

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

In the Matter of)	
)	
Petition for Rulemaking of the American)	RM _____
Association of State Highway and Transportation)	RM-11514
Officials to Modify Section 90.242(b)(7) of the)	PS Docket No. 09-19
FCC's Rules)	

**PETITION FOR RULE MAKING OF THE AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION OFFICIALS**

The American Association of State Highway and Transportation Officials (“AASHTO”), on behalf of its member, the New York State Department of Transportation (“NYSDOT”), by its counsel and pursuant to Section 1.401 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”),^{1/} hereby submits this petition for rule making (“Petition”) asking the FCC to modify Section 90.242(b)(7) to clarify that Travelers’ Information Station (“TIS”) facilities may be used to: (1) 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/}

I. Background

AASHTO is a non-profit association of Departments or Agencies of the States of the United States, Puerto Rico, and the District of Columbia in which the official highway responsibility for that State or Territory is lodged, and the United States Department of

^{1/} 47 C.F.R. § 1.401.

^{2/} AASHTO submitted a letter, on behalf of the NYSDOT, to the then Chief of the Public Safety and Homeland Security Bureau on December 20, 2007 requesting clarification that the broadcast of AMBER Alerts be considered a permissible form of communication under the Commission’s TIS rules. This Petition reiterates and elaborates upon the points made in that correspondence and asks the FCC to change its rules. *See* Letter from John Horsley, Executive Director, American Association of State Highway and Transportation Officials, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (Dec. 20, 2007).

Transportation, which is an ex-officio member. Membership consists of the following organizations:

- Alabama Department of Transportation
- Alaska Department of Transportation & Public Facilities
- Arizona Department of Transportation
- Arkansas Department of Transportation
- California Department of Transportation
- Colorado Department of Transportation
- Connecticut Department of Transportation
- Delaware Department of Transportation
- District of Columbia Department of Transportation
- Florida Department of Transportation
- Georgia Department of Transportation
- Hawaii Department of Transportation
- Idaho Transportation Department
- Illinois Department of Transportation
- Indiana Department of Transportation
- Iowa Department of Transportation
- Kansas Department of Transportation
- Kentucky Transportation Cabinet
- Louisiana Department of Transportation and Development
- Maine Department of Transportation
- Maryland Department of Transportation
- Massachusetts Executive Office of Transportation and Public Works
- Massachusetts Highway Department
- Michigan Department of Transportation
- Minnesota Department of Transportation
- Mississippi Department of Transportation
- Missouri Department of Transportation
- Montana Department of Transportation
- Nebraska Department of Roads
- Nevada Department of Transportation
- New Hampshire Department of Transportation
- New Jersey Department of Transportation
- New Mexico Department of Transportation
- New York Department of Transportation
- North Carolina Department of Transportation
- North Dakota Department of Transportation
- Ohio Department of Transportation
- Oklahoma Department of Transportation
- Oregon Department of Transportation
- Pennsylvania Department of Transportation
- Puerto Rico Department of Transportation and Public Works
- Rhode Island Department of Transportation
- South Carolina Department of Transportation
- South Dakota Department of Transportation

- Tennessee Department of Transportation
- Texas Department of Transportation
- Utah Department of Transportation
- Vermont Agency of Transportation
- Virginia Department of Transportation
- Washington State Department of Transportation
- West Virginia Department of Transportation
- Wisconsin Department of Transportation
- Wyoming Department of Transportation

The individual employees of these constituent organizations collectively form the largest single user group of public safety spectrum. Through its Special Committee on Wireless Communications Technology, AASHTO informs its member departments of pending Commission actions and advocates for the inclusion of all critical infrastructure spectrum users in any decision that may be reached by the Commission. AASHTO is a certified Frequency Advisory Committee (“FAC”) with primary responsibility for Highway Maintenance and is authorized by the Commission to recommend the most appropriate frequency or frequencies to qualified applicants that will cause the least amount of harmful interference to incumbent users. AASHTO is a member of the Land Mobile Communications Council (“LMCC”), Public Safety Communications Council (“PSCC”), the National Public Safety Telecommunications Council (“NPSTC”), and the Board of Directors for the Public Safety Spectrum Trust Corporation (“PSST”), which currently holds the Public Safety Broadband License (“PSBL”). AASHTO’s members hold a majority of the approximately 1300 licenses to operate TIS facilities.

The NYSDOT, a member of AASHTO, is responsible for coordinating and developing a comprehensive transportation policy for the State of New York and assisting in the development and operation of transportation facilities and services for highways, railroads, mass transit systems, ports, waterways, and aviation facilities. In support of these responsibilities, the NYSDOT controls the operation of its state’s TIS system.

As AASHTO noted in simultaneously submitted comments, the TIS rules require modification.^{3/} However, NYSDOT believes that, regardless of the outcome of that proceeding, the FCC must consider modifying its rules so that the TIS service may be used to communicate AMBER Alerts and information regarding state 511 service.^{4/} Accordingly, AASHTO submits this Petition so that the FCC may initiate a separate rule making proceeding regarding this matter, if required.

II. Petition for Rulemaking

A. Preservation of the Limitation on Content in the TIS Rules

The Commission established the TIS service in 1977 to enable local government entities, as the only eligible licensees, to transmit certain types of information to the public traveling within their local areas.^{5/} The Commission stated that the purpose behind the TIS service is to serve as “a source of localized information pertinent only to the traveler in the immediate proximity of the station.”^{6/} As a result, the Commission limited the geographic scope and specified the content of the messages that could be transmitted through the TIS system.

Specifically, the FCC mandated that TIS stations can “transmit only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories,

^{3/} See Comments of the American Association of State Highway and Transportation Officials (filed March 16, 2009) (“AASHTO Comments”); see also Travelers’ Information Service Provision of Localized Public Safety and Emergency Information Pursuant to 47 C.F.R. Section 90.242 and 90.407, Petition for Ruling (filed Sept. 9, 2008) (“AAIRO Petition”); Petition for a Rulemaking to Revise and Update the Travelers Information Service Rules of Highway Information Systems, Inc. (filed July 16, 2008) (“HIS Petition”).

^{4/} Because of the relationship between this request and already initiated AAIRO and HIS proceedings, AASHTO has submitted this Petition for Rule Making in those matters as well.

^{5/} *Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Service for the Transmission of Certain Kinds of Information to the Traveling Public, et al.*, Report and Order, 67 FCC 2d 917, ¶ 1 (1977) (“TIS Order”).

^{6/} *TIS Order* ¶ 22.

directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.”^{7/} This restriction on the type of permissible TIS content was intended to preserve the utility of the service in transmitting only sufficiently important information specific to a particular geographic area. As stated in the AASHTO Comments, this content restriction should not be broadened; rather, it should be refined or clarified to guarantee it encompasses the types of communications it was designed to protect: those communications that promote situational awareness and further important public safety goals.

B. The FCC Should Clarify that TIS Licensees May Transmit AMBER Alerts over TIS Systems

AMBER Alerts have proven to be an effective way to expedite a local community’s recovery of a missing child. AMBER Alerts are “emergency messages broadcast when a law enforcement agency determines that a child has been abducted and is in imminent danger.”^{8/} To date, AMBER Alert programs have helped save the lives of over 430 children nationwide, with over 90% of recoveries occurring since October 2002.^{9/} In 2007, 227 AMBER Alerts were issued in the United States involving 278 children.^{10/} Of the 227 issued AMBER Alerts, 188 cases resulted in recovery, 48 of which were resolved as a direct result of an AMBER Alert being issued.^{11/}

^{7/} 47 C.F.R. § 90.242(a)(7).

^{8/} Press Release, U.S. Dep’t of Justice, Office of Justice Programs, Department of Justice Conference Highlights AMBER Alert System Success, Finds Way to Enhance Program (Oct. 14, 2008), *available at* <http://www.ojp.usdoj.gov/newsroom/pressreleases/2008/oaag09002.htm>.

^{9/} See U.S. Dep’t of Justice, Office of Justice Programs, AMBER Alert Frequently Asked Questions, <http://www.amberalert.gov/faqs.htm> (last visited March 11, 2009).

^{10/} See National Center for Missing & Exploited Children, *2007 AMBER Alert Report* at 8, *available at* http://www.amberalert.gov/pdfs/07_amber_report.pdf.

^{11/} See *id.*

The program has been growing in success and momentum over the past decade, with the enactment of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (“PROTECT”) Act in 2003, which codified the national coordination of state and local AMBER Alert programs.^{12/} The FCC has also recognized the AMBER Alert program in other contexts. Most notably, the FCC recently decided to require the transmission of AMBER Alerts by Commercial Mobile Service (“CMS”) providers participating in the Commercial Mobile Alert System (“CMAS”).^{13/} In adopting this requirement for the CMAS, the FCC concluded that “[b]ased on the limited number of AMBER alerts and their confined geographic scope, we do not expect such alerts to be overly burdensome to CMS providers that participate in the CMAS.”^{14/} A similar outcome is warranted here; a clarification to existing FCC rules could bolster this effective and critically important program by providing local authorities with another medium in which to communicate vital, time-sensitive information to assist in the recovery of missing children.

Moreover, AMBER Alerts comport with the Commission’s specific purpose for the TIS service. In particular, the rule contemplates localized travel advisories alerting those within the area to important circumstances arising within the particular location. Communication regarding the abduction of a child within a particular geographic location should certainly be deemed to meet this criteria.

AASHTO’s Comments expressed concern that the FCC not expand the content limitation of TIS messages so that the type and duration of permitted messages are not clear. Conversely, AMBER Alerts are well-suited for transmission using the TIS system because they alert the

^{12/} See *Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144, ¶ 31 n.87 (2008) (“*CMAS Order*”).

^{13/} *CMAS Order* ¶ 32.

^{14/} *Id.*

public to emergencies limited in both duration and location. For example, in 2007, 97% of children successfully recovered using AMBER Alerts were found within 72 hours of the AMBER Alert being issued.^{15/} Similarly in 2007, the distance between the location where the child was reported missing and the location where the child was recovered generally was either less than 100 miles or within the same city.^{16/} Accordingly, the TIS system presents an appropriate medium for the dissemination of AMBER Alerts.

Similarly, AMBER Alerts are a specific, uniform type of alert with limited variability from state to state. In particular, each locality's AMBER Alert plan follows the United States Department of Justice's established guidelines. Under the guidelines, the following criteria must be met in order for an AMBER Alert to be issued: (1) law enforcement must reasonably believe that an abduction has occurred, (2) law enforcement must believe that the child is in imminent danger of serious bodily injury or death, (3) enough descriptive information about the victim and the abduction must exist, (4) the child must be 17 years old or younger, and (5) the child's name and other critical data elements must have been entered into the National Crime Information Center ("NCIC") system.^{17/} Given the Department of Justice's specific criteria and established procedures for the content and distribution of AMBER Alerts nationwide, use of the TIS system to issue such alerts would not broaden the content restriction contained in Section 90.242. As the Department of Justice states in its AMBER Alert guidelines, issuing communications that do not

^{15/} See National Center for Missing & Exploited Children, *2007 AMBER Alert Report* at 30, available at http://www.amberalert.gov/pdfs/07_amber_report.pdf.

^{16/} See *id.* at 22.

^{17/} See U.S. Dep't of Justice, Office of Justice Programs, *AMBER Alert Guidelines*, <http://www.amberalert.gov/guidelines.htm> (last visited March 11, 2009).

specifically adhere to the system’s specifications “could lead to abuse of the system and ultimately weaken its effectiveness.”^{18/}

AASHTO has identified AMBER Alerts as a specific type of alert that falls within the narrow class of permissible content for the TIS system. AMBER Alerts represent a type of communication with pre-established, nationally-recognized, uniform standards. State and local authorities commonly issue various other types of alerts depending upon the particular jurisdiction, such as environmental alerts and alerts regarding missing elderly persons (often called “Silver Alerts”). Unlike AMBER Alerts, these other types of alerts are not based on nationally recognized criteria and are not used consistently from state to state. Accordingly, the Commission should adopt the specific clarification that only AMBER Alerts, and not other types of state or local alerts, may be transmitted using the TIS system.

C. The FCC Should Clarify that TIS Licensees May Transmit 511 Information Over TIS Systems

The Commission should also modify its rules to clarify that TIS licensees may transmit information regarding the availability of 511 services. In response to a petition submitted by the United States Department of Transportation, the FCC established 511 as a nationwide abbreviated dialing code for use by state and local governments to deliver travel-related information to the public.^{19/} The reasons cited by the Commission for adopting the nationwide 511 service are the same as the reasons the Commission adopted the TIS service. In particular, the Commission found that 511 service “would stimulate the deployment and use of travel-related information by making access to such information more readily accessible” and “would

^{18/} See *id.*

^{19/} *Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide, et al.*, Third Report and Order on Reconsideration, 15 FCC Rcd 16753, ¶ 10 (2000) (“511 Order”).

maximize the benefits of such information, which include decreasing traffic congestion, reducing air pollution and inefficient use of fossil fuels, improving the nation's productivity on and off the roadways, and improving traveler safety.”^{20/}

Since establishment of the service in 2000, 511 service has received wide adoption and significant success. The 511 Deployment Coalition reports that, in North America, there are 43 such services available to the traveling public operating in 33 states and two provinces.^{21/} The 511 service has received over 112 million calls nationwide since its inception and has seen at least eight consecutive months with more than two million calls.^{22/} In addition, similar to AMBER Alerts, 511 service is adopted by localities pursuant to nationally-recognized guidelines.^{23/}

511 service, as a local travel and traffic hotline, is precisely the type of information for which the TIS service was created. At the end of any TIS transmission, stations should be encouraged to state, for example, “for more information, dial 511 or visit [the local government 511 website].” Because 511 service furthers the same purpose as the TIS service, is based on nationally-recognized criteria, and is proving to be yet another effective way for the public to receive important travel-related information, clarification of the FCC's TIS rules to allow transmission of 511 information would advance the intended purpose of the TIS system without expanding the content restriction or reducing the utility of the service.

^{20/} *511 Order* ¶ 13.

^{21/} *See* 511 Deployment Coalition, 511 Usage Statistics, <http://www.deploy511.org/usage.html> (last visited March 13, 2009).

^{22/} *See id.*

^{23/} *See* 511 Deployment Coalition, 511 Guidelines, <http://www.deploy511.org/guidelines.html> (last visited March 13, 2009).

III. Conclusion

While AASHTO recognizes that the FCC's TIS rules require certain updates to ensure that they are current and further the purpose for which they are intended, at the very least the FCC should clarify that the TIS system may be used to transmit AMBER Alerts and 511 information. These types of messages provide travelers with important, localized information to promote situational awareness and advance important public policy goals.

Respectfully submitted,

AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION
OFFICIALS

On Behalf of its Member:

THE NEW YORK STATE DEPARTMENT OF
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Dated: March 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2009, a true copy of the foregoing

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