

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Review of the Emergency Alert System)	EB Docket No. 04-296
)	
To the Commission)	

PETITION FOR IMMEDIATE INTERIM RELIEF

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On August 29, 2005, Hurricane Katrina, a Category 4 hurricane with sustained winds in excess of 175 mph, ripped through the Gulf Coast states of Louisiana, Mississippi, and Alabama. U.S. Census figures conservatively estimate that more than 50,000 Latinos live in the New Orleans area affected by the hurricane and the consequent flooding, which left people with nothing but the clothes on their backs.¹ Many Latinos, Vietnamese, and other minorities in these communities had little to no advance warning that this country's worst natural disaster in recent history was at their doorstep. KGLA(AM), the sole Spanish language station broadcasting in the area, was forced to cease transmissions on the evening before the hurricane struck. KGLA was off the air for the next seven days. Thereafter, vital information concerning the path of the storm, where and how to seek shelter, and how to remain healthy and safe in the aftermath of the storm was available only in English. Many non-English speaking persons were not aware

¹ U.S. Census Bureau at: <http://www.census.gov> (visited Sept. 12, 2005); U.S. Census Bureau at: <http://www.census.gov> (visited Sept. 12, 2005). Consular authorities from Latin American countries estimate that as many as 300,000 people from Mexico, Central American and several South American nations reside in the affected areas. See Diego Cevallos, *Thousands of Latin American Immigrants Among Katrina's Victims*, International Press News Agency, (rel. Sept. 5, 2005) at: <http://www.ipsnews.net/news.asp?idnews=30150>.

of the urgency of evacuating, and on returning home to non-flooded communities adjacent to New Orleans non-English speaking persons were without basic health and survival information.²

The need for timely action in response to Katrina was painfully evident in the days following the storm. In Katrina's wake, time is of the essence in providing emergency communications to the Latino population and other populations having large numbers of persons who speak little or no English.

Accordingly, the Independent Spanish Broadcasters Association,³ the Office of Communication of the United Church of Christ, Inc.,⁴ and the Minority Media and Telecommunications Council⁵ (collectively, "Petitioners") respectfully submit the instant Petition for Immediate Interim Relief. This Petition seeks revisions to the Commission's EAS rules to provide for the dissemination of multilingual local, state and national emergency information via the EAS to ensure that non-English speaking persons will have access to the same information as their English speaking neighbors in an emergency.

² For example, KGLA reported that a Latino family returning to their home, and finding it without electricity, lit a match which ignited natural gas and blew up the house, killing the family as well. Spanish language emergency broadcasts on the subject of gas leaks could have prevented this tragedy.

³ The Independent Spanish Broadcasters Association ("ISBA") was formed in 2004 to give a voice to the independent Spanish language and Latino radio and television broadcasters.

⁴ The Office of Communication of the United Church of Christ, Inc. ("OC, Inc.") was incorporated in 1959 to advocate on behalf of those who had been historically excluded from the media, especially people of color, women and the disabled.

⁵ The Minority Media and Telecommunications Council ("MMTC"), founded in 1986, is a national nonprofit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media and telecommunications industries.

I. INTRODUCTION AND SUMMARY

On August 12, 2004, the Commission released a Notice of Proposed Rulemaking (“*NPRM*”) which sought comment on whether the EAS in its present form is the most effective mechanism for warning the American public of an emergency and, if not, on how EAS can be improved.⁶ The Commission specifically recognized in the *NPRM* that it should “consider the needs of people with primary languages other than English when considering the best method of contacting the public during an emergency.”⁷ The Commission sought comment “on whether current methodologies for providing alert and warning to non-English speaking persons are adequate” and if not “what additional provisions are necessary.”⁸ The Commission is undoubtedly evaluating the myriad comments submitted in this docket and may issue a comprehensive and complete rewrite of its EAS rules once its review is complete. However, in the aftermath of Katrina, action must be taken now to ensure that emergency warnings are made available to non-English speaking persons.

Accordingly, Petitioners respectfully request that the Commission provide immediate interim relief to provide non-English speaking persons in the United States with access to emergency information during times of local, state and national

⁶ *Review of the Emergency Alert System (NPRM)*, EB Docket 04-296, 19 FCC 2d 15775 (2004).

⁷ *Id.* at 15790 ¶40. See also *Separate Statement of Commissioner Kathleen Q. Abernathy*, *id.* at 15804 (“I am very pleased that this NPRM recognizes the Commission’s continued commitment to ensuring that ... speakers of other languages have equal access to public warnings”); *Separate Statement of Commissioner Jonathan S. Adelstein*, *id.* at 15807 (“We can design a system to better serve... the nation’s many non-English speakers.”)

⁸ *Id.*

emergencies. As further detailed at pp. 13-16 *infra*, Petitioners propose that the

Commission provide that:

1. EAS PEP stations would air Presidential level messages in both English and Spanish
2. state and local EAS plans would designate a “Local Primary Spanish” (“LP-S”) station to transmit emergency information in Spanish in local areas where a substantial proportion of the population has its primary fluency in Spanish⁹
3. state and local EAS plans would also designate a “Local Primary Multilingual” (“LP-M”) station in local areas where a substantial proportion of the population has its primary fluency in a language other than English or Spanish¹⁰
4. at least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations
5. stations remaining on the air during an emergency would broadcast emergency information in Spanish and in languages used on local LP-S and LP-M stations if these stations lose transmission capability, and
6. all broadcasters would be encouraged to assist local LP-S and LP-M stations to return to the air under such circumstances.

⁹ A paradigm for the designation of a local market entitled to an LP-S station may be derived and imported from the multilingual provisions of the Voting Rights Act of 1965, 42 U.S.C. §1973aa-1a *et seq.* Section 1973aa-1a(b)(1) states that “no covered State or political subdivision shall provide voting materials only in the English language.” Subsection 1973aa-1a(b)(2) defines “covered states and political subdivisions” and includes an exception for limited-English proficient populations that fall below 5% of the population of the political subdivision. Section 1973aa-1a(c) directs any state or political subdivision that is subject to the prohibition of Section 1973aa-1a(b) to provide “any materials or information relating to the electoral process, including ballots ... in the language of the applicable minority group as well as in English.” Since life-saving communications are even more fundamental than the franchise, the Commission should ensure that an LP-S station is designated in each radio market having a Latino population of either 50,000 or 5% of the total market population.

¹⁰ The paradigm for designation of markets entitled to an LP-M station should be similar to that described in n. 9 *supra* for LP-S stations. Specifically, an LP-M station would be designated in each radio market having a population of a non-Spanish language minority (*e.g.* Vietnamese, Haitians, Chinese) of either 50,000 or 5% of the total market population.

These modest proposals would not alter the voluntary nature of the EAS system. In the wake of Katrina, the nation's broadcasters responded with exemplary professionalism and compassion. Thus, Petitioners are confident that each of the proposals above, if embraced by the Commission, will be fully implemented with the voluntary and enthusiastic participation of the nation's broadcasters.

II. BACKGROUND

A. Hurricane Katrina's Impact on Language Minorities

Hurricane Katrina was the worst natural disaster in the history of the United States. At one point, eighty percent of the city of New Orleans, Louisiana was flooded due to the effects of the hurricane and subsequent breaches in the Lake Pontchartrain levee. Damage estimates forecast that Katrina caused at least \$125 billion in economic damage and could cost the insurance industry up to \$60 billion in claims.¹¹ More than five million people in the Gulf Coast region lost power during the storm, and as many as 350,000 in New Orleans alone are still without electricity. Thousands were left homeless and destitute. Fifty-one thousand United States active duty troops were dispatched to Mississippi, Alabama, and Louisiana to assist in relief efforts. Katrina also all but obliterated communications in many of the affected areas. More than three million wireline customers lost service and more than one thousand cell sites were destroyed by Katrina. Only four of forty-one radio stations in the New Orleans area remained on the air after Katrina.¹²

¹¹ *Losses from Katrina seen at 60 Billion*, Reuters News Service (rel. Sept. 9, 2005) at: http://news.yahoo.com/s/nm/20050909/bs_nm/financial_losses_dc_2.

¹² *See Written Statement of Kenneth P. Moran Director, Office of Homeland Security, Enforcement Bureau, Federal Communications Commission on Hurricane Katrina*,

KGLA(AM), in Gretna, Louisiana, a 1,000 watt daytimer that has long served as the only Spanish-language station in New Orleans, was forced to cease broadcasting Sunday evening August 28th, shortly before the hurricane arrived. KGLA was unable to return to the air until September 5. Since there are no Spanish language television stations or newspapers in the New Orleans market, New Orleanians had no Spanish language media at all during the most desperate week of their lives.

Statistics illustrate the full extent of this deficiency in emergency communications. The 2000 Census estimates the Latino population in the city of New Orleans at 50,000.¹³ The Honduran Embassy has stated that as many as 150,000 Hondurans reside in Louisiana – mainly in New Orleans.¹⁴ Tens of thousands of these individuals could receive no emergency information on regarding evacuation procedures, the path of the hurricane, and where to seek food and shelter and safety in its aftermath.

For Latinos in Mississippi, the situation was similarly desperate. The most recent Census figures estimate that more than 42,000 Latinos reside in Mississippi.¹⁵ In addition, countless thousands of undocumented Latinos work on farms and in construction projects, and reside in the rural areas of the state. A lucky few received notice from Spanish language fliers that they were in the path of the deadly hurricane. However, many in the affected communities, where there are no Spanish language media, did not understand the stream of advisories on the radio in English and did not know

Before the Committee on Energy & Commerce, United States House of Representatives (rel. Sept. 7, 2005) (“*Moran Testimony*”).

¹³ U.S. Census Bureau at: <http://www.census.gov> (visited Sept. 12, 2005).

¹⁴ *NCLR Expresses Grave Concern for Communities Affected By Hurricane Katrina*, National Council of La Raza, *News Release* (rel. Sept. 2, 2005) at: <http://www.NCLR.org>.

¹⁵ *Id.*

Katrina was heading their way – or how dangerous it was -- until a few hours before it hit, much too late to take necessary precautions.¹⁶ Days after Katrina laid waste to the Gulf Coast of Mississippi, many victims in the Latino community still lacked the barest of necessities. Local announcements instructing listeners where to get ice, water, food and shelter were broadcast only in English.

The substantial Vietnamese population of coastal Mississippi also found itself without access to vital information before, during and after the hurricane. The Biloxi Sun Herald reported that “[m]any fear that without translated information the area’s largest non-English speakers - the Vietnamese and Latino communities – could be more at risk than their English speaking neighbors to a litany of health problems – from carbon-monoxide poisoning from generators to skin rashes and gastrointestinal problems from drinking unclean water.”¹⁷

B. The Substantial Growth of Language Minorities in the United States

The growth of the Latino population in the United States over the past 20 years has been unprecedented. The Latino population in the United States more than doubled between 1980 and 2000, accounting for 40 percent of the growth in the country’s population during that period. In 2003, the Census Bureau designated Latinos as the nation’s largest minority group. According to 2000 Census figures, more than 35.3 million in Latinos now reside in the United States. The Census currently projects that by

¹⁶ Ana Radelat, *Mexican Workers Received Brief Notice of Hurricane, but Little Follow-Up*, *Gannett News Service* (rel. Sept. 5, 2005).

¹⁷ Beth Musgrave, *Vietnamese and Latino Communities could be more at Risk*, *Biloxi Sun Herald*, Sept. 12, 2005.

the year 2050 Latinos will represent nearly 25 percent of the United States population.¹⁸

In no MSA -- even the smallest and most remote -- are there fewer than several hundred Latinos.

Approximately 38.3% of Spanish-speaking people in the United States are not fluent in English.¹⁹ Furthermore, many communities contain substantial populations of Asian Americans,²⁰ and approximately 22.5% of Asian Americans are not fluent in English.²¹

¹⁸ U.S. Census Bureau, "Projected Population of the United States, by Race and Hispanic Origin: 2000 to 2050" at: <http://www.census.gov/ipc/www/usinterimproj/natprojtab01a.pdf> (visited Sept. 16, 2005).

¹⁹ U.S. Census Bureau, "American FactFinder: Ability to Speak English for the Population 5 Years and Over: 2000," at: http://factfinder.census.gov/servlet/QTable?_bm=y&-geo_id=01000US&-qr_name=DEC_2000_SF3_U_QTP17&-ds_name=DEC_2000_SF3_U&-lang=en&-redoLog=false&-sse=on (visited Sept. 15, 2005) (18.3%, or 5,130,400 individuals, of the total U.S. population that speaks Spanish at home reported that they do not speak English well. 10.0%, or 2,801,448 of such individuals, reported that they do not speak English at all).

²⁰ See, e.g., U.S. Census Bureau, "American FactFinder: Thematic Maps: Percent of the Total Population Who are Asian Alone: 2004," at: http://factfinder.census.gov/servlet/ThematicMapFramesetServlet?_bm=y&-_MapEvent=displayBy&-errMsg=&-_dBy=050&-redoLog=false&-%20sse=on&-_zoomLevel=& (visited on Sept. 16, 2005) (29.4% of the population of Santa Clara County, CA reported that their ethnicity is Asian alone. 12.8% of the population of King County, WA reported that their ethnicity is Asian alone. 12.9% of the population of Los Angeles County, CA reported that their ethnicity is Asian alone).

²¹ U.S. Census Bureau, "American FactFinder: Ability to Speak English for the Population 5 Years and Over: 2000," at: http://factfinder.census.gov/servlet/QTable?_bm=y&-geo_id=01000US&-qr_name=DEC_2000_SF3_U_QTP17&-ds_name=DEC_2000_SF3_U&-lang=en&-redoLog=false&-sse=on (visited Sept. 15, 2005) (18.1%, or 1,260,264 individuals, of the total U.S. population that speaks an Asian or Pacific Island language at home reported that they do not speak English well. 4.4%, or 306,457 of such individuals, reported that they do not speak English at all).

The growth of the Latino population has given rise to increased demand for Latino media outlets. In recent years, many new Spanish language FM radio stations have entered major markets across the country and excelled in the ratings. For example, in the most recent Arbitron ratings book, WSKQ-FM, a Spanish Tropical format radio station in the New York City market, was ranked number two among all listeners age 12 and over.²² According to Nielsen Media Research, WXTV(TV) in New York, a Spanish language television station, ranked number one primetime in the August 2005 local people meter ratings.²³ This event marked the first time that a Spanish-language television station has won in the primetime ratings race. Further, Latinos and Asian Americans are extraordinarily reliant on ethnic media for information about politics, government, and issues important to their communities.²⁴

²² See Arbitron Ratings, Spring 2005 Ratings Book.

²³ See Nielsen Ratings, August 2005.

²⁴ See New California Media and the Leadership Conference on Civil Rights, *Ethnic Media in America: The Giant Hidden in Plain Sight* (June, 2005), the first comprehensive study of ethnic media. Key findings of this survey of 1875 adults, in 10 languages, included:

- There are about 29 million primary consumers of ethnic media in the U.S. – adults that prefer ethnic television, radio or newspapers to their mainstream counterparts. This amounts to 13% of the U.S. population and 45% of the ethnic population.
- Fifty-five percent of Latinos, 46% of Vietnamese Americans, 46% of Korean Americans, 38% of Chinese Americans and 9% of Japanese Americans are primary consumers of ethnic media.
- When asked “do you rely more on ethnic media or general market media for information about your native country or about issues that are important to your ethnic community”, Latinos responded 82% ethnic media and 14% mainstream media; Asian Americans responded 54% ethnic media and 41% mainstream media.
- When asked “do you rely more on ethnic media or general market media for information about politics and government”, Latinos responded 64% ethnic media

The number of Latino television households has increased over last year by 2.9%, or 11.2 million.²⁵ The tremendous growth of the Latino population and the corresponding explosion of Latino media in the United States cannot be overstated. Nonetheless, although Latinos constitute nearly 14% of the U.S. population, Latinos own only about 2% of broadcast stations, and most non-Latino owned companies lack the human resources or expertise to broadcast in Spanish. In many markets with large Latino populations, advertisers are unfamiliar with Spanish language media or undervalue Latinos' purchasing power. In some markets, the Latino community may be substantial but not quite large enough to sustain a fulltime in-format station. Consequently, many communities with quite substantial Latino populations lack Spanish language media or, as in New Orleans, depend on a single small radio station.²⁶

C. The Current State of the Emergency Alert System

In a model of preparedness and professionalism, the Commission responded immediately and effectively to Hurricane Katrina, waiving unnecessary rules, remaining open weekends, and doing all it could do to ensure the integrity and effectiveness of our broadcast, wireline and wireless communications infrastructure. While the EAS system was not activated during or after Hurricane Katrina, many broadcasters voluntarily

and 31% mainstream media; Asian Americans responded 28% ethnic media and 66% mainstream media.

²⁵ Katy Bachman, *Nielsen: TV Households Now 11.2 Million*, MediaWeek (Aug. 26, 2005).

²⁶ Among the top 100 radio markets with more than 100,000 Latinos, one (Detroit) has no Spanish language radio station, and two (Milwaukee and Charlotte) each have only one such station. Among top 100 radio markets with 50,000 – 99,000 Latinos, six (Cleveland, Norfolk, Monmouth-Ocean, Rochester, Honolulu, and Sarasota-Bradenton) each have no Spanish language radio station, and five (Baltimore, Milwaukee, New Orleans, Allentown-Bethlehem and Wichita) each have only one such station. *See BIA Radio Market Report* (March 2005).

undertook significant emergency information efforts. EAS is certainly very likely to be invoked in future emergencies.

The EAS is a hierarchal distribution system that provides for the mandatory dissemination of Presidential messages during a national emergency. The system is also used on a voluntary basis by local broadcasters to disseminate information from the National Weather Service (“NWS”) concerning state or local emergencies.

The first link in the EAS distribution chain is comprised of 34 radio stations, designated as Primary Entry Points, or PEPs, by the Federal Emergency Management Agency (“FEMA”). PEP stations serve as the national entry point for all Presidential messages.²⁷

The second link in the EAS distribution chain is comprised of approximately 550 Local Primary One (“LP-1”) radio stations across the country. LP-1 stations monitor and rebroadcast any Presidential level messages carried by the regional PEP stations. LP-1 stations also serve as the entry point for state or local authorities and the NWS to distribute emergency information.

The final link in the EAS distribution chain is the local broadcast station or cable system. The Commission’s rules provide that all broadcast stations and cable systems will monitor at least two LP-1 stations and air any Presidential message received from them.²⁸ Local stations and cable systems may at their discretion pass through any additional non-Presidential messages carried by the local LP-1 station (such as emergency information from state and local authorities or the NWS) in accordance with voluntary EAS local area plans.

²⁷ 47 C.F.R. § 11.14.

²⁸ 47 C.F.R. §§ 11.21, 11.52(d).

The current EAS rules also allow Spanish language broadcasters the option of broadcasting EAS messages in Spanish,²⁹ but provide no mechanisms for the broadcast of Presidential messages in Spanish where there are no Spanish language stations. Nor do they facilitate the broadcast of EAS messages concerning state and local emergencies in any languages other than English. Because so many communities lack multiple stations broadcasting in languages other than English,³⁰ the current EAS rules do not ensure that persons not fluent in English will receive life-saving information in an emergency.

III. RELIEF REQUESTED

This cannot wait – and not only because there are still two months remaining in the hurricane season. Weather or other emergencies can strike at any time, with or without warning. Now is the time for action on this item to ensure that non-English speaking persons have the same access to emergency information in the United States as those whose primary language is English.

Access to local, state and national emergency information in multiple languages is critical, even in the smallest communities. Moreover, an evacuation of those affected by one emergency can profoundly change the demographics of other communities that might face subsequent emergencies.³¹ Thus, it is critical to have local radio stations broadcast multilingual emergency information in large markets and small communities alike.

²⁹ 47 C.F.R. §§ 11.54(b)(7), 11.55(c)(4).

³⁰ See p. 9 n. 24 *supra*.

³¹ As the Commission has recognized, “the need to make the critical details of emergency information accessible is not limited to the immediate geographic areas affected by Katrina[.]” Public Notice, *Reminder to Video Programming Distributors of Need to Make Emergency Information Regarding Hurricane Katrina Evacuation and Relief Efforts Accessible to Persons With Hearing or Vision Disabilities*, DA 05-2438 (rel. Sept. 9, 2005).

The Commission expeditiously implemented interim procedures in the aftermath of Katrina to ensure re-establishment of emergency communications and to facilitate the rapid deployment of humanitarian aid to the affected areas.³² In Katrina's wake, the Commission also reemphasized to licensees the importance of ensuring access to emergency information to all of those affected by the hurricane.³³ It is in this spirit that Petitioners respectfully request that the Commission act expeditiously to modify its EAS rules as set forth below, and adopt emergency interim EAS policies implementing the same. Specifically, Petitioners propose that the Commission undertake the following:

First, the Commission should modify Section 11.14 of the EAS rules to provide that the 34 PEP stations would air all Presidential level messages in both English and Spanish. LP-1 stations monitoring the 34 PEP stations, and local stations monitoring the LP-1 stations across the country could then air Presidential level messages in both English and Spanish. This minor modification to the existing EAS rules can be easily implemented if Presidential level messages are delivered to the 34 PEP stations by FEMA in Spanish.³⁴

³² See, e.g., *FCC's Media Bureau to Allow Noncommercial Educational Stations to Air Essential Commercial Programs to Victims of Hurricane Katrina*, Public Notice, DA 05-2410 (MB, rel. Sept. 9, 2005); *FCC Assigns Emergency Telephone Numbers in Response to Hurricane Katrina Relief and Restoration Efforts*, News Release (rel. Sept. 8, 2005); *Facilitating Restoration of Wireless Facilities in Areas Impacted by Hurricane Katrina*, Public Notice, DA-05-2427 (WTB, rel. Sept. 7, 2005); see also *Appendix A to Moran Testimony*.

³³ See *Reminder to Video Programming Distributors of Need to Make Emergency Information Regarding Hurricane Katrina Evacuation and Relief Efforts Accessible to Persons With Hearing or Vision Disabilities*, Public Notice, DA 05-2438 (MB, rel. Sept. 9, 2005).

³⁴ There are already a number of congressional legislative efforts underway to provide additional funds to improve emergency communications systems. See *Bills Would Boost Emergency Communications Funds*, *Communications Daily*, Vol. 25, No. 177 (rel. Sept.

Second, the Commission should modify Section 11.18(b) of the EAS rules to include a Local Primary Spanish” (“LP-S”) designation and provide that state and local EAS plans would designate an LP-S station in each of the local areas in which an LP-1 has been designated. Local EAS plans in California and Texas already provide for the voluntary establishment of LP-S stations.³⁵ As in California and Texas, each LP-S station would be expected to monitor and rebroadcast Presidential messages carried by the regional PEP stations, and also serve as the entry point for state and local authorities and the NWS to distribute emergency information in Spanish in accordance with local area EAS plans. As described herein, an LP-S station should be designated in each radio market having a Latino population of either 50,000 or 5% of the total market population.³⁶

The Independent Spanish Broadcasters Association represents over 200 stations. All or nearly all of its member stations will volunteer to accept the LP-S designation in these areas or in nearby markets experiencing emergencies in the same states. Additionally, there are more than 500 stations across the country broadcasting in Spanish.³⁷ Many are already translating and broadcasting emergency messages from state and local sources as well as the NWS. Thus, implementing Petitioners’ proposed modification to Section 11.18(b) could be undertaken with virtually no additional costs to broadcasters.

13, 2005). It is hoped that these legislative initiatives would provide for funds for a translator to be assigned to the White House when national emergencies arise.

³⁵ See California EAS Plan at: <http://eas.oes.ca.gov/>; Texas EAS Plan at: www.tab.org/eas-texas-plan.php.

³⁶ See p. 4 n. 9 *supra*.

³⁷ Kevin Brass, *Turning up the Volume*, Hispanic Business (Dec. 2004) (citing BIA Financial Network).

Third, the Commission should modify Section 11.18(b) of the EAS rules to include a Local Primary Multilingual” (“LP-M”) designation in local areas where a substantial proportion of the population has its primary fluency in a language other than English or Spanish. As in the case of LP-S stations, Petitioners expect that the nation’s multilingual broadcasters will be eager to provide translations to stations in nearby markets experiencing emergencies. As described herein, an LP-M station should be designated in each radio market having a population of a language minority (*e.g.* Vietnamese, Haitians, Chinese) of either 50,000 or 5% of the total market population.³⁸

Fourth, the Commission should modify Section 11.52(d) of the EAS rules to provide that at least one broadcast station in every market would monitor and rebroadcast emergency information carried by local LP-S and LP-M stations. Such a modification to the Commission’s existing EAS rules could be implemented with virtually no cost to local monitoring stations, since the LP-S or LP-M stations would provide the emergency information and the monitoring stations would merely need to pass through the multilingual EAS messages. Voluntary designations of stations to rebroadcast emergency information from LP-S or LP-M stations could be coordinated through state broadcast associations.

Fifth, the Commission should modify Section 11.52(d) of the EAS rules to specify that if during an emergency a local LP-S or LP-M stations loses its transmission capability, stations remaining on the air should broadcast emergency information in the affected languages (at least as part of their broadcasts) until the affected LP-S or LP-M station is restored to the air.

³⁸ See p. 4 n. 10 *supra*.

Sixth and finally, the Commission should encourage all broadcasters to assist LP-S or LP-M stations that have been damaged during an emergency to return to the air as soon as possible.

Implementation of these proposals would impose no significant cost burdens on broadcasters. Apart from including multilingual service in the emergency coordination all broadcasters already undertake, the only costs attendant to the proposals herein are the costs of translations in emergencies, which we expect will be voluntarily borne by ISBA members in the same state as the community experiencing an emergency, and by other broadcasters that provide service in languages other than English. In light of the very modest nature of these proposals, and recalling the spirit of cooperation and compassion demonstrated by the nation's broadcasters in the wake of Katrina, we are confident that broadcasters will embrace the relief sought in this Petition.

This Petition is ripe for immediate action. The Commission has in the past provided for interim relief pending resolution of issues in an open proceeding.³⁹

Adoption of the proposals set out in this Petition would be a logical outgrowth of the *NPRM*,⁴⁰ and the facts set out in this Petition provide a satisfactory explanation to revise

³⁹ See, e.g., *Integration of Rates for the Provision of Communications by Authorized Common Carriers between the Contiguous States, Alaska, Hawaii, Puerto Rico and the Virgin Islands*, 2 FCC Rcd 2442, 2443 (1987), citing *Integration of Rates and Services*, FCC 84-512 (rel. Dec. 11, 1984), appeal dismissed sub nom. *American Telephone and Telegraph Co. v. FCC*, No. 84-1605 (DC Cir. May 14, 1985).

⁴⁰ See *Crawford v. FCC*, 417 F.3d 1289, 1300 (D.C. Cir. 2005) (“whether the ‘logical outgrowth’ test is satisfied depends ... on whether the affected party ‘should have anticipated’ the agency's final course in light of the initial notice”), citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (“if the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and an opportunity to respond to the proposal.”) See also *AFL-CIO v. Donovan*, 757 F.2d 330, 338-339 (D.C. Cir. 1985) (“[a] determination of whether notice [is] adequate ... turns, then, on an examination of the notice ... provided in relation to the final rule which

the EAS rules to the extent sought by Petitioners.⁴¹ Finally, the Commission has ample authority to adopt interim emergency public safety plans and procedures.⁴²

V. CONCLUSION

Accordingly, Petitioners respectfully request that the Commission immediately adopt the interim relief set forth herein to provide non-English speaking persons with access to emergency information while it contemplates permanent changes to its EAS rules to provide for the same.⁴³

was ultimately adopted.”) Here, the *NPRM* expressly sought comment on “Emergency Warning for Non-English Speakers,” followed by a series of expansive questions addressing essentially the same issues raised in this Petition. *Id.*, 19 FCC Rcd at 15790 ¶40 (“[f]or example, if a radio station transmitting in English is located in a predominantly Spanish-speaking community, should the station transmit EAS alerts in both English and Spanish?”) On its face, then, the *NPRM* provides notice adequate to justify adoption of the proposals herein.

⁴¹ See, e.g., *Prometheus Radio Project v. FCC*, 373 F.3d 372, 389-90 (3d Cir. 2004) (an agency is expected to “examin[e] the relevant data and articulat[e] a satisfactory explanation for its action, including a ‘rational connection between the facts found and the choice made’”), citing *Motor Vehicle Mfrs. Ass’n. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962)).

⁴² See *Approval of an Interim Amateur Radio Service Plan for Emergency Operation pursuant to Executive Order 11092*, 3 FCC Rcd 726 (1966); *Approval of an Interim Basic Land Transportation Industries Communications Emergency Plan for Emergency Operation Pursuant to Executive Order 11092*, 19 FCC 2d 644 (1969). Executive Order 11092 has since been superseded by existing Executive Order No. 12472. Executive Order No. 12472 contains the same mandate. *Exec. Order No. 12472 Assigning National Security and Emergency Preparedness Telecommunications Functions*, 49 Fed. Reg. 13471 (Apr. 3, 1984).

⁴³ For example, the *NPRM* contemplates extending EAS to telephony. The Commission should ensure that multiple language capability is incorporated into the rollout of “reverse 911” and similar technological innovations.

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September 20, 2005