



# PUBLIC NOTICE

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DA 09-694

Release Date: March 27, 2009

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU PROVIDES GUIDANCE REGARDING “LIVE CODE” TESTING OF THE EMERGENCY ALERT SYSTEM

The Public Safety and Homeland Security Bureau reminds Commission-regulated entities that participate in the Emergency Alert System (EAS Participants)<sup>1</sup> that tests of the EAS must conform to requirements set out in Part 11 of the Commission’s Rules.<sup>2</sup> In particular, section 11.31(c) provides that the EAS protocol, including any codes, “must not be amended, extended or abridged without FCC authorization.”<sup>3</sup> The codes are specified in section 11.31(e), which lists the “live” event codes that are to be used for alerts in specific emergency situations, *e.g.*, tornadoes, tsunamis, and other natural and weather-related emergencies. Section 11.31(e) also lists specific test codes that are to be used for national periodic, required monthly and required weekly tests, as well as for practice/demonstration warnings.

Some EAS Participants have expressed a desire to participate in state-designed EAS tests that employ live codes for events such as tornadoes, hurricanes, and tsunamis, rather than the test codes specified in Section 11.31(e). In some instances, these “live code” tests are intended to substitute for the weekly and monthly EAS tests using test codes that are required by the Commission’s rules.<sup>4</sup> Other live code tests are designated as “special tests.”<sup>5</sup> In order to participate in state-designed EAS tests using live event codes, EAS Participants must seek prior rule waiver of Section 11.31(c), including showings demonstrating steps being taken to minimize the potential for public confusion from the use of live codes.<sup>6</sup> In an effort to assist EAS Participants seeking to participate in live code testing, the Bureau provides the following guidance regarding the information that should be contained in such waiver requests.

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<sup>1</sup> EAS Participants include television and radio broadcasters. 47 C.F.R. § 11.2(c).

<sup>2</sup> 47 C.F.R. Part 11.

<sup>3</sup> *Id.* at § 11.31(c).

<sup>4</sup> *See* 47 C.F.R. § 11.61(a)(1) and (2).

<sup>5</sup> 47 C.F.R. § 11.61(a)(4).

<sup>6</sup> We note that the Commission’s rules also prohibit transmission of false or deceptive EAS messages. *See* 47 C.F.R. § 11.45.

## **Waiver Request Showings**

The Commission may waive its rules “for good cause shown.”<sup>7</sup> To obtain a waiver of the Commission’s rules, a waiver proponent must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>8</sup> An entity seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>9</sup>

Consistent with the Commission’s waiver criteria, and to minimize public confusion that may be caused by the use of live codes during EAS tests, the Bureau has developed certain criteria that it employs in considering waiver requests. Based on these criteria, the Bureau recommends that waiver requests to allow live code tests contain the following information:

- 1) A description of the test and test participants, including when the test is scheduled to occur, when it will conclude, and what notification is being provided during the test (*e.g.*, audio voiceovers, video crawls) to make sure the public understands that the test is not, in fact, warning about an actual emergency, plus a statement whether the proposed test is designed to substitute for a “RWT” (required weekly test) or a “RMT” (required monthly test) or would constitute a "special test," pursuant to 47 C.F.R. § 11.61;
- 2) An explanation why the EAS Participant or the state authority conducting such tests has concluded that use of live codes is necessary; *e.g.*, what live code testing is expected to achieve that could not be achieved by using standard test codes;
- 3) A statement about how the test has been coordinated among EAS Participants and with state and local emergency authorities, as well as first responder organizations such as police and fire agencies; and
- 4) A description of those public information steps that have been taken before the test occurs to notify the public about the test (specifically, that live event codes will be used, but that no emergency is in fact occurring). This should include a statement about all media that have participated in the public awareness/information campaign (*e.g.*, broadcasters, cable, print media, *etc.*).

The Bureau encourages rule waiver proponents to include sufficient information to address comprehensively each of these suggested showings. The Bureau also strongly recommends and invites EAS Participants to consult with Bureau staff well in advance of such planned tests and to submit timely requests for rule waiver.

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<sup>7</sup> 47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>8</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>9</sup> *Id.* (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

**Contact Information**

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Action by the Acting Chief, Public Safety and Homeland Security Bureau.

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