

ORAL ARGUMENT NOT YET SCHEDULED

No. 16-1222

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL, *et al.*,
Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION *et al.*,
Respondents.

On Petition for Review of an Order of the Federal Communications Commission

**BRIEF FOR AMICI CURIAE ASIAN AMERICANS ADVANCING
JUSTICE | AAJC ET AL. IN SUPPORT OF PETITIONERS
MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL
AND THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici. Except for the following, all parties, intervenors, and *amici* appearing before this Court are listed in the Brief for Petitioners and the Brief of *Amici Curiae* Former FCC Officials in Support of Petitioners.

Amici appearing in this Court include Asian Americans Advancing Justice | AAJC; Asian Americans Advancing Justice – Atlanta (AAAJ-Atlanta); Asian Americans Advancing Justice – Chicago (AAAJ-Chicago); Asian Americans Advancing Justice – Los Angeles (Advancing Justice – LA); Asian American Community Services (AACS); Association of Asian Pacific Community Health Organizations (AAPCHO); Americans for Immigrant Justice (AI Justice); The Asian Law Alliance; The Asian Pacific American Institute for Congressional Studies (APAICS); The Asian Pacific Institute on Gender-Based Violence (API-GBV); Asian Services In Action (ASIA); BPSOS-Houston; The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA); Hmong National Development, Inc. (HND); LatinoJustice PRLDEF; Many Languages One Voice; National Council of La Raza (NCLR); The National Asian Pacific American Bar Association (NAPABA); National Asian Pacific American Families Against Substance Abuse (NAPAFASA); The National Asian Pacific American Women’s Forum (NAPAWF); National Council of Asian Pacific Americans (NCAPA); The

National Center for Lesbian Rights (NCLR); The National Immigration Law Center (NILC); OCA – Asian Pacific American Advocates; The United States Committee for Refugees and Immigrants (USCRI); and The Washington State Coalition for Language Access.

B. Rulings Under Review. The ruling under review is the Federal Communication Commission’s (“FCC”) Order, Amendment of the Emergency Alert System, FCC 16-32, EB Docket No. 04-296, (rel. Mar. 30, 2016) (“Order”). A summary of the Order was published in the Federal Register on May 6, 2016. *See* 81 Fed. Reg. 27342 (May 6, 2016).

C. Related Cases. Counsel for *amici curiae* are not aware of any related cases pending in this Court or any other court.

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DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amici* state that none of the *amici* has a parent corporation and no publicly held corporation owns 10% or more of the stock of any *amicus*.

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GLOSSARY**Term****Abbreviation**

Asian Americans Advancing Justice AAJC	AAJC
Civ. Rts. Div., U.S. Dep't of Justice, Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery (2016)	Tips and Tools
Dep't of Justice, Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency, Policy Guidance, 65 Fed. Reg. 50123 (Aug. 16, 2000)	2000 DOJ Guidance
Dep't of Justice et al., Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities in Compliance with Title VI of the Civil Rights Act of 1964 (Aug. 17, 2016)	2016 Joint Guidance
Emergency Alert System	EAS
Federal Communication Commission	FCC
Federal Emergency Management Agency	FEMA
Limited English Proficiency	LEP
Metropolitan Statistical Area	MSA
Multicultural Media, Telecom, and Internet Council	MMTC

**STATEMENT REGARDING IDENTITY AND INTEREST OF AMICI,
SOURCE OF AUTHORITY TO FILE, AND SEPARATE BRIEFING**

Amici are 26 national and local organizations committed to expanding language access for all people in the United States. Some *amici* work with and advocate on behalf of communities with large numbers of limited-English-proficient (LEP) members. For others, language access is an important priority alongside other advocacy work. Many *amici* advocate for disenfranchised and disadvantaged groups that have historically been subject to discriminatory treatment on the basis of language ability and national origin.

All *amici* support greater access to public services without regard to language ability and national origin, and all see meaningful access to multilingual emergency information as essential to that goal. All *amici* have clients and constituents who are burdened by language barriers in public services, and who would benefit from Petitioners' proposal.

A complete listing of *amici* is attached to this brief as Appendix A.

Amici have received consent to file this brief from Respondents FCC and the United States, as well as from Petitioners MMTC and League of United Latin American Citizens.

Counsel for *amici* certify that a separate brief is necessary to present the unique arguments relating to *amici*'s experience working with LEP groups and

individuals. Counsel for *amici* have consulted with counsel on the other amicus brief being filed on behalf of Petitioners in this case, and concluded that it would not be practical to file a joint brief, given the different and complex issues discussed in each amicus brief. Both amicus briefs being filed on Petitioners' behalf are well under the 7,000 word limit, and together would barely exceed it.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the *amici curiae*, their members, or their counsel contributed money that was intended to fund preparation or submission of the brief. *Amici*'s counsel are representing *amici* on a pro bono basis.

SUMMARY OF ARGUMENT

When emergencies and disasters strike, those in harm's way depend on access to emergency information in a language they can understand. For the 25 million limited-English-proficient (LEP) individuals in the United States, access to multilingual emergency information is an urgent matter of life and death.

Repeated tragic experiences have provided powerful evidence of the grave risks that LEP individuals face because of the failure to ensure widespread access to emergency information. When Hurricane Katrina devastated New Orleans in

2005, the only Spanish-language radio station was knocked off the air for days, leaving Spanish-speaking LEP individuals without access to potentially life-saving information. Vietnamese speakers found themselves in a similarly dangerous position. Since 2005, in other natural disasters and emergencies, LEP individuals have continued to face unconscionable and unnecessary risks to life, limb, and property – risks against which the FCC works to protect English speakers by ensuring the availability of EAS content and other emergency broadcasts in English.

The Communications Act instructs the FCC to “promot[e] safety of life and property through the use of wire and radio communications.” 47 U.S.C. § 151. Even if the Communications Act did not impose an explicit nondiscrimination requirement on the FCC – which it does – the Commission is required to consider and promote the safety of non-English-speaking individuals. Of course, the Communications Act *does* prohibit the FCC from discriminating on the basis of national origin – making the FCC’s refusal to ensure access to emergency broadcasts for LEP individuals doubly disappointing. As the nation’s demographics increasingly diversify, emergency response plans must account for the reality that English-only alerts are inadequate to protect the lives and safety of

all people in the United States. English-only emergency alerts are no longer effective in a nation with a large and growing LEP population.

At stake in this case is a basic question of fairness in federal emergency planning. Of course, the emergency alert system is only one part of the federal government's role in responding to emergencies and natural disasters. But the question in this case is not whether a multilingual emergency alert plan would be comprehensive and perfect. The question is whether a multilingual emergency alert plan would be a more reasonable and effective way of promoting the safety and lives of persons in the United States – *all* persons. The record before the FCC clearly demonstrated that it would be.

The LEP population of the United States has grown to the point that an English-only alert system is inadequate to protect lives. Unfortunately, emergencies and natural disasters will continue to provide ample evidence of the need for multilingual alerts. Federal law and many federal agencies have caught up to this reality. This Court should not permit the FCC to lag behind any longer.

ARGUMENT

I. ACCESS TO MULTILINGUAL EAS CONTENT IS A MATTER OF LIFE AND DEATH

A. Because Of The FCC's Inaction And Delay, LEP Individuals Have Faced Disproportionate, Avoidable Risks To Their Safety.

Access to comprehensible emergency information in the wake of a disaster is a matter of life and death for all people, including the 25 million LEP people in the United States. *See* Letter from MMTC to Marlene H. Dortch, Secretary, FCC (Jan. 21, 2016); *see also* Civ. Rts. Div., U.S. Dep't of Justice, Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery (2016)¹ [hereinafter Tips and Tools] ("If LEP individuals are not able to access disaster information in a language they can understand, the consequences can be deadly. When individuals do not evacuate, find shelter, or understand how to prevent getting a contagious disease, emergency response personnel and resources are further strained to conduct rescue operations or otherwise remedy avoidable situations.").

Petitioners' original emergency petition for multilingual access to emergency information emerged from the searing experience of Hurricane Katrina.

¹ Available at <https://www.justice.gov/crt/file/885391/download> (last visited Oct. 24, 2016).

In that national crisis, in part because of the failure to provide multilingual access, “people died because they didn’t speak English.” Letter from MMTC to Marlene H. Dortch, Secretary, FCC at 2 (Aug. 11, 2011). The FCC’s efforts to understand and correct this systemic failure have been welcome. But more than a decade has passed, and in the meantime many other federal agencies, including the Department of Homeland Security, have taken concrete steps to expand access to emergency services to LEP individuals. LEP individuals could not afford to wait for FCC action when the emergency petition was originally filed in the wake of Katrina. They still cannot afford to wait, yet the FCC continues to delay meaningful action while LEP individuals face a disproportionate risk of injury and death. The Court should not abide a situation in which people “die[] because they [don’t] speak English.” *Id.*

Sadly, there are too many stories of LEP individuals suffering preventable harms because they lacked lifesaving emergency information in a language they could understand. During Hurricane Katrina, “approximately 70 or 80” casino service workers, including Peruvian and Brazilian immigrants, were stranded in a Gulfport, Mississippi apartment complex. Brenda Muñiz, *In the Eye of the Storm: How the Government and Private Response to Hurricane Katrina Failed Latinos*,

National Council of La Raza, at 5 (2006).² Without access to broadcasts in Spanish or Portuguese, they would not have received the emergency evacuation advisories, or the directions to shelters, that were broadcast over local television stations. The storm reduced the apartment buildings to rubble, and those 70 or 80 people are presumed to have lost their lives. *Id.*

Meanwhile, “[l]ike other Gulf Coast residents, thousands of Asian Americans . . . lost their homes, businesses, and livelihoods. But Asian Americans faced additional hurdles due to their limited English proficiency.” Bethany Li, “*We Are Already Back*”: *The Post-Katrina Struggle for Survival and Community Control in New Orleans East’s Vietnamese Community of Versailles*, 18 Asian Am. L.J. 25, 30 (2011) (footnote omitted). Many of the 35,000 Vietnamese-Americans who lived in Katrina’s path “were injured or killed during the storm and the flooding in its wake because they could not understand the English-only evacuation orders.” Susan S. Kuo, *Speaking in Tongues: Mandating Multilingual Disaster Warnings in the Public Interest*, 14 Wash & Lee J. Civ. Rts. & Soc. Justice 3, 4-5 (2007).

² Available at <http://publications.nclr.org/handle/123456789/1365> (last visited Oct. 24, 2016).

The absence of multilingual emergency broadcasts during Katrina left LEP communities and individuals to fend for themselves. One Mississippi grocer visited churches door-to-door to warn Spanish-speaking parishioners about the storm and provide information about evacuation plans, relying on a “one-page Spanish-language article that had been printed that day in the local paper.” *When Disaster Strikes: A Human Rights Analysis of the 2005 Gulf Coast Hurricanes*, Int’l Hum. Rts. Law Clinic, Boalt Hall Sch. of Law, at 16 (June 2006) (footnote omitted).³ “In the face of one of the most powerful hurricanes in U.S. history, the only early warning system immigrant communities could rely on was word of mouth.” *Id.* As a result, in the immediate aftermath of the storm, LEP individuals faced a disproportionate risk of various environmental harms, like unsafe drinking water and carbon-monoxide poisoning. *Id.* at 22.

The sad lessons of Katrina have only been echoed in subsequent disasters. When Hurricane Ike hit Houston in 2008, “groups were slow to respond to disaster . . . primarily due to language barriers and lack of understanding of transmitted information.” Vishnu P. Nepal et al., *Understanding Disaster Preparedness of Linguistically Isolated Groups: Chinese, Somali, Vietnamese and*

³ Available at https://www.law.berkeley.edu/files/IHRLC/Shadow_Report_-_When_Disaster_Strikes.pdf (last visited October 24, 2016).

Spanish Speaking Communities, at 6 (Nov. 2009).⁴ “[W]eather graphics and visual images alerted non-English speakers to a turn in events and the need to gather additional information. Word-of-mouth was the second most reliable and used source of information.” *Id.* at 11.

Some LEP residents of Houston “reported having no food for seven days. Mothers recounted their fears of losing a child to starvation during that time. Spanish-speaking [residents] did not know where the cooling stations [for those without power after the storm] and rest areas were located.” *Id.* at 9.

During the 2007 wildfires in Southern California, “although the area affected by the . . . wildfires included a large LEP population, reports indicated that vital information regarding evacuation was disseminated only in English, was not distributed at all in areas populated by migrant farmworkers, and interpreters were generally unavailable.” Dep’t of Justice et al., Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities in Compliance with

⁴ Available at https://www.houstontx.gov/health/chs/Disaster%20Preparedness%20_LIP_Houston.pdf (last visited Oct. 24, 2016).

Title VI of the Civil Rights Act of 1964, at 4-5 (Aug. 17, 2016) (footnote omitted)⁵ [hereinafter 2016 Joint Guidance].

In 2012, when Superstorm Sandy tore through New York and New Jersey, widespread blackouts left residents without power for days and weeks. In New York City's public housing developments, elderly residents were stranded on high floors, without working elevators, heat, hot water, or electricity. It took three weeks for the FEMA Community Relations Limited English Proficiency team to begin door-to-door contacts in the Coney Island Houses. Elderly Russian-speaking residents had been stranded there after the storm hit. *Timeline of the New York City Housing Authority's Response*, N.Y. Times (Dec. 9, 2012).⁶

In Connecticut, a post-Sandy report found that the storm had “especially impact[ed] vulnerable communities, and even more distressingly those whose members have limited English communication skills.” Dr. Jamie S. Gomez & Dr. Diana Rios, *The Role of State Government and Latino Media in Natural Disasters and Statewide Emergencies*, Latino and Puerto Rican Affairs Comm'n, at 4 (July

⁵ Available at <https://www.justice.gov/crt/file/885401/download> (last visited Oct. 24, 2016).

⁶ Available at <http://www.nytimes.com/2012/12/10/nyregion/timeline-of-the-new-york-city-housing-authoritys-response.html> (last visited Oct. 24, 2016).

2015).⁷ The report concluded that the “ad-hoc system” of disseminating Spanish-language emergency information was “too reliant on volunteerism and good will,” and was consequently “ineffective, inconsistent, and easily overwhelmed in an emergency.” *Id.* at 18. The report lamented “wide variations among [Connecticut] governments in the effectiveness of [their] efforts to reach the Spanish-speaking population,” and called for increased coordination and planning. *Id.* at 18-19.

In 2013, a tornado in Oklahoma City killed 23 people, including nine from “Oklahoma’s growing Guatemalan community, many unfamiliar with the fury of spring storms.” Unfortunately, “[a]s they struggled to understand storm precautions, panic ensued in many Hispanic houses. . . . ‘There were a lot of Latino families that didn’t know what to do in that storm and just reacted, and there was a greater loss of life than there had to be.’” Juliana Keeping & Hannah Covington, *Oklahoma Storms: Many Spanish-Speaking Families Struggle To Understand Storm Precautions*, *The Oklahoman* (July 14, 2013).⁸

Each of these failures to provide needed multilingual alerts had serious consequences both for the affected LEP population and the broader crisis response

⁷ Available at <https://www.cga.ct.gov/lprac/docs/2015/LPRAC%20Statewide%20Emergencies%20Report.pdf> (last visited Oct. 24, 2016).

⁸ Available at <http://newsok.com/article/3862301> (last visited Oct. 24, 2016).

effort. In such situations, “not only [are LEP] individuals denied critical information needed to safely respond to the emergency, but first responders also face[] heightened risks.” 2016 Joint Guidance at 5. While the FCC defers action to remedy this urgent problem, LEP individuals must continue to face each natural disaster or crisis knowing that they may not have access to life-saving information. There are over twenty million people – including millions of children – who cannot afford to wait.

B. Changing U.S. Demographics Mean That The FCC Must Make Language Access For LEP Persons A Renewed Priority.

The FCC’s failure to act is particularly concerning because language access is an increasingly important need as demographics in the United States rapidly change. As of 2011, there were 25.3 million LEP individuals in the United States, or about 9 percent of the total population. Monica Whatley & Jeanne Batalova, *Limited English Proficient Population of the United States*, Migration Pol’y Inst. (July 25, 2013).⁹ The LEP population in the United States has been growing steadily for many years. In 1990, about 14 million LEP individuals lived in the United States, or about 6 percent of the total population. *Id.* By 2011, that share

⁹ Available at <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states-1> (last visited Oct. 24, 2016).

had risen to 9 percent. *Id.* Of the 25.3 million total LEP population measured in 2011, 2.3 million were children. *Id.*

It is vital to evaluate the FCC's inaction in the context of these changing demographics. Although English-only emergency alerts may have been the norm in the past, today an English-only system does not suffice to protect the American people. Much of the growth in the LEP population in the United States has been relatively recent: the 1990s saw especially rapid change, from 14 million to over 21 million LEP individuals. *Id.* By the time Hurricane Katrina struck in 2005, the LEP population of the United States had changed radically. Over ten years later, the LEP population has grown even more, and as a result further delay by the FCC will cost more and more lives in future disasters. The nation's demographics have changed, and the federal government's plan for emergency services must catch up.

Fortunately, many federal agencies apart from the FCC have taken important steps to adapt their services, including emergency planning, to a multilingual population. Since 2000, the federal government has increasingly prioritized an LEP-accessible model of public services. *See* Improving Access to Services for Persons with Limited English Proficiency, Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000) (ordering systemic review and improvement of services "to improve access to federally conducted and federally assisted programs and

activities for persons who, as a result of national origin, are limited in their English proficiency (LEP)"). In recent years, the Attorney General has emphasized the government's commitment to Executive Order 13166. *See* Memorandum from the Attorney General to Heads of Federal Agencies, at 1 (Feb. 17, 2011)¹⁰ ("Events such as the H1N1 influenza pandemic, Hurricanes Katrina and Rita, the Gulf oil spill, and the 2010 Decennial Census highlight the need for federal agencies to ensure language access" to ensure the "widespread and nondiscriminatory availability of accurate, timely, and vital information."). Since the FCC issued the order at issue in May 2016, the Departments of Justice, Homeland Security, Housing and Urban Development, Health and Human Services, and Transportation have issued joint guidance for recipients of federal assistance on Title VI compliance in emergency services. *See* 2016 Joint Guidance. That guidance noted that among the "critical lessons" of Hurricanes Katrina and Rita was "the importance of complying with the nondiscrimination requirements of civil rights statutes, addressing the needs of the whole community, and ensuring equal opportunity to access recovery efforts." *Id.* at 1-2. The guidance advised state and local governments to act affirmatively and quickly to "assess the language needs of

¹⁰ *Available at* https://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf (last visited Oct. 24, 2016).

the service community and develop a language access plan.” *Id.* at 9. By contrast, the FCC took no concrete steps to ensure the needed immediate action to provide LEP individuals with access to emergency information. The FCC’s inaction is all the more distressing when examined alongside the Joint Guidance’s reaffirmation that LEP individuals must have meaningful access to emergency services. *See id.* That basic promise of federal antidiscrimination law is not met when LEP individuals have access to translated information only after they have reached an emergency shelter, for example, but not to the translated emergency alerts that would lead LEP individuals to seek shelter in the first place.

The importance – and the feasibility – of accommodating LEP populations are bolstered by the fact that the populations are not distributed evenly across the United States. LEP persons are concentrated in a handful of states, and virtually all in metropolitan areas. Whatley & Batalova, *Limited English Proficient Population of the United States* (94 percent of LEP individuals lived in or around cities in 2011). Data provided to the FCC by AAJC show the concentration of certain language groups within various metropolitan areas, where they are served by major media markets. For example, in the Cleveland metropolitan statistical area (MSA), 28 percent of Asian Americans are LEP, along with 24 percent of Latinos. Asian Americans Advancing Justice, *A Community of Contrasts: Asian*

Americans, Native Hawaiians, and Pacific Islanders in the Midwest at 28, attached to Letter from AAJC to Marlene H. Dortch, Secretary FCC (Aug. 14, 2014). In the Twin Cities, over one third of Asian Americans and Latinos are LEP, including two thirds of Asian American seniors and 93 percent of Hmong American seniors. *Id.* at 52. In Wisconsin, more than 35,000 Asian Americans, or 28 percent of Asian Americans statewide, are LEP. *Id.* at 64. In the Chicago MSA, about 30 percent of Asian Americans are LEP, including nearly half of Laotian and Vietnamese Americans, and over half of all Asian American seniors.

AAJC has analyzed available data on LEP individuals who speak Asian languages to illustrate the impact of a proposal like the one that MMTC has advanced on behalf of Asian-language speakers. Under a plan modeled on the Voting Rights Act's language-access provisions, for example, there would be 43 covered communities of Asian-language speakers in 22 cities and political subdivisions across 14 states. *See* Section 203 Map, attached to Letter from MMTC to Marlene H. Dortch, Secretary, FCC (July 3, 2014). The concentration of Asian-language speakers in metropolitan areas simplifies any plan to address their language needs in an emergency.

The concentration of LEP populations in a relatively small number of radio markets adds to the feasibility of MMTC's proposal. Of the 273 radio markets in

the United States, 80 contain at least one language group needing protection. Those language groups are spread over 35 states and the District of Columbia. (Where there are two or more radio stations broadcasting in a certain language, MMTC considers that particular LEP community's needs met for these purposes, recognizing that any reasonable plan will have to draw such an arbitrary line somewhere.) Letter from MMTC to Marlene H. Dortch, Secretary, FCC at 1-2 & n.2 (Jan. 21, 2016).

C. The FCC Should Have Taken Action To Ensure Comprehensible EAS Content To As Many Americans As Reasonably Possible.

As the FCC correctly recognized, the enormous diversity of languages in the United States presents a challenge to emergency planners. But the difficulty of providing multilingual content that can protect *all* persons in the United States does not warrant inaction. Instead, the FCC should have acted to ensure the provision of emergency information in as many languages as reasonably possible.

The FCC was mistaken to rely on AAJC's emphasis on the importance of ensuring multilingual emergency information content in Asian languages to justify further delay. During the ten-year-long period between MMTC's petition and the FCC's order this year, AAJC submitted a letter to the FCC pointing out that a plan to provide emergency broadcasts in Asian languages would present some special

difficulties deserving of the Commission's attention alongside, for example, proposals to provide emergency broadcasts in Spanish. Letter from AAJC to Marlene H. Dortch, Secretary, FCC at 3 (July 3, 2014). In its Order, the FCC seized on this piece of AAJC's comment as a reason to delay taking any meaningful action at all. Order ¶ 70 & n.72. As the evidence in the record demonstrates, the additional alleged complexities involved with translation into Asian languages cannot justify inaction. To be sure, under MMTC's proposal, state and local EAS participants could work to produce content in every language that met an appropriate threshold, including Asian languages. But even if the only reasonable plan in the present time was a partial step toward comprehensive multilingual emergency broadcast content (by requiring plans for the provision of Spanish-language content, for example), the benefits in terms of lives saved and property protected would suffice to justify the plan.

Indeed, as MMTC's proposal makes clear, the appropriate goal in designing a rule for multilingual EAS content is to promote the "maximum effectiveness" of the system. *See* 47 U.S.C. § 154(o). That objective requires looking at census and other data to determine where there is a need for multilingual content. If the resulting plan is focused on Spanish, that could be the natural result of the fact that a majority of LEP individuals in the United States speak Spanish. *See, e.g.,*

Whatley & Batalova, *Limited English Proficient Population of the United States* (about two-thirds of LEP people in the United States are Latino). If a resulting plan *only* required Spanish-language content, perhaps on a temporary basis, that would be because mandating Spanish-language content – while not as effective as mandating content in several languages – is still more effective than no mandate at all. Of course, even a rule modeled on the Voting Rights Act’s language-access provisions would leave some LEP communities and individuals uncovered. As Petitioners recognized, and as *amici* reaffirm, imperfection in designing a regulation to address the problem at issue is inevitable. But with lives at stake, the perfect should not be the enemy of the good, and the FCC’s inaction – if the Court permits it – will create an unacceptably high risk to the millions of people who cannot benefit from English-language emergency alert content.

II. PREVENTING DISCRIMINATION ON THE BASIS OF LANGUAGE PROFICIENCY IS AN IMPORTANT FEDERAL PRIORITY

Nondiscrimination on the basis of language ability in the provision of public services is an important federal priority and is among the FCC’s specific duties. The Communications Act charges the FCC with “promoting safety of life and property through the use of wire and radio communications” “without discrimination on the basis . . . of national origin.” 47 U.S.C. § 151. As

Petitioners correctly observe, discrimination on the basis of language ability is tantamount to discrimination on the basis of national origin. *See* Pet. Br. at 26; *see also, e.g.*, 29 C.F.R. § 1606.1 (1964); 2016 Joint Guidance at 9; Dep’t of Justice, *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency*, Policy Guidance, 65 Fed. Reg. 50123, 50124 (Aug. 16, 2000) [hereinafter 2000 DOJ Guidance].

The failure to provide multilingual EAS content where it would be feasible to do so raises serious questions concerning national-origin discrimination in violation of § 151, just as it would under Title VI of the 1964 Civil Rights Act. *See, e.g., Nat’l Multi Hous. Council v. Jackson*, 539 F. Supp. 2d 425, 430 (D.D.C. 2008) (“Longstanding Justice Department regulations . . . expressly require communication between funding recipients and program beneficiaries in languages other than English to ensure Title VI compliance.”). Moreover, it is also a failure by the FCC to perform its statutory responsibility to “obtain[] maximum effectiveness from the use of radio and wire communications in connection with safety of life and property.” 47 U.S.C. § 154(o). As the FCC recognized, this requires the Commission to “promot[e] the delivery of Emergency Alert System (EAS) alerts to as wide an audience as technically feasible.” Order ¶ 1.

Apart from Congress's statutory mandates, Executive Order 13166 also requires that federal agencies include and accommodate LEP individuals in their "federally conducted" activities. 65 Fed. Reg. at 50121.¹¹ The Executive Order provides that "each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency." *Id.* Several guidance documents published by the Department of Justice guidance have reemphasized this policy. *See, e.g.,* 2016 Joint Guidance; Dep't of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455 (June 18, 2002). Most recently, the Departments of Justice, Homeland Security, Housing and Urban Development, Health and Human Services, and Transportation jointly released guidance to state and local governments and other recipients of federal assistance on antidiscrimination law in the context of emergency response. As the departments emphasized, "complying with [Title VI nondiscrimination] requirements becomes even more important during emergencies and disasters in

¹¹ The Executive Order does not create a right legally enforceable by private parties, but it illustrates the importance of the federal interest in ensuring multilingual access to public services.

order to ensure that no one is unjustly denied the services and support they need during times of crisis, when their physical safety or well-being are often at greatest risk, and when many of the resources they might otherwise have drawn upon for support may not be available.” 2016 Joint Guidance at 3.

By continuing to delay a meaningful plan to provide multilingual emergency information to LEP people across the United States, the Commission has acted arbitrarily and unlawfully. This Court should vacate the FCC’s Order and Final Rule and remand to the Commission so that it can finally respond meaningfully to this more than ten-year-old emergency petition.

CONCLUSION

Amici respectfully request that the Court vacate the Final Order, remand to the FCC, and retain jurisdiction to ensure that the FCC takes appropriate action to promote the safety of LEP individuals through the Emergency Alert System and any other means of distributing emergency information within its authority.

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Respectfully submitted,

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APPENDIX A: List of *Amici Curiae*

Appendix A: List of Amici Curiae

Asian Americans Advancing Justice | AAJC is a national nonprofit organization founded in 1991. Based in Washington D.C., Advancing Justice | AAJC works to advance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice | AAJC is one of the nation's leading experts on issues of importance to the Asian American community, including language access, immigration, and immigrants' rights. Along with our Advancing Justice affiliates, Advancing Justice | AAJC works to promote justice and bring national and local constituencies together through community outreach, public policy advocacy, and litigation.

Asian Americans Advancing Justice – Atlanta (AAAJ-Atlanta) is the first legal and policy advocacy center dedicated to promoting the civil rights of Asian Americans, Native Hawaiians and Pacific Islanders in Georgia and the Southeast. Many of the individuals that Advancing Justice - Atlanta serves are immigrants and limited English proficient.

Asian Americans Advancing Justice – Chicago (AAAJ-Chicago) is a nonprofit organization that works to empower the Asian American community through advocacy; education, research, and coalition-building. AAAJ-Chicago fights for laws and policies that promote social, economic, and political equity for the Asian American community as a whole.

Asian Americans Advancing Justice – Los Angeles (Advancing Justice – LA) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI). Founded in 1983 as the Asian Pacific American Legal Center, Advancing Justice – LA serves more than 15,000 individuals and organizations every year. Through direct services, impact litigation, policy advocacy, leadership development and capacity building, Advancing Justice – LA focuses on the most vulnerable members of Asian American and NHPI communities while also building a strong voice for civil rights and social justice. Advancing Justice – LA has a long history of advocating for language rights, including litigation challenging the State of California's failure to ensure language access in the provision of public benefits.

Asian American Community Services (AACS) is a community-based organization in Central Ohio that seeks to improve the well-being and quality of life of Asian/Pacific Islanders (APIs) through a broad range of social services, education, and community outreach. Since its founding in 1976, AACS has worked to address the various social, linguistic, cultural, and other barriers faced by APIs in the community, many of whom are limited English proficient. Many of its clients require language access for vital needs including medical services, legal services, education, and voting. AACS's Interpreting & Translation Department's 24/7 hotline exists to ensure that API community members are not left without language access at the most critical times. From its 40 years of experience serving the API community, AACS strongly believes in the need for a system that provides language access for all critical services, particularly when access to those services could mean the difference between life and death.

Association of Asian Pacific Community Health Organizations (AAPCHO) is a national association of community health centers serving over 500,000 medically underserved patients each year, predominantly Asian American, Native Hawaiian and Pacific Islanders. More than 60% of the patients served are limited English-proficient and are extremely vulnerable in emergency situations. AAPCHO supports this brief which asks that the FCC require a multilingual EAS alert plan anywhere a population of limited-English-proficient (LEP) people reach 10,000, or 5% of the local population.

Americans for Immigrant Justice (AI Justice), formerly Florida Immigrant Advocacy Center, is a non-profit law firm dedicated to promoting and protecting the basic rights of immigrants. Since its founding in 1996, AI Justice has served over 90,000 immigrants from all over the world. Our clients are unaccompanied immigrant children; survivors of domestic violence, sexual assault, and human trafficking and their children; immigrants who are detained and facing removal proceedings; and immigrants seeking assistance with work permits, legal permanent residence, asylum and citizenship. AI Justice's clients mostly include individuals who have no or limited English proficiency and are thus unable to receive critical, and even life-saving information from emergency alert communications, subjecting them to unnecessary harm during emergencies and natural disaster events. The issue presented in this matter directly affects a majority of the population AI Justice serves. Part of AI Justice's mission is to

ensure that immigrants are treated justly, and to help bring about a society in which the contributions of immigrants are valued and encouraged. In Florida and on a national level, AI Justice champions the rights of immigrants; serves as a watchdog on immigration detention practices and policies; and speaks for immigrant groups who have particular and compelling claims to justice.

The **Asian Law Alliance** is a non-profit law office founded in 1977 by law students from Santa Clara University School of Law. ALA's mission is to provide equal access to the justice system to Asian and Pacific Islanders and low income residents of Santa Clara County with a particular concern for limited English speakers. ALA provides legal services in the areas of public benefits, civil rights, domestic violence, landlord and tenant law and immigration law.

The **Asian Pacific American Institute for Congressional Studies (APAICS)** is a national non-partisan, nonprofit 501(c)(3) organization dedicated to promoting Asian Pacific American participation and representation at all levels of the political process, from community service to elected office. Among the 8.3 million Americans aged five or older who speak an Asian or Pacific Island language, approximately one in three are limited English proficient (LEP). AAPI's continue to be under-represented in the political process, despite being the fastest growing demographic in the country; just as a basic tenet of democracy is to have full representation at all levels of government, so too is the right to basic humanitarian need of safety during emergencies and natural disasters. APAICS fully supports AAJC's amicus brief pursuing the fundamental right of LEP communities' access to multilingual EAS alerts.

The **Asian Pacific Institute on Gender-Based Violence (API-GBV, formerly, Asian & Pacific Islander Institute on Domestic Violence)** is a national resource center on domestic violence, sexual violence, trafficking, and other forms of gender-based violence in Asian and Pacific Islander communities. The Institute serves a national network of advocates and community-based service programs that work with Asian and Pacific Islander survivors, and is a leader on providing analysis on critical issues facing victims in the Asian and Pacific Islander ("API") communities, including training and technical assistance on laws and policies and how they impact API survivors. The Institute leads by promoting culturally relevant intervention and prevention, expert consultation, technical assistance and

training; conducting and disseminating critical research; and informing public policy. The API-GBV is particularly interested in decreasing the susceptibility of Limited English Proficient individuals to gender-based violence and exploitation during large emergencies and disasters and supports efforts to increase the availability of emergency alerts non-English languages.

Asian Services In Action (ASIA) is the largest Asian American & Pacific Islander (AAPI)-focused health and social service non-profit agency in the state of Ohio. For over 20 years, ASIA has taken on the most challenging tasks to help the underserved, low-income, refugee and immigrant communities. ASIA's mission is to empower and advocate for Asian Americans & Pacific Islanders (AAPIs); and to provide AAPIs and other communities with access to health and social services, and culturally and linguistically appropriate information.

BPSOS-Houston works to empower and organize Vietnamese individuals and communities through education, outreach, and advocacy. BPSOS-Houston has extensive experience in disaster relief and recovery efforts. In the event of disasters, BPSOS is a first-responder, bringing immediate relief and recovery services to communities. BPSOS also provides longer term case management services, including benefits, housing, and legal assistance. BPSOS-Houston has assisted hundreds of families affected by Hurricane Ike, Hurricane Rita, and Hurricane Katrina. Many of BPSOS' client families were African-Americans and other non-Vietnamese. BPSOS-Houston has focused on serving high-need populations, including LEP populations, in the wake of hurricanes and other natural disasters.

The **Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)** is a non-profit organization with local and state presence in California, and national recognition. Its mission is to advance the human, civil rights, and full integration of New Americans and their children into the fabric of our society. CHIRLA advocates on behalf of this community through policy and advocacy, organizing, education and community building. Furthermore, CHIRLA has chosen to become a core partner and leader in enacting local and state laws to mitigate the intersection of the criminal and immigration law by actively working to advance a progressive Racial Profiling guidelines by the Department of Justice, continue to fight against

anti-immigrant bills that further criminalize immigrants and demand that immigration status be included in the federal racial profiling guidance.

Hmong National Development, Inc. (HND) is the leading national policy advocacy organization for the Hmong American community. For the past 20 years HND has provided local Hmong non-profits with capacity building and technical assistance tools, advocated in DC for legislation which impacts our community, cultivated leadership in youth through our DC internship programs and local youth empowerment programming models. HND represents a community that has significant LEP populations and knows how vulnerable that community is in emergency situations.

LatinoJustice PRLDEF, formerly known as the Puerto Rican Legal Defense & Education Fund, is a national not-for-profit civil rights legal defense fund that has advocated for and defended the constitutional rights of all Latinos to ensure their equal protection under the law since 1972. As part of its continuing mission to protect and advance the civil rights of the greater pan-Latino community in the United States, LatinoJustice has engaged in and supported law reform litigation across the country addressing, criminal justice, education, employment, fair housing, immigrants' rights, language rights, redistricting, telecommunications and voting rights.

Many Languages One Voice is a movement organization, building power with immigrant communities in the District of Columbia.

National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States. NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in key issue areas, and has a long history of fighting for civil rights, including language access rights, at the federal and state levels. NCLR's Affiliate Network of nearly 300 community-based organizations—operating in 41 states, Puerto Rico, and the District of Columbia—provides education, healthcare, housing, workforce development, immigration, and other services to millions of Americans and immigrants annually. Most of NCLR's Affiliates teach English, promote financial literacy, and otherwise ease the integration of immigrants into the mainstream.

The **National Asian Pacific American Bar Association (NAPABA)** is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of over seventy five state and local Asian Pacific-American bar associations and nearly 50,000 attorneys who work in solo practices, large firms, corporations, legal services organizations, nonprofit organizations, law schools, and government agencies. Since its inception in 1988, the National Asian Pacific American Bar Association has served as the national voice for Asian Pacific Americans in the legal profession and has promoted justice, equity, and opportunity for Asian Pacific Americans. The National Asian Pacific American Bar Association advocates for increased access to justice and services by limited English proficient individuals.

National Asian Pacific American Families Against Substance Abuse (NAPAFASA) is a national organization dedicated to reducing substance use disorders and other behavioral addictions among Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. NAPAFASA advocates for public policy that will support and empower AANHPI communities, especially those who are Limited English Proficient or Non English Proficient (LEP) – these AANHPI community members often live with additional issues including trauma, domestic violence, immigration status, linguistic isolation, and mental health issues. For these reasons, NAPAFASA joins this amicus in highlighting the vulnerabilities of and dangers to LEP communities with this ongoing failure to provide multilingual content through the Emergency Alert System.

The **National Asian Pacific American Women's Forum (NAPAWF)** is the only national, multi-issue Asian and Pacific Islander (AAPI) women's organization in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI women and girls. 40% of all AAPI people are Limited-English Proficient (LEP), and currently have no way of receiving life-saving information through the Emergency Alert System. For the last decade, the FCC's refusal to take action on Petitioners' original emergency petition for multilingual access has caused countless AAPI women and girls physical and financial harm during time-sensitive situations. The FCC's denial will cause further harm to the AAPI women and girls NAPAWF serves.

National Council of Asian Pacific Americans (NCAPA) is a coalition of thirty-five national Asian Pacific American organizations around the country. Based in Washington D.C., NCAPA serves to represent the interests of the greater Asian American (AA) and Native Hawaiian Pacific Islander (NHPI) communities and to provide a national voice for the communities' concerns.

The **National Center for Lesbian Rights (NCLR)** is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBT people through legislation, policy, and litigation, and represents LGBT people in cases in courts throughout the country.

The **National Immigration Law Center (NILC)** is the primary advocacy organization in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. NILC envisions a U.S. society in which all people—regardless of their race, gender, or immigration or economic status—are treated fairly and humanely, and have equal access to the education, health care, government resources, and economic opportunities they need to achieve their full human potential.

OCA - Asian Pacific American Advocates is a national membership-driven organization of community advocates dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans (APA). We represent over 100 chapters and affiliates throughout the continental United States, and through our chapters, provide culturally relevant trainings and programs on various policy and professional issues; multilingual support and direct services; and advocacy. In technology and telecommunications, OCA supports policies that increase access to modern communications networks and services for APA communities, including but not limited to multilingual emergency and wireless alert system notifications.

The **United States Committee for Refugees and Immigrants (USCRI)** is a national non-profit organization serving refugees and immigrants with a network of over 90 agencies and offices across the nation. For over 100 years, USCRI has protected the rights and addressed the needs of persons in forced or voluntary migration worldwide and supported their transition to a dignified life. Access to comprehensible emergency information in the wake of a disaster is critical to the people we serve.

The **Washington State Coalition for Language Access** works to eliminate language barriers to essential services statewide. Emergency alerts are among the most essential of services, literally a matter of life and death. Washington state serves as a prime example of America's changing demographics, highlighting the reasons why alerts must be multilingual and not limited to only English and Spanish. Washington's population with limited English proficiency (LEP) increased 210% between 1990-2010, and by very conservative estimates based on Census data, now numbers at least 8% of the population or a half-million people age 5 and older. Spanish is the second most-spoken language overall after English, especially in Central and Eastern Washington, while on the western, most populous, side of the state, over 200 different languages and dialects are spoken. LEP rates vary greatly ranging from 10-50% or more of residents in specific counties. Among speakers of Spanish, Russian, Cantonese, Mandarin and other Chinese languages, Korean, Khmer, and Vietnamese, and many other languages of newcomer groups, there is a 50% average LEP rate. These metrics show why a statewide average cannot be used to determine language assistance needs. Washington State Coalition for Language Access urges action now to ensure that everyone can get vital emergency alerts in a language that they understand.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that this brief complies with the type-volume limitation because it contains 4,439 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii), as determined by the word count function of Microsoft Word. I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typeface style requirements of Fed. R. App. P. 32(a)(6) because the brief was prepared in 14-point Times New Roman font using Microsoft Word.

DATED: October 24, 2016

/s/ Michael J. Gottlieb

Michael J. Gottlieb

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c) and Cir. R. 25, that on October 24, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

DATED: October 24, 2016

/s/ Michael J. Gottlieb

Michael J. Gottlieb