(D) The date and time that the ship's owner, operator or master was notified that the ship failed the inspection.

* * * * *

12. Section 80.802 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.802 Inspection of station.

(a) Every ship of the United States subject to Part II of Title III of the Communications Act or Chapter IV of the Safety Convention equipped with a radiotelegraph installation must have the required radio equipment inspected by an FCC-licensed technician holding a Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate once every 12 months. If the ship passes the inspection the technician will issue a Cargo Ship Safety Radio Certificate. Cargo Ship Safety Radio Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its Forms contractor.

* * * * *

13. Section 80.818 is amended by revising paragraph (b) to read as follows:

§ 80.818 Direction finding and homing equipment.

* * * * *

(b) *On or after May 25, 1980,* must be equipped with radio direction finding apparatus having a homing capability in accordance with § 80.824.

14. Section 80.819 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.819 Requirements for radio direction finder.

(a) The radio direction finding apparatus must:

* * * * *

15. Section 80.822 is revised to read as follows:

§ 80.822 Contingent acceptance of direction finder calibration.

When the required calibration can not be made before departure from a harbor or port for a voyage in the open sea, the direction finder may be tentatively approved on condition that the master certifies in writing that the direction finder will be calibrated by a competent technician.

16. Section 80.835 is amended by removing the fourth sentence in paragraph (a).

17. Section 80.851 is amended by redesignating the text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 80.851 Applicability.

* * * * *

(b) Until February 1, 1999, the inspection of all cargo vessels equipped with a radiotelephone installation operated on domestic or international voyages must be conducted by an FCC-licensed technician in accordance with § 80.59 once every 12 months. If the ship passes the inspection the technician will issue a Safety Certificate. Cargo Ship Safety Radio Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its forms contractor.

18. Section 80.903 is revised to read as follows:

§ 80.903 Inspection of radiotelephone installation.

Every vessel subject to Part III of Title III of the Communications Act must have a detailed inspection of the radio installation by an FCC-licensed technician in accordance with § 80.59 once every five years. The FCC-licensed technician must use the latest FCC Information Bulletin, *How to Conduct an Inspection of a Small Passenger Vessel.* If the ship passes the inspection, the technician will issue a Communications Act Safety Radiotelephony Certificate. Communications Act Radiotelephony Certificates may be obtained from the Commission's National Call Center—(888) 225–5322—or from its forms contractor.

19. Section 80.1067 is amended by revising paragraph (a) to read as follows:

§ 80.1067 Inspection of station.

(a) Ships must have the required equipment inspected at least once every 12 months by an FCC-licensed technician holding a GMDSS Radio Maintainer's License. If the ship passes the inspection the technician will issue a Safety Certificate. Safety Certificates may be obtained from the Commission's National Call Center at 1–888–CALL FCC (1–888–225–5322) or from its field offices. The effective date of the ship Safety Certificate is the date the station is found to be in compliance or not later than one business day later. The FCC-licensed technician must use the latest FCC Information Bulletin, *How to Conduct a GMDSS Inspection.* Contact the FCC's National Call Center at 1–888–CALL FCC (1–888–225–5322) to request a copy.

* * * * *

[FR Doc. 98–13463 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11 and 76

[FO Dockets No. 91–171, 91–301; FCC 97–338]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Report and Order* modifies the Emergency Alert System (EAS) as it applies to wired cable TV systems. Also, wireless cable TV systems are required to participate in EAS. Deadlines for compliance are established. Small cable systems are allowed five years to phase-in EAS and may operate with reduced EAS equipment requirements. Larger cable systems must comply by December 31, 1998. Satellite Master Antenna TV and Video Dial Tone/Open Video Systems are not required to participate. State and local regulations relating to emergency communications and EAS are not preempted, but will be if these regulations interfere with EAS.

EFFECTIVE DATE: July 31, 1998.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Report and Order* in FO Dockets 91–171; 91–301, adopted September 24, 1997, and released September 29, 1997.

The full text of this Federal Communications Commission's (FCC) *Second Report and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20036; phone: (202) 857–3800, facsimile: (202) 857–3805.

Synopsis of Second Report and Order

The FCC adopted a *Second Report and Order* pertaining to the participation by wired and wireless cable TV systems in the Emergency Alert System (EAS). The rule changes are provided at the end of this synopsis.

EAS replaced the Emergency Broadcast System (EBS), and uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies.

EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

In 1994, the Commission issued a *Report and Order* 59 FR 67090, December 28, 1994 in this proceeding dealing largely with the participation by broadcast stations in EAS, but also directing that wired cable TV systems participate, and specifying the nature of this participation. The *Report and Order* added a new part 11 (47 CFR part 11) to the FCC's rules containing EAS regulations. At the same time, the Commission issued a *Further Notice of Proposed Rule Making (FNPRM)* 59 FR 67104, December 28, 1994.

The *Second Report and Order* modifies some of the requirements in the *Report and Order* applying to wired cable systems, and addresses issues raised in the *FNPRM*.

The *FNPRM* asked for comments regarding whether small wired cable systems should be exempted from participation in EAS. The *Second Report and Order* concludes that the FCC lacks legal authority to exempt small cable systems, but allows them five years to comply with the EAS requirements. The new rules addressing this issue and establishing deadlines for large systems state the following:

—Wired cable TV systems serving less than 5,000 subscribers from a headend must by October 1, 2002, provide either the national level EAS message (including tests) on all programmed channels or operate EAS equipment that provides a video interrupt and audio alert (informing listeners of the channel carrying emergency information) on all programmed channels and an EAS audio and video message (providing emergency information) on at least one programmed channel.

—Wired cable systems serving 5,000 or more, but fewer than 10,000 subscribers must by October 1, 2002, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

—Wired cable systems serving 10,000 or more subscribers must by December 31, 1998, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

The *FNPRM*, proposed to require wireless cable TV systems to participate in EAS. The *Second Report and Order* concludes that wireless cable systems that own or lease facilities and channels that transmit programming to the subscribing public by the Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS) or Instructional Television Fixed Service (ITFS) must comply with the EAS requirements. The following is required of these wireless cable systems:

—Wireless cable systems serving less than 5,000 subscribers from a single transmission site must by October 1, 2002, provide either the national level EAS message (including required tests) on all programmed channels or operate EAS equipment that provides a video interrupt and audio alert (informing listeners of the channel carrying emergency information) on all programmed channels and an EAS audio and video message (providing emergency information) on at least one programmed channel.

—Wireless cable systems serving 5,000 or more subscribers must by October 1, 2002, operate EAS equipment that provides EAS audio and video messages (emergency information) on all programmed channels.

The *FNPRM* also requested comments concerning whether Satellite Master Antenna TV (SMATV) systems and Video Dial Tone (VDT) (video programming delivered by common carriers)(now referred to as Open Video Systems (OVS)) should be required to operate EAS equipment. The *Second Report and Order* concludes that participation by these services in EAS will be voluntary. However, the FCC will monitor these services regarding whether mandatory participation might be appropriate in the future. Other services are encourage to participate in EAS.

Finally, the *FNPRM* asked for comments regarding whether EAS can coexist with state and local government regulations and franchise agreements relating to emergency communications and EAS on cable systems, and whether the FCC should preempt conflicting state and local requirements. The *Second Report and Order* declines to exercise preemption, but warns that if a jurisdiction takes action that interferes with the national warning functions of EAS, the action will be preempted by the FCC.

Paperwork Reduction Act of 1995 Analysis

As required by the Paperwork Reduction Act of 1995, the *Second Report and Order* contains a paperwork reduction analysis. The analysis concludes that the requirements adopted in the *Second Report and Order* impose new or modified information collection requirements on the public. The FCC as part of its effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in the *Second Report and Order*.

Written comments by the public are due within 30 days after publication of this notice in the **Federal Register**. Comments should be submitted to Judy Boley, FCC, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503, or via the Internet to fain__t@al.eop.gov. For additional information, contact Judy Boley at 202–418–0214 or at above Internet address.

The information collection requirements contained in the attached rules becomes effective July 31, 1998, following OMB approval, unless timely notice is published in the **Federal Register** stating otherwise.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the *Second Report and Order* contains a final regulatory flexibility analysis. No comments were submitted in response to the initial Regulatory Flexibility Analysis. However, comments in response to the *FNPRM* raised issues regarding small cable systems. Concern was expressed that if small cable systems were required to buy EAS equipment, this would adversely impact on their finances. The Commission, though, concluded that it did not have legal authority to exempt small cable systems from the EAS requirements. Furthermore, participation by small cable systems in EAS would provide emergency messages to people that otherwise would not receive these messages, and this would save lives and property. However, the Commission acknowledged that EAS equipment costs could have a detrimental financial impact on small cable systems and their surrounding communities. To minimize this financial burden, the FCC allowed small systems to phase-in EAS over five years and reduced some of the EAS equipment requirements.

Legal Basis

The *Second Report and Order* is issued under the authority contained in sections 1, 4(i) and (o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

List of Subjects

47 CFR Part 11

Emergency alert system, Radio, Television.

47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Amendments

For the reasons stated in the preamble parts 11 and 76 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.11 is revised to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; wireless cable systems which may consist of Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), or Instructional Television Fixed Service (ITFS) stations; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE

	Broadcast stations			
Requirement	AM & FM	TV	FM class D	LPTV [1]
Two-tone encoder [2 3]	Y	Y	N	N
Two-tone decoder [4 5]	Y	Y	Y	Y
EAS decoder	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
EAS encoder	Y 1/1/97	Y 1/1/97	N	N
Audio message	Y 1/1/97	Y 1/1/97	Y 1/1/97	Y 1/1/97
Video message	N/A	Y 1/1/97	N/A	Y 1/1/97

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.
[2] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[3] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.
[4] Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3–4 seconds duration.
[5] Effective January 1, 1998, the two-tone decoder will no longer be used.

EAS REQUIREMENTS CABLE SYSTEMS

A. Cable systems serving fewer than 5,000 subscribers from a headend must either provide the national level EAS message on all programmed channels—including the required testing—by October 1, 2002, or comply with the following EAS requirements. All other cable systems must comply with B.

B. EAS Equipment Requirement.

	System size and effective dates		
	≥10,000 subscribers	≥5,000 but <10,000 subscribers	<5,000 subscribers
Two-tone signal from storage device [1]	Y 12/31/98	Y 10/1/02	Y 10/1/02
Two-tone decoder	N	N	N
EAS decoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
EAS encoder	Y 12/31/98	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 12/31/98	Y 10/1/02	N
Video interrupt and audio alert message on all channels; [2] Audio and Video EAS message on at least one channel.	N	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.
[2] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data such as interactive games.

WIRELESS CABLE SYSTEMS

(MDS/MMDS/ITFS Stations)

A. Wireless cable systems serving fewer than 5,000 subscribers from a single transmission site must either provide the national level EAS message on all programmed channels—including the required testing—by October 1, 2002, or comply with the following EAS requirements. All other wireless cable systems must comply with B.

B. EAS Equipment Requirement.

	System size and effective dates	
	≥5,000 subscribers	<5,000 subscribers.
EAS decoder	Y 10/1/02	Y 10/1/02
EAS encoder[1]	Y 10/1/02	Y 10/1/02
Audio and Video EAS Message on all channels	Y 10/1/02	N
Video interrupt and audio alert message on all channels;[2] Audio and Video EAS message on at least one channel.	N	Y 10/1/02

[1] Two-tone signal is only used to provide an audio alert to audience before EAS emergency messages and required monthly test. The two-tone signal must be 8–25 seconds in duration.

[2] The Video interrupt must cause all channels that carry programming to flash for the duration of the EAS emergency message. The audio alert must give the channel where the EAS messages are carried and be repeated for the duration of the EAS message.

Note: Programmed channels do not include channels used for the transmission of data services such as Internet.

(b) Class D non-commercial educational FM stations as defined in § 73.506 and LPTV stations as defined in § 74.701(f) are not required to comply with § 11.32. LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part.

(c) For purposes of the EAS, Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) stations operated in accordance with subpart K of part 21 of this chapter and Instructional Television Fixed Service (ITFS) stations operated as part of wireless cable systems in accordance with subpart I of part 74 of this chapter are defined as follows:

(1) A ''wireless cable system'' is a collection of channels in the MDS, MMDS, or ITFS used to provide video programming services to subscribers. The channels may be licensed to or leased by the wireless cable system operator.

(2) A ''wireless cable operator'' is the entity that has acquired the right to use the channels of a wireless cable system for transmission of programming to subscribers.

(d) Local franchise authorities and cable television system operators may enter into mutual agreements that require the installation of EAS equipment before the required dates listed in the tables in pargraph (a). Additionally, local franchise authorities may use any EAS codes authorized by the FCC in any agreements.

(e) Organizations using other communications systems or technologies such as, Direct Broadcast Satellite (DBS), low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

3. Section 11.13 is revised to read as follows:

§ 11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).

(a) The Emergency Action Notification (EAN) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAS has been activated for a national emergency.

(b) The Emergency Action Termination (EAT) is the notice to all broadcast stations, cable systems and wireless cable systems, other regulated services of the FCC, participating industry entities, and to the general public that the EAN has terminated.

4. Section 11.15 is revised to read as follows:

§ 11.15 EAS Operating Handbook.

The EAS Operating Handbook states in summary form the actions to be taken by personnel at broadcast stations, cable systems and wireless cable systems, and other participating entities upon receipt of an EAN, an EAT, tests, or State and Local Area alerts. It is issued by the FCC and contains instructions for the above situations. A copy of the Handbook must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.

5. Section 11.17 is amended by revising the fourth sentence of the introductory text to read as follows:

§ 11.17 Authenticator word lists.

* * * LPTV stations and cable systems and wireless cable systems do not receive authenticator lists.

* * * * *

6. Section 11.19 is revised to read as follows:

§ 11.19 EAS Non-participating National Authorization Letter.

This authorization letter is issued by the FCC to broadcast station licensees and cable systems and wireless cable systems. It states that the licensee, cable operator or wireless cable operator has agreed to go off the air or in the case of cable discontinue programming on all channels during a national level EAS message. For Broadcast licensees this authorization will remain in effect through the period of the initial license and subsequent renewals from the time of issuance unless returned by the holder or suspended, modified or withdrawn by the Commission.

7. Section 11.21 is amended by revising the first sentence of the introductory text and paragraph (a) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by broadcast and cable personnel, emergency officials and National Weather Service (NWS) personnel to activate the EAS. * * *

(a) The State plan contains procedures for State emergency management and other State officials, the NWS, and broadcast and cable personnel to transmit emergency information to the public during a State emergency using the EAS.

* * * * *

8. Section 11.31 is amended by revising the last sentence of paragraph (b), the last sentence of paragraph (c) introductory text, and in paragraph (c), in the definitions following the format example, the third and fifth sentences of the definition of ''PSSCCC'' code and the first sentence of the definition of the ''LLLLLLL''—code to read as follows:

§ 11.31 EAS protocol.

* * * * *

(b) * * * FM or TV call signs must use a slash ASCII character number 47 (/) in lieu of a dash.

(c) * * * Examples are provided in FCC Public Notices.

* * * * *

PSSCCC—* * * The Location code uses the Federal Information Processing Standard (FIPS) numbers as described by the U.S. Department of Commerce in National Institute of Standards and Technology publication FIPS PUB 6–4. * * * Each county and some cities are assigned a CCC number. * * *

* * * * *

LLLLLLLL—This is the identification of the broadcast station, cable system, MDS/MMDS/ITFS station, NWS office, etc., transmitting or retransmitting the message. * * *

* * * * *

9. Section 11.35 is revised to read as follows:

§ 11.35 Equipment operational readiness.

(a) Broadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, broadcast stations and cable systems and wireless cable systems must determine the cause of any failure to receive the required tests or activations specified in §§ 11.61(a) (1) and (2). Appropriate entries must be made in the broadcast station log as specified in § 73.1820 and § 73.1840 of this chapter, cable system record as specified in § 76.305 of this chapter, MDS/MMDS station records as specified in § 21.304 of this chapter, indicating reasons why any tests were not received.

(b) If the EAS Encoder or EAS Decoder becomes defective, the broadcast station, cable system or wireless cable system may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system or wireless cable system station records showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the broadcast station, cable system or wireless cable system is located for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

10. Section 11.41 is revised to read as follows:

§ 11.41 Participation in EAS.

(a) All broadcast stations and cable systems and wireless cable systems specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be a Non-Participating (NN) sources.

(b) A broadcast station and cable system and wireless cable system may submit a written request to the FCC asking to be a Non-Participating National (NN) source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) A station or system that is a Non-participating National (NN) source under § 11.18(f) that wants to become a Participating National (PN) source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of broadcast station and cable system and wireless cable system management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook. They should contact the FCC to ensure that they are on the FCC EAS mailing list. Broadcast stations must also have a current copy of the Red Envelope Authenticator List.

11. Section 11.46 is amended by revising the first sentence to read as follows:

§ 11.46 EAS public service announcements.

Broadcast stations, cable systems and wireless cable systems may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public. * * *

12. Section 11.51 is amended by revising paragraph (b); redesignating paragraphs (e) through (l) as paragraphs (f) through (m), adding a new paragraph (e), and revising paragraphs (f) through (m) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(b) When relaying EAS messages, broadcast stations and cable systems and wireless cable systems may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Television stations, cable systems and wireless cable systems should ensure that pauses in video programming before EAS message transmission do not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

* * * * *

(e) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and low power TV stations as defined in § 74.701(f) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other broadcast stations and cable systems and wireless cable systems alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in § 11.32(a)(4), shall modulate the transmitter at no less than 80% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(g) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention Signal may be produced from a storage device. Additionally, cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Provide a video interruption and an audio alert message on all channels.

The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Cable systems and wireless cable systems shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(h) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend and wireless cable systems with 5,000 or more subscribers; shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, after the dates indicated, these cable systems and wireless cable systems must:

(1) Install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate cable subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) The cable systems and wireless cable systems in this paragraph (h) shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) The cable systems and wireless cable systems in this paragraph (h) shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) Cable systems and wireless cable systems may elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, cable systems and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(i) If manual interrupt is used as authorized in paragraph (k) of this section, EAS Encoders must be located so that broadcast station, cable system or wireless cable system staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(j) Broadcast stations, and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or cable systems or wireless cable systems with one EAS Encoder. The requirements of § 11.32 must be met by the combined facility.

(k) Broadcast stations and cable systems and wireless cable systems are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the broadcast station, cable system, wireless cable system, or other entity retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, broadcast stations and cable systems and wireless cable systems shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or cable system or wireless cable system community or city. Other location codes may be included upon approval of broadcast station, cable system or wireless cable system management. EAS messages may be transmitted automatically or manually.

(1) *Automatic* interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) *Manual* interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 15 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(l) Broadcast stations and cable systems and wireless cable systems may employ a minimum delay feature, not to exceed 15 minutes, for automatic interrupt of EAS codes. However, this may not be used for the EAN Event which must be transmitted immediately.

(m) Either manual or automatic operation of EAS equipment may be used at broadcast stations and cable systems and wireless cable systems that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. Broadcast stations and cable systems and wireless cable systems may change back and forth between automatic and manual operation.

13. Section 11.52 is amended by revising the third sentence of paragraph (a), paragraphs (b) through (d)(2), and the introductory sentence of paragraph (e) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) * * * The effective dates for cable and wireless cable systems to install and operate EAS equipment are set forth in § 11.11.

* * * * *

(b) If manual interrupt is used as authorized in § 11.51(j)(2), decoders must be located so that operators at their normal duty stations at broadcast stations and cable systems and wireless cable systems can be alerted

immediately when EAS messages are received.

(c) Broadcast stations and cable systems and wireless cable systems that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) Broadcast stations and cable systems and wireless cable systems must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) Broadcast station and cable system and wireless cable system management shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) Broadcast stations and cable systems and wireless cable systems are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

* * * * *

14. Section 11.53 is amended by revising paragraph (a)(2) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) * * *

(2) Cable networks and program suppliers to cable systems, wireless cable systems and subscribers.

* * * * *

15. Section 11.54 is amended by revising paragraph (b)introductory text; redesignate paragraph (b)(8) through paragraph (b)(14) as paragraph(b)(9) through paragraph (b)(15); adding new paragraph (b)(8); revising newly designated paragraphs (b)(10), (b)(11) and (b)(14), and paragraphs (c) and (d) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, broadcast stations and cable systems and wireless cable systems must:

(1) * * *

* * * * *

(8) Cable systems and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h).

* * * * *

(10) Broadcast stations may transmit their call letters and cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and EAS Local Area identifications must also be given as provided in State and Local Area EAS plans.

(11) All broadcast stations and cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

* * * * *

(14) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by broadcast stations in their logs (as specified in § 73.1820 and § 73.1840 of this chapter), by cable systems in their records (as specified in § 76.305 of this chapter), and by subject wireless cable systems in their records (as specified in § 21.304 of this chapter).

(c) Upon receipt of an Emergency Action Termination Message, broadcast stations and cable systems and wireless cable systems must follow the termination procedures in the EAS Operating Handbook.

(d) Broadcast stations and cable systems and wireless cable systems originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by Section 325(a) of the Communications Act of 1934, to other participating broadcast stations, cable systems and wireless cable systems.

16. Section 11.55 is amended by revising the first sentence of paragraph (a), revising paragraph (c) introductory text, (c)(4) and (c)(7) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by broadcast stations, cable systems and wireless cable systems at their discretion for day-to-day emergency situations posing a threat to life and property. * * *

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message, broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must do the following:

* * * * *

(4) Broadcast stations, cable systems and wireless cable systems participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area Plans. Television stations must comply with § 11.54(b)(7) and cable systems and wireless cable systems must comply with § 11.54(b)(8). Broadcast stations providing foreign language programming shall comply with § 11.54(b)(9).

* * * * *

(7) The times of the above EAS actions must be entered in the broadcast station, cable system or wireless cable system records as specified in § 11.54(b)(14). FCC Form 201 may be used to report EAS activations to the FCC.

* * * * *

17. Section 11.61 is amended by revising paragraph (a)(1)(ii); redesignating paragraphs (a)(1)(iii) as (a)(1)(v); adding new paragraphs (a)(1)(iii) and (a)(1)(iv); revising newly redesignated paragraph (a)(i)(v)and (a)(2)(ii)(B); adding new paragraphs (a)(2)(ii)(C), (a)(2)(ii)(D), (a)(2)(ii)(E), and (a)(2)(v); and, revising paragraphs (a)(6) and (b) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(ii) Effective October 1, 2002, cable systems with fewer than 5,000 subscribers per headend.

(iii) Effective December 31, 1998, cable systems with 10,000 or more subscribers; and, effective October 1, 2002, cable systems serving 5,000 or more, but less than 10,000 subscribers per headend.

(iv) Effective October 1, 2002, all wireless cable systems.

(v) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from EAS Local or State Primary sources. The time of the test and script content will be developed by State Emergency Communications Committees in cooperation with affected broadcast stations, cable systems, wireless cable

systems, and other participants. Script content may be in the primary language of the broadcast station. These monthly tests must be transmitted within 15 minutes of receipt by broadcast stations and cable systems and wireless cable systems in an EAS Local Area or State. Class D non-commercial educational FM and LPTV stations are required to transmit only the test script.

(2) * * *

(ii) * * *

(B) Effective December 31, 1998, cable systems with 10,000 or more subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(C) Effective October 1, 2002, cable systems serving fewer than 5,000 subscribers per headend must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel.

(D) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on all programmed channels:

(*1*) Cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and,

(*2*) Wireless cable systems with 5,000 or more subscribers.

(E) Effective October 1, 2002, the following cable systems and wireless cable systems must conduct tests of the EAS header and EOM codes at least once a week at random days and times on at least one programmed channel:

(*1*) Cable systems with fewer than 5,000 subscribers per headend; and,

(*2*) Wireless cable systems with fewer than 5,000 subscribers. * * *

(v) TV stations, cable television systems and wireless cable systems are not required to transmit a video message when transmitting the required weekly test.

* * * * *

(6) EAS activations and special tests. The EAS may be activated for emergencies or special tests at the State or Local Area level by a broadcast station, cable system or wireless cable system instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for a weekly test of the Attention Signal in paragraph (a)(2)(i) of this section, activation must include transmission of the Attention Signal and emergency message. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (a)(2)(ii) of this section, activation must include transmission of the EAS header and EOM codes. Television stations and cable systems and wireless cable systems shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in broadcast station and cable system and wireless cable system records as specified in § 11.54(b)(14) concerning EAS tests received and transmitted.

PART 76—CABLE TELEVISION SERVICE

18. The Authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

19. Section 76.5 is amended by revising paragraph (qq) to read as follows:

§ 76.5 Definitions.

* * * * *

(qq) Emergency Alert System (EAS). The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

[FR Doc. 98–13462 Filed 5–29–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 86–179; FCC 98–70]

Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Consistent with previous determinations by the Federal Communications Commission and judicial decisions, this *Second Report and Order* continues to classify subscription Multipoint Distribution Service (''MDS'') as a non-broadcast service. The order defers the classification of non-subscription MDS, and requires prior notification and Commission approval before MDS service can be offered on a non-subscription basis.

EFFECTIVE DATE: August 10, 1998, following approval by the Office of Management and Budget, unless a notice is published in the **Federal Register** stating otherwise.

FOR FURTHER INFORMATION CONTACT: Charles Dziedzic or Jerianne Timmerman at (202) 418–1600.

SUPPLEMENTARY INFORMATION: A summary of the *Second Report and Order* follows. The complete text is available for inspection and copying during normal business hours in the MDS public reference room, Room 207, at the Federal Communications Commission, 2033 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

1. *Synopsis of Second Report and Order.* Following the remand of petitions to review by the United States Court of Appeals for the District of Columbia Circuit, the Federal Communications Commission, in this *Second Report and Order,* reaffirmed its previous determination to classify subscription Multipoint Distribution Service (''MDS'') as a non-broadcast service. Consistent with judicial precedent, the *Second Report and Order* defers the regulatory classification of non-subscription MDS, and requires prior notification and Commission approval before MDS can be offered on a non-subscription basis.

2. *Final Regulatory Flexibility Act Certification.* Pursuant to the Regulatory Flexibility Act of 1980, as amended (''RFA''),[1] it is hereby certified that the notification requirement for non-subscription MDS service adopted herein will not have a significant economic impact on a substantial number of small entities. As indicated above in ¶¶ 6–8, we are not aware of any instances in which MDS service has been offered on a non-subscription basis. Thus, the only impact of the notification requirement will be the submission of data concerning non-subscription MDS service from the limited number (if any) of MDS

[1] See 5 U.S.C. § 605(b). The RFA, *see* 5 U.S.C. 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Pub.L. No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996.