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November 16, 2015

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

RE: Review of the Emergency Alert System (EB Docket No. 04-296);
Recommendations of the Independent Panel Reviewing the Impact of Hurricane
Katrina on Communications Networks (EB Docket 06-119)

Dear Ms. Dortch:

This letter reports on meetings that were held November 12 with: (1) Public Safety and Homeland Security Bureau Chief Admiral David Simpson, Special Counsel for Public Safety and Homeland Security Renee Roland, and Associate Chief of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau Greg Cooke; (2) Commissioner Mignon Clyburn, her Chief of Staff and Media Legal Advisor Chanelle Hardy, and her Senior Legal Advisor-Wireless, International, and Public Safety Louis Peraertz; (3) Johanna Thomas, Legal Advisor to Commissioner Jessica Rosenworcel; (4) Brendan Carr, Legal Advisor for Wireless, Public Safety, and International to Commissioner Ajit Pai; (5) Associate General Counsel and Chief of Staff Jennifer Tatel, Associate General Counsel Linda Oliver, and Attorney-Advisor Anjali Singh; and (6) a meeting today (November 16) with Jessica Almond, Legal Advisor to Chairman Tom Wheeler. Our delegation to meetings (1) through (5) consisted of our VP/Research and Policy Dr. Nicol Turner-Lee, Staff Counsel and Cathy Hughes Fellow Charlyn Stanberry, Rainbow PUSH Public Policy Institute Government Relations and Telecommunications Project Executive Director Rev. Steven Smith, National Coalition on Black Civic Participation and Black Women's Roundtable Senior Technology Policy Advisor Joycelyn Tate, and myself. Our delegation to meeting (6) consisted of Dr. Turner-Lee, Ms. Stanberry, Rev. Smith, MMTC Research Director DeVan Hankerson, and myself.

At these meetings, we offered the following points regarding the pending Petition for Emergency Relief filed September 20, 2005 by MMTC, the Spanish Broadcasters Association and the Office of Communication of the United Church of Christ (the "Katrina Petition").

What the Katrina Petition Seeks to Accomplish

The Katrina Petition and subsequent pleadings asked the Commission to ensure that before, during, and immediately after a catastrophic event such as a hurricane, individuals not proficient in English, who find themselves with no operational in-language radio station in the wake of the disaster, will have life-saving in-language information available within the regular programming of another, “designated hitter” station.

As nearly all of the nation’s leading civil rights organizations wrote to the Chairman and Commissioners on August 26, 2015 (the “26 National Organizations’ Letter”):

The 10th anniversary of Hurricane Katrina will be August 29, 2015. The days leading up to, during, and after this natural disaster demonstrated the importance of multilingual emergency communications. For the over 100,000 Louisianans not proficient in English, their world went dark that day and remained that way for many days. These residents were unable to get answers to questions such as, “Where do I go to find shelter?” “How can I find my children?” and “Is the water safe to drink?” For the terrified multitude taking refuge on rooftops as the water rose, there was often little hope for survival.

The penalty for an adult’s or child’s lack of English proficiency must never be death.

In many cities with large Latino, Korean, Chinese and Vietnamese communities, few or no stations are broadcasting in those languages. When Hurricane Katrina decimated New Orleans in 2005, the city’s only Spanish language station was damaged and could not return to the air for eight critical days. During those eight days, over 100,000 Latinos had no landline service, no cellular telephony, no television, no radio, and no print media in their language. The city’s Vietnamese population also went dark and many of these residents had no means to communicate their need for medical assistance. In a time of desperate need, finding medical facilities, shelter, food, and potable water was a matter of life and death for tens of thousands who were not fluent in English.

The 26 National Organizations Letter also pointed out that “among the greatest beneficiaries of multilingual emergency communications are first responders – as well as the taxpayers who underwrite their operations. The cost of rescuing and providing emergency health care is much less when the public has access to essential information in an emergency.”

The Record in the Katrina Docket

In 2006, the agency’s Katrina Independent Panel, appointed by former Chairman Michael Powell, unanimously agreed that the agency must mandate multilingual emergency alerts. Over 70 national organizations have endorsed the Petition. The National Association of Broadcasters, while opposing the Petition, has correctly pointed out that only free local radio can always be counted upon to provide life-saving information in emergencies.

During our November 12 and 16 meetings, we pointed out that in seven rounds of pleadings, opponents have failed to document any cost, jurisdictional, constitutional, or operational issues

that would prevent the Commission from taking action. Nor has any party offered a serious alternative to our “designated hitter” paradigm.

Moreover, the 26 National Organizations’ Letter noted that voluntary efforts have failed to establish a mechanism “to protect the lives and well-being of our 25,000,000 adults and children who are not proficient in English” --

Since the Katrina Petition was filed, not a single state broadcast association – not one – has come up with a plan to ensure emergency service to non-English language minorities. The issue here is not whether there will be another Katrina, it is will we be prepared when it happens again. The lives of our fellow Americans should not hang in the balance.

The Reported Draft Order Denying the Petition

A report in TR Daily (10/30/15) stated that a draft order on circulation “would deny” the Katrina Petition. Instead, according to the article, EAS participants would “notify states whether they transmit alerts in any language other than English” and the states “would then be required to update their EAS plans with that information” and submit the information to the PSHS Bureau. The draft order, then, would not require broadcasters to take *any* steps to provide in-language service to multilingual Americans before, during, or after an emergency. (Commission staff have advised us that the press account is incomplete.)

We believe that if such a draft order is approved, the Commission will have failed to solve the Katrina problem – *i.e.*, the entirely predictable scenario in which the only station serving a large non-English language population is knocked off the air by a hurricane, earthquake, tsunami or other disaster.

Further, the Commission will have failed to address non-EAS-triggering emergencies such as 9/11 and Katrina itself. It will also have failed to address what happens immediately in the wake of a disaster striking – time period not covered by EAS. And above all, it will have failed to establish an objective standard for what broadcasters must do in order to comply. Thus, it virtually invites state reports to the PSHS Bureau that will contain little of substance and in response to which the Commission could do nothing. At best, the gathering of data, with no underlying objective standards, would set up years of market-by-market litigation, at great expense to the parties and the Commission.

Finally, it appears that most or all of the multilingual broadcasting data being sought by the draft order is readily available from the *BIA Radio Market Report* database at minimal cost. Yet, we understand, the Commission plans to afford broadcasters two years to respond to an information request for this readily available data. The two-year time period would signal that the Commission is comfortable putting off, until 2017 at the earliest, the date by which the Commission will take meaningful steps to preserve the lives of multilingual Americans.

The Ease of Framing A Remedy

We are confident that if the Commission revisits this issue in light of these comments, it would adopt directives that more effectively protect individuals who are not conversant in English.

Multilingual emergency service is really not difficult to achieve. State EAS plans can easily be amended to incorporate reasonable methods of ensuring that life-saving information finds its way to the public before, during, and in the immediate wake of a life-threatening disaster. As we suggested in meeting (3) above, a local multilingual community's eligibility for relief could be determined by reference to whether federal election guidelines provide for bilingual ballots.

First, however, the Commission needs to articulate a clear standard for compliance. Otherwise we can be sure that many states will fail to put forth realistic plans – thus triggering years of expensive and tedious market-by-market litigation that would pit local broadcasters against local citizens. It would be more efficient and effective for the Commission to articulate a reasonable bright-line standard and expect broadcasters to comply – the way the FCC expects them to comply with bright line ownership rules, bright line engineering rules, and bright line public announcement rules like mandatory station ID and EAS announcements and tests.

Recommendation and Pledge of Action

The item should be recalled from circulation and, in its place, an item circulated that would grant the Petition and call for further pleadings regarding the details of implementation.

In the alternative, if there is insufficient support for this relief, the Commission should leave the Petition pending so that a future Commission would still have the Petition available and ready to protect the public. Discussions are underway about MMTC potentially amending the Petition to address questions that the Commission has raised.

Sincerely,

David Honig

David Honig
President Emeritus and Senior Advisor

cc: Hon. Tom Wheeler
Hon. Mignon Clyburn
Hon. Ajit Pai
Hon. Jessica Rosenworcel
Hon. Michael O'Rielly
Admiral David Simpson
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