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OPERATORS - AAIRO**
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updated 12/11/03

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

In the Matter of)	
)	
Petition for Rule Making of the American)	RM-11531
Association of State Highway and Transportation)	DA 09-901
Officials to Modify Section 90.242(b)(7) of the)	
FCC's Rules)	

To: The Secretary
Attention: Chief, Public Communications and Outreach Division, Public Safety and
Homeland Security Bureau, and Chief, Policy Division

COMMENTS
OF THE AMERICAN ASSOCIATION OF INFORMATION RADIO OPERATORS

The American Association of Information Radio Operators (“AAIRO”), which includes City and County Departments of Public Safety/Emergency Management, Police and Fire, Transportation, Bridge Authorities, Airports and Park Districts, through counsel, hereby submits these comments (the “AAIRO Comments”) in response the Commission’s Public Notice of a call for Public Comment, released April 23, 2009, in DA 09-901 (the “PN”). The PN issued in response to the above-referenced petition for rule making (the “Petition”)¹ filed by the American Association of State Highway and Transportation Officials (“AASHTO”).

¹ The AAIRO comments are timely submitted pursuant to instructions in the Public Notice.

Background

1. In the Petition, AASHTO seeks “to modify Section 90.242(b)(7) [of the Commission’s Rules] . . . to [allow] broadcast advisories regarding missing children, known as America’s Missing: Broadcast Emergency Response Alerts (“AMBER Alerts”); and (2) transmit information regarding the availability of 511 services”² on Travelers Information Stations (“TIS”).

2. Specifically, AASHTO requested a rule making to “Clarify that TIS Licensees May Transmit AMBER Alerts over TIS Systems.”³ The Petition also asked the “FCC to Clarify that TIS Licenses May Transmit 511 Information Over TIS Systems.”⁴

3. But nowhere does AASHTO explain why the relief sought requires the rule making.⁵ Clarifications are more efficiently considered not through rule making, but through the more precise methods governing adjudicative procedures.⁶

4. Specifically, 47 C.F.R. Sec. 1.2 states: “The Commission may, in accordance with section 5(d)⁷ of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”

² *Petition* at 1.

³ *Id.* at 5.

⁴ *Id.* at 8.

⁵ The Administrative Procedure Act, 5 U.S.C. Sec. 553 specifically excludes the type of interpretive order required here from the rubric for rule making.

⁶ *See* 5 U.S.C. Sec. 554(e).

⁷ *Id.*

5. The motion to clarify that transmission of AMBER Alerts on TIS was made months ago in PS Docket No. 09-19, when AAIRO requested, *inter alia*, to explicitly declare AMBER Alerts the kind of information properly broadcast by TIS Stations as they are clearly “bulletins affecting the immediate welfare of citizens”⁸ – in this case, some of the nation’s most vulnerable citizens. As AAIRO explained: “AMBER Alerts, issued as they are to aid in location of kidnapped local children, are pertinent, affecting as they do the welfare of citizens. Indeed, those on the road may well be best placed to spot an abductor and child on the run – and alert police.”⁹

6. Yet, 9 months later, the matter remains unresolved – and many TIS stations remain reluctant to broadcast AMBER Alert and other crucial information for fear of FCC sanction.¹⁰ Now, apparently at AASHTO’s suggestion, the Commission is further delaying resolution of this matter by opening the lengthy process of rule making, which is likely to add months or even years to the 9 months that have already passed since the Commission first received AAIRO’s petition.

⁸ *Transmission of Certain Kinds of Information to the Traveling Public*, 67 FCC 2d 917 (FCC 1977) (“TIS Order”) at para. 16

⁹ Petition for Ruling, filed by AAIRO (“Ruling Request”), Sept. 9, 2008 at 3

¹⁰ As noted in the Ruling Request, FCC “enforcement actions have raised uncertainty that could cast a chill over the TIS community and its provision of such crucial traveler-pertinent information. Public agency licensees, local municipalities and other public safety officials want to transmit pertinent, potentially lifesaving, information – but have become wary, lest their agencies be sidetracked and embarrassed by FCC enforcement action. TIS is not their main business – but is simply a tool to assist in the protection of lives and property, in this instance, the lives and property of travelers. If TIS efforts lead to sanctions, many reasonable agency administrators may hesitate to transmit useful information for fear of being sanctioned or may curtail TIS activities altogether. The big loser will be the traveling public – which will be deprived of an important source of pertinent and often urgent information.” *Id.* at 7.

7. As the FCC originally established TIS to save lives and protect property, it is not clear why any party interested in protecting missing children would want to put any procedural delay or hindrance in the way of AMBER Alert transmission on Travelers Information Stations. It is certainly not apparent why the FCC would want to do so by taking a rule making path when even AASHTO itself states that the relief required here is merely “to clarify.”¹¹

8. A clarification can today be quickly issued, as the matter has been well-argued and a complete record created as a result of AAIRO’s Ruling Request, pursuant to 47 C.F.R. Sec. 1.4 and 5 U.S.C. Sec. 554(e). Such “bulletins affecting the immediate welfare of citizens” are already permitted – all that is needed is a simple bureau-level statement declaring that AMBER Alerts are squarely within the definition.

9. The resort to rule making when clarification will suffice, then, is not only contrary to the public interest in traveler safety, but contrary to the scheme of administrative law, laid down both in the Administrative Procedure Act and the Communications Act.

10. Therefore, AAIRO opposes any further delays in resolving this matter. The Commission must act on the Ruling Request to remove any regulatory question marks that are now hindering the public interest in traveler safety – and particularly, the powerful public interest in protecting children that underlies the AMBER Alert system.

11. As noted in the Ruling Request, failure to clarify this principal, would put the Commission at odds with the Communications Act, which established the FCC, in part, “for

¹¹ *Petition* at 1, 5.

the purpose of promoting safety of life and property” through radio communication, 47 U.S.C.

Sec. 151.

Respectfully submitted,

/S/

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