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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

REPLY
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 this reply (the “AAIRO Reply”) to comments filed in response the Commission’s Public Notice, 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”).

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)

¹ The AAIRO Reply is timely submitted pursuant to instructions in the PN.

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 In the same rule making petition, AASHTO also asked the “FCC to Clarify that TIS Licenses May Transmit 511 Information Over TIS Systems.”⁴

3. AAIRO filed comments (the “AAIRO Comments”)⁵ noting that the Commission already had a proceeding underway in which it could take action – immediately – by issuing an interpretative ruling based on a long extant record in P.S. Docket No. 09-19. AAIRO’s Comments described how such an order, issued pursuant to 47 C.F.R. Sec. 1.2 and 5 U.S.C. Sec. 554(e), would clarify existing rules to better permit transmission of “bulletins affecting the immediate welfare of citizens.”⁶ By contrast, as AAIRO noted, a rule making, pursuant to 5 U.S.C. Sec. 553, would take months – if not years to achieve a similar goal. For this reason, AAIRO petitioned for an interpretative ruling in 2008,⁷ with the issues then fully pleaded in P.S. Docket 09-19.

² *Petition* at 1.

³ *Id.* at 5.

⁴ *Id.* at 8.

⁵ Filed May 26, 2009.

⁶ *Transmission of Certain Kinds of Information to the Traveling Public*, 67 FCC 2d 917 (FCC 1977) (“TIS Order”) at para. 16

⁷ *Petition for Ruling*, Filed by the American Association of Information Radio Operators, Sep. 9, 2008.

Discussion

4. No commenter argued that AMBER Alerts do not belong on TIS. Because the safety of people in transit is at stake, there should be no doubt current regulations allow such announcements for “the immediate welfare of citizens.”⁸ But as the AAIRO Petition in P.S. Docket 09-19 noted, enforcement sanctions have been issued in a number of cases after public safety agencies with TIS licenses have transmitted other information of such immediate import⁹ – actions that have cast a chill on licensee’s willingness to provide such needed information, including AMBER Alerts.

5. In this proceeding, no commenter argues that messages affecting the immediate welfare of citizens, such as AMBER Alerts, should be banned from the TIS. In principle, therefore, everyone agreed: the only dispute in this proceeding, then, is over implementation procedures.

6. No commenter, here, has explained why the inherently slower rule making process is preferable to the speedy release of an interpretative ruling, as requested last year in the AAIRO Petition. As the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) noted: “While it is not clear that a rulemaking is necessary to achieve that purpose, we certainly agree . . . that AMBER Alerts should be permitted on TIS stations.”¹⁰

⁸ *TIS Order, supra*, at para. 16

⁹ *AAIRO Petition* at 4.

¹⁰ *Comments of APCO*, RM-11531, filed May 26, 2009, at 2.

7. If clarification is important, why slow down the effort with rule making? This question has simply not been answered by anyone. Lacking such an answer, it is puzzling why such thoughtful commenters as National Public Radio (“NPR”) so strongly oppose AAIRO’s request for a quick and efficient interpretative ruling – advocating, instead, for the slower rule making route.¹¹

8. It appears that such opposition is based on misunderstanding, confusion or equivocation. NPR argues against “two petitions pending in a separate proceeding propose far reaching, but ill-defined changes to the TIS service rules.”¹² NPR cites to two distinct items in PS Docket 09-19: first, the *Petition for Rulemaking to Revise and Update the Travelers Information Service Rules*, filed by Highway Information Systems, Inc., filed July 16, 2008 (the “HIS Petition), *which is a petition for rule making*, and, next, the AAIRO Petition, *which is not a rule making request at all!* The AAIRO Petition explicitly requested action pursuant to 47 C.F.R. Sec. 0.191(e), which empowers the Public Safety and Homeland Security Bureau to act “on requests for interpretation . . . of rules.”¹³ By contrast, the Commission itself must vote in rule making proceedings, with the bureau merely “conducting” the ministerial processes — but not acting as decision-maker. This distinction is explicit in Section 0.191(e).

9. Nonetheless NPR treats the HIS Petition and the AAIRO Petition as if they were procedurally identical attempts at rule making. Apparently, NPR’s opposition to the

¹¹ See *Statement of National Public Radio, Inc.*, RM-11531, filed May 26, 2009

¹² *Id.* at 5.

¹³ 47 C.F.R. Sec. 0.191(e).

AAIRO Petition for clarification of existing rules is wholly based on this misunderstanding. For the record: The HIS Petition seeks change through rule making. The AAIRO Petition seeks only clarification of existing rules through an interpretative process. NPR errs when it lumps them together when they are, in fact, clearly distinguishable.

10. As noted, it cannot be that NPR wants to hinder transmission of AMBER Alerts or any other important information via TIS. Indeed, NPR says it favors AMBER Alert transmission via TIS. Therefore, it should certainly have no good faith objection to achieving the goal by the more procedurally efficient mechanism.

11. With equivocation thus yielding to clarity, the Commission must act accordingly. In sum: no party objects to the transmission of AMBER Alerts via TIS. Of all the procedural means available, issuance of an interpretative ruling, as the AAIRO Petition requested, provides the most efficient means to make it so. Objections to the AAIRO Petition rest on the notion that AAIRO and HIS both seek rule making. As the AAIRO petition did no such thing, these objections are essentially null sets.

12. Absent any compelling reason to take the long way, instead of the expressway, the Commission should act expeditiously and decisively. It must issue the clarification sought in the AAIRO Petition. There is absolutely no need to open a rule making proceeding here – unless the goal is delay that will potentially increase the risk of harm.

Conclusion

13. The Commission must act expeditiously and decisively. The Communications Act demands no less when proclaiming a core FCC “purpose of promoting safety of life and property” through radio communication. 47 U.S.C. Sec. 151. Rule making, by its very

nature, takes longer than issuance of an interpretive ruling – especially when, as here, a well argued record is in place. If something takes longer, it is, by definition, a less expeditious and less decisive approach. Therefore, the Commission must issue the interpretive ruling that AAIRO requested.

Respectfully submitted,

/S/

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June 8, 2009