able to receive CAP-formatted EAS alerts as required by this part no later than June 30, 2012.