

**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)	

To the Commission

**REPLY COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS
COUNCIL**

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Summary

August 29, 2014 marks the nine-year anniversary of Hurricane Katrina, a Category 4 storm that devastated the Gulf Coast and affected hundreds of thousands of English and non-English speaking residents. Despite the Petition for Immediate Relief, Independent Panel recommendations and Federal Emergency Management Agency (FEMA) support, the Commission has made no significant progress to ensure that non-English speaking residents will have access to lifesaving information before, during, and in the wake of an emergency. The Minority Media and Telecommunications Council (MMTC) respectfully continues to request that the Commission act to correct this oversight before the August 29, the nine-year anniversary of this devastating natural disaster.

Broadcasters should be required to work with local governments and other broadcast stations to develop a plan that communicates each party's responsibilities in reasonably anticipated emergency circumstances to help ensure that non-English speaking populations receive timely access to both emergency alert system (EAS) alerts and non-EAS emergency information. The initial comments submitted in this docket illustrate the need for coordinated multilingual emergency communications plans and demonstrate reliance on voluntary efforts will not be effective. There are dozens of broadcast markets in which sizeable multilingual populations face the risk of having no information sources in an emergency. The industry has had nine years to act voluntarily to solve this problem, yet not a single broadcast market having large multilingual populations but few or no multilingual stations has implemented a multilingual broadcasting plan.

MMTC strongly believes that the Commission should prioritize human lives above the minimal costs of requiring broadcasters to serve their communities in times of greatest need.

Coordinated outreach continues to be a viable tool that the Commission can and should use as it implements its revised rules and policies, but this outreach should not be used as a way to postpone a decision through another hurricane season. We need federal intervention yesterday and that's not soon enough.

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**REPLY COMMENTS OF
THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council (MMTC) continues to request that the Commission act – prior to the ninth anniversary of Hurricane Katrina – upon the petitions and recommendations¹ to institute multilingual emergency communications plans to ensure that all men, women and children, young and old, regardless of the language they speak, have access to life-saving information before, during, and after an emergency.

In our initial comments, MMTC explained that the greatest barrier to comprehensive, effective emergency communications is the assured dissemination of multilingual emergency information or, more specifically, the lack of coordination and collaboration among government, community organizations, and broadcasters to provide multilingual information.² Research

¹ See Petition for Immediate Relief, Independent Spanish Broadcasters Association *et al.*, EB Docket No. 04-296 (Sep. 20, 2005) (“Petition for Immediate Relief”); Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and recommendations to the Federal Communications Commission (June 12, 2006), p. i-ii (“Independent Panel Recommendations”); and Comments on Behalf of Federal Emergency Management Agency integrated Public Alert and Warning System Program Management Officer, EB Docket No. 04-296 (Mar. 31, 2014) (“FEMA Comments”).

² See Comments of the Minority Media and Telecommunications Council, EB Docket No. 04-

illustrates that this profound weakness in America’s emergency preparedness is a result of “the modus operandi of each of the entities that work oftentimes too independently of each other and not in the coordinated and collaborative manners that are indispensable for overcoming the current shortcomings to assure the maximum possible safety and well being that all residents of every community deserve, regardless of the language they speak.”³

Yet some broadcasters seek to maintain a status quo that does not work. In nearly the same breath that the National Association of Broadcasters (NAB) submits that a voluntary system is working to deliver non-English emergency information, they decry primary responsibility for issuing multilingual alerts.⁴ It is inconsistent for the NAB to suggest on the one hand that accomplishing the “dual goals [of increasing multilingual EAS and non-EAS emergency information] will turn on properly assigning primary responsibility for each task,” while asserting on the other hand that non-EAS emergency communications is best left to “voluntary

296 (May 28, 2014) (“MMTC 2014 Multilingual EAS Comments”) (citing Federico Subervi, Ph.D., *An Achilles Heel in Emergency Communications: The Deplorable Policies and Practices Pertaining to Non English Speaking Populations* (on file with MMTC) (Dec. 2010) (“Multilingual EAS Study”).

³ *Id.*

⁴ *See* Comments of the National Association of Broadcasters, EB Docket No. 04-296 (May 28, 2014), at i-ii (“NAB Comments”). The NAB comments focus on Spanish language stations. As other commenters have noted, Spanish-language speakers is not the only limited English proficient population in the United States. MMTC finds disturbing the “English speakers first” ranking and prioritization of the values of human lives that certain broadcasters are calculating based on language proficiency. *See* Joint Comments of the Named State Broadcasters Associations, EB Docket No. 04-296 (May 28, 2014), at ii (“State Association Comments”), which contains this statement: “[c]onducting a second National EAS Test should be the federal government’s top priority for fear that multilingual EAS alerting may complicate matters at a time when “getting it right” in English should be the first priority of our nation.” *Id.* (emphasis supplied). An 85-year old grandparent in a nursing home, notwithstanding her lack of English proficiency, should be able to find life-saving emergency information by searching the radio dial – just like English speaking Americans can do.

coordination of local EAS Participants familiar with the needs and demographics of their local communities.”⁵

Voluntary plans have not been put into place since Hurricane Katrina set this proceeding in motion. None of the State EAS plans address multilingual EAS alerts,⁶ notwithstanding the Federal Emergency Management Agency’s (FEMA) willingness and readiness to help.⁷ The Commission has the authority to require broadcasters to work with one another, as well as their national, state and local emergency management counterparts, to identify needs of the communities and the resources⁸ available to fill those needs, and come up with a plan. These plans will stop this cycle of procrastination, facilitate cooperation, and delegate accountability to ensure that crucial multilingual emergency information is passed along to the public.

As the NAB correctly notes, “[l]ocal broadcasters are the backbone of the nation’s EAS system. Given their ability to reach virtually all Americans – especially when other communications platforms fail – radio and television stations play an indispensable role in the

⁵ NAB Comments at 1-2.

⁶ See State Association Comments at 5.

⁷ “FEMA supports the work of MMTC to extend alerting to the non-English speaking population. The US IPAWS Common Alerting Protocol Profile specifically includes specified means and methods to propagate alert information received with multiple language versions to privately held broadcast, cable and commercial mobile service providers for delivery to members of the public using their systems. Alerting Authorities (AA) may originate alert messages in the language that they prefer for consumption by the public or other public warning dissemination and distribution methods. However, AAs should understand that some EAS encoder/decoder products may have limitations in Text-to-Speech conversions to languages other than English and compose messages intended for Text-to-Speech accordingly. During the course of conveying alert and warning messages FEMA does not alter, edit or translate the contents of any messages. In fact messages are digitally signed by authorized originators to ensure that no changes occur.” See Comments on Behalf of Federal Emergency Management Agency Integrated Public Alert and Warning System Program Management Office, EB Docket No. 04-296 (Mar. 31, 2014) (“FEMA Comments”). Compare NAB Comments at 1-2.

⁸ We note that other resources in the IPAWS system and social media are also available and should be encouraged as part of this plan.

distribution of public alerts and warnings.”⁹ It imposes no imposition on their First Amendment rights to expect them, in effect, to yell “fire” in a crowded theater that is actually on fire.”¹⁰

There is a clear indication from the Supreme Court that the public interest in access to safety information carries more weight than a broadcaster’s desire to stick to its general format.¹¹

⁹ NAB Comments at p. 2. *See also* MMTC 2014 Multilingual EAS Comments at 3 ((citing Members of Congress Recognize Broadcasters’ Critical Role as First Informers, NAB News Release (June 1, 2012), available at <http://www.nab.org/documents/newsRoom/pressRelease.asp?id=2748> (last visited May 28, 2014) (President and CEO of the National Association of Broadcasters, Gordon Smith, remarked, “With the start of hurricane season upon us, we thank these Members of Congress for recognizing the critical role that stations play in keeping citizens safe and informed. Indeed, no technology can replicate broadcasting’s reliability in reaching mass audiences and providing a lifeline support in emergency and disaster situations.”))

¹⁰ *See* State Association Comments at ii; *see also id.* at 11-12 (citing *Lutheran Church-Missouri Synod v. FCC*, 154 F.3d 487, 491 (D.C. Cir. 1998)). The State Associations use this Equal Protection case regarding regulations that create racial classifications and are therefore analyzed under strict scrutiny as constructive in this instance. However, even in this case the court clarified, “That does not mean that any regulation encouraging broad outreach to, as opposed to the actual hiring of, a particular race would necessarily trigger strict scrutiny. Whether the government can encourage--or even require--an outreach program specifically targeted on minorities is, of course, a question we need not decide.” *Id.* at 492.

¹¹ The Supreme Court has long held that the public’s First Amendment rights are prioritized above those of broadcasters. *See CBS v. Democratic National Committee*, 412 U.S. 94, 102 (1973) (quoting *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) (“... it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.... *It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.*”)) (emphasis provided). Great deference is awarded to the FCC when balancing First Amendment claims. *CBS v. DNC*, 412 U.S. at 102. *See also FCC v. League of Women Voters*, 468 U.S. 365, 374-381 (1984) (discussing the appropriate First Amendment standard of review for broadcasting form and content regulations.) “[T]hese restrictions have been upheld only when we were satisfied that the restriction is narrowly tailored to further a substantial governmental interest, such as ensuring adequate and balanced coverage of public issue. Making that judgment requires a critical examination of the interests of the public and broadcasters in light of the particular circumstances of each case.” *Id.* at 380. Even under this standard of review, here, the public interest is in receiving lifesaving information. As for the scope of the regulation proposed, the Commission is urged to require broadcasters to work with one another and the state and local emergency management counterparts to develop a plan to meet this public interest. *See also* Federal Respondent in Opposition to Certiorari, *Minority Television Project, Inc. v. FCC*, No. 13-1124 at 12-20 (May 2014) (when seeking a denial of certiorari, the FCC provided an in depth analysis on the level of scrutiny that has been applied to First Amendment challenges to broadcast regulations. The FCC argued that judicial

Further, there is no First Amendment right to use a broadcast license to let people die.¹²

Broadcasters have a basic duty to “yell fire in a crowded theater that is actually on fire.”¹³

There is a significant – lifesaving – interest in resolving this proceeding to ensure that communities with limited-English proficiency have access to emergency information before, during, and after an emergency. It is time for broadcasters to step up and do their part by creating multilingual communications plans for emergencies. Given their important role in communicating critical information before, during, and after emergencies, broadcasters must be part of the solution.¹⁴

review was not appropriate because the petitioner “urges the Court to overrule its precedents establishing an intermediate standard of review for broadcast regulations and to subject such regulations to strict scrutiny instead.”)

¹² See State Association Comments at 11-12 (citing *Lutheran Church-Missouri Synod v. FCC*, 154 F.3d 487, 491 (D.C. Cir. 1998)). The State Associations use this Equal Protection case regarding regulations that create racial classifications and are therefore analyzed under strict scrutiny as constructive in this instance. However, even in this case the court clarified, “That does not mean that any regulation encouraging broad outreach to, as opposed to the actual hiring of, a particular race would necessarily trigger strict scrutiny. Whether the government can encourage--or even require--an outreach program specifically targeted on minorities is, of course, a question we need not decide.” *Id.* at 492.

¹³ See Dr. Martin Luther King, Jr., Letter from A Birmingham Jail (Apr. 16, 1963), copy available at http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Jun. 12, 2014) (“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial ‘outside agitator’ idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”)

¹⁴ The Commission should prioritize human lives over the minimal costs of requiring broadcasters to serve their communities in times of greatest need. In other contexts, the Commission has held that the benefits outweigh the minimal costs associated with upgrading emergency communications programs. See MMTCC 2014 Multilingual EAS Comments at n. 38 (quoting *Review of the Emergency Alert System et al., Fifth Report and Order*, 27 FCC Rcd 642, 672 ¶75 (2012)). “Although no commenters discussed specific figures for equipment costs, we believe that the approximately three and one half-year window we are providing for intermediary device users is sufficient to allow EAS Participants to finish depreciating and then replace this aging legacy EAS equipment and to allow equipment manufacturers time to develop possible workarounds to allow intermediate devices to become compliant with our rules. Among the

One devastating instance – Katrina – should have been enough of a wake up call for the industry to realize the importance of multilingual emergency communications. The broadcast market has changed since 2005, but just because the more recent storms have not yet forced the only non-English speaking station in a market off the air during an emergency does not provide adequate reassurance against future harm. This issue is not moot; it will remain relevant and timely until there is a plan in place to ensure that non-English proficient communities have access to lifesaving information before, during, and after an emergency. MMTC researchers currently are compiling data that compares multilingual communities to stations that serve those communities; this supplement will be filed in this docket shortly.

The State Broadcasters Associations urge the Commission to defer to state and local emergency management officials and to solicit feedback from state emergency management personnel on MMTC’s proposals.¹⁵ The Commission has, in fact, solicited feedback on the “designated hitter” proposal numerous times over the past eight-plus years. With the closing of this latest round of comments refreshing the record,¹⁶ the time for action is now. The Commission can and should do outreach on implementation of its revised rules and policies, but it should not continue to kick the can down the road through another hurricane season.

benefits that CAP compliant equipment will bring is an EAS that is more accessible to all Americans, including Americans with disabilities, who will directly benefit from this new requirement. We agree with the many commenters that argued that using CAP’s capacity for enhanced text would, among other things, help harmonize the EAS rules with the requirements of section 79.2, and thus conclude that requiring intermediate equipment to comply with these rules by June 30, 2015 is justified.” *Id.*

¹⁵ See State Association Comments at i.

¹⁶ See *Comment Requested to Refresh the Record in EB Docket No. 04-296, On Petition Filed by the Minority Media and Telecommunications Council Proposing Changes to Emergency Alert System (EAS) Rules to Support Multilingual EAS and Emergency Information*, EB Docket No. 04-296 (rel. Mar. 11, 2014).

Over the years, forty-one organizations have supported acting on this issue.¹⁷ MMTC respectfully continues to request that the Commission take this opportunity to act before the upcoming ninth anniversary of Hurricane Katrina.

Respectfully Submitted,



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¹⁷ See attached list.

National Organizations that have Endorsed the Katrina Petition

[as of June 12, 2014]

1. American Indians in Film and Television
2. Asian American Justice Center
3. Black College Communication Association
4. Black Leadership Forum
5. Hispanic Association of Colleges and Universities
6. Hispanic Technology and Telecommunications Partnership
7. International Black Broadcasters Association
8. Latinos in Social Media (LATISM)
9. Lawyers' Committee for Civil Rights Under Law
10. League of United Latin American Citizens
11. Latinos in Information Sciences and Technology Association
12. MANA – A National Latina Organization
13. Minority Media and Telecommunications Council
14. National Association of Black County Officials
15. National Association of Black Owned Broadcasters
16. National Association of Black Telecommunications Professionals
17. National Association of Latino Independent Producers
18. National Association of Neighborhoods
19. National Association for the Advancement of Colored People
20. National Black Chamber of Commerce
21. National Black Coalition for Media Justice
22. National Coalition on Black Civic Participation
23. National Conference of Black Mayors
24. National Conference of Puerto Rican Women
25. National Congress of Black Women, Inc.
26. National Council of La Raza
27. National Hispanic Media Coalition (NHMC)
28. National Indian Telecommunications Institute
29. National Newspaper Publishers Association
30. National Organization of Black Elected Legislative Women
31. National Puerto Rican Chamber of Commerce
32. National Puerto Rican Coalition
33. National Urban League
34. Native American Journalists Association
35. Office of Communications of the United Church of Christ
36. Rainbow PUSH Coalition
37. The Hispanic Institute
38. United States Hispanic Chamber of Commerce
39. UNITY: Journalists for Diversity
40. Women's Institute for Freedom of the Press
41. Vision Maker Media (formerly Native American Public Telecommunications)