

## **FHH Telecom Law November 2006**

### **You Have Been WARNed**

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On October 13, 2006 the Port Security Act of 2006 was signed into law and included in that piece of legislation was an amendment called the Warning, Alert and Responsive Network (“WARN”) Act. The WARN Act extends Emergency Alert Service (“EAS”) provisions to CMRS providers. In addition, the bill requires the FCC to establish a CMRS Alert Advisory Committee, which must hold its first meeting by December 12, 2006.

The WARN Act changed dramatically from the initial draft legislation to the final passed legislation. The biggest change was limiting the scope of the Act to CMRS providers, as opposed to other types of communications services like Internet Service Providers. EAS and implementation of the WARN Act is being handled at the FCC by the newly formed Homeland Security Bureau.

For CMRS providers, the Act requires them to “elect” whether or not they will participate in delivering EAS services to their customers. This election must be made within 30 days of the first FCC order on the subject (which must occur within 120 days from when the bill was signed into law on October 13). If a CMRS provider elects not to provide EAS services they must give “conspicuous notice” to consumers at the point of sale. For those providers who elect to provide EAS, they cannot charge a fee for the service.

Currently the Homeland Security Bureau is seeking nominations to fill the CMRS Alert Advisory Committee, as required by the WARN Act. Additionally, the Act requires the FCC to regulate under the WARN Act based on the recommendations of the CMRS Alert Advisory Committee, which makes the current nomination process important for effected industries. It is also somewhat unusual that the FCC is, to a degree, bound by the Committee’s recommendations.

The WARN Act also affects noncommercial television and public television broadcasters. These broadcasters will be required to use their transmission facilities to broadcast “geographically targeted” alerts to CMRS subscribers. This obligation will begin 90 days after the FCC establishes technical standards for the EAS broadcasts. Affected broadcasters are entitled to receive “reasonable” compensation for their costs associated with these requirements. They will be able to recover there costs through NTIA at the Commerce Department.