

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Request for Waiver of Sections 10.520, 11.45 and)	
11.46 of the Commission’s Rules to Allow Broad-)	
cast of Public Service Announcements Produced)	
by Emergency, Community, Health and Outreach)	PS Docket No. 07-287
to Educate the Public on the Wireless Emergency)	
Alert System and the Emergency Alert System)	PS Docket No. 15-94
)	
)	

ORDER

Adopted: September 22, 2015

Released: September 22, 2015

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission) grants a request for waiver of sections 10.520, 11.45 and 11.46 of the Commission’s rules,¹ filed by Emergency, Community, Health and Outreach (ECHO),² a pro-

¹ 47 C.F.R. §§ 10.520, 11.45, 11.46.

² See Letter from Lillian McDonald, Managing Director, ECHO, to David Simpson, Chief, Public Safety and Homeland Security Bureau, FCC (Aug. 20, 2015) (*ECHO Waiver Request*). ECHO supplemented its request for waiver

gram and service of Twin Cities Public Television. Specifically, ECHO seeks waiver relief in order to broadcast or transmit a simulation of the Wireless Emergency Alert (WEA) and Emergency Alerts System (EAS) Attention Signal,³ as well as a simulation of the audible portion of the EAS codes in public service announcements (PSAs) developed in coordination with FEMA as part of a public outreach program to educate English and non-English speakers in the state of Minnesota about emergency alerts. As discussed below, we grant waiver relief for one year from the release date of this Order.⁴

II. BACKGROUND

A. The EAS

2. The EAS, codified in Part 11 of the Commission's rules,⁵ is a national public warning system that enables broadcasters, cable systems, and other service providers (EAS Participants)⁶ to deliver alerts to the public of impending emergencies and dangers to life and property.⁷ Although the underlying purpose of the EAS is to provide the President with "the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency,"⁸ the EAS is primarily used by state and local governments, as well as by the National

on September 11, 2015. See Letter from Lillian McDonald, Managing Director, ECHO, to David Simpson, Chief, Public Safety and Homeland Security Bureau, FCC (Sept. 11, 2015) (*ECHO Waiver Request Supplement*).

³ See 47 C.F.R. § 10.520(b).

⁴ The waiver that we grant today applies solely to the broadcast and other transmission of the PSAs developed by ECHO for the program referenced in its request, and is limited to the one year duration discussed herein. The waiver does not apply to any other party, and does not permit use of the EAS and WEA Attention Signal and EAS Codes for any other purpose whatsoever.

⁵ See 47 C.F.R. §§ 11.1–11.61.

⁶ EAS Participants are defined as "[e]ntities required under the Commission's rules to comply with EAS rules, e.g., analog radio and television stations, and wired and wireless cable television systems, DBS, DTV, SDARS, digital cable and DAB, and wireline video systems." See 47 C.F.R. § 11.2(c).

⁷ See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, *Fifth Report and Order*, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). A more detailed history of the EAS is summarized in the *First Notice of Proposed Rulemaking* in this docket. See Review of the Emergency Alert System, EB Docket No. 04-296, *Notice of Proposed Rulemaking*, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, an overview of the present organization and functioning of the EAS system is included in the *Second Report and Order*. See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief, *Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

⁸ See 47 C.F.R. § 11.1.

Weather Service (NWS), to distribute life-saving weather and other alerts, including America's Missing: Broadcasting Emergency Response (AMBER) alerts.⁹

3. The EAS is a broadcast-based, hierarchical alert message distribution system in which an alert message originator at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol.¹⁰ This message contains data about the alert in the EAS header codes that identifies the sender, the type of emergency, its location, and the valid time period of the alert.¹¹ Data contained in the EAS header codes are converted to audible tones (the distinctive three part EAS "squawk"), and is accompanied by the EAS Attention Signal, a loud, attention-grabbing, two-tone audio signal, that must be transmitted after the transmission of the header codes.¹² When an EAS alert is to be issued, the EAS Codes and Attention Signal are broadcast from one or more EAS Participants, and subsequently relayed from one station to another until all affected EAS Participants have received the alert and translated the code into a message that that can be delivered to the public.¹³ In combination, the EAS Codes and Attention Signal are a distinctive and instantly recognizable signal that an important,

⁹ EAS Participants are required to broadcast Presidential alerts; they participate in broadcasting state and local EAS alerts on a voluntary basis. *See* 47 C.F.R. § 11.55(a). *See also* Review of the Emergency Alert System, EB Docket No. 04-296, *First Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 18625, 18628, para. 8 (2005). The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level, with the respective roles of the Commission, FEMA, and NWS defined in a series of Executive documents. *See* 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee (NIAC), reprinted as Appendix K to Partnership for Public Warning Report 2004-1, *The Emergency Alert System (EAS): An Assessment; Assignment of National Security and Emergency Preparedness Telecommunications Functions*, Exec. Order No. 12472, 49 Fed. Reg. 13471 (1984); Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995).

¹⁰ *See* 47 C.F.R. § 11.31.

¹¹ The EAS Protocol-formatted message provides basic information about the emergency involved. *See* 47 C.F.R. § 11.31 - 11.31(a).

¹² The EAS header codes are combined with a "Preamble" code and broadcast three times in short tonal bursts followed by the Attention Signal, which is broadcast for 8 seconds as a single, dual-frequency audio tone, consisting of the fundamental frequencies of 853 Hz and 960 Hz transmitted simultaneously. *See* 47 C.F.R. § 11.31(a)(2). The three tonal bursts comprised of the EAS header codes and Preamble code activate EAS equipment at the EAS Participants' premises, thus initiating alert's broadcast if the data contained in the codes is valid. *See* 47 C.F.R. § 11.33(a)(10).

¹³ Since June 30, 2012, authorized emergency alert authorities also have been able to distribute EAS alerts over the Internet to EAS Participants (who in turn deliver the alert to the public) by formatting those alerts in the Common Alerting Protocol (CAP) and delivering those alerts through the FEMA-administered Integrated Public Alert and Warning System (IPAWS). *See* 47 C.F.R. § 11.56; *see also* *Fifth Report and Order*, 27 FCC Rcd 642, 644-45, para. 4. CAP is an open, interoperable standard developed by the Organization for the Advancement of Structured Information Standards (OASIS), and incorporates a language developed and widely used for web documents. *See id.* at 648-49, paras. 10-11. CAP-formatted alerts can include audio, video or data files; images; multilingual translations of alerts; and links providing more detailed information than what is contained in the initial alert (such as streaming audio or video). *See id.*

potentially life-saving alert is about to be issued.¹⁴ In order to prevent false alerts from occurring, and to maintain the recognition value of the codes and tones, the Commission adopted rules prohibiting their use outside of actual alerts and tests.¹⁵ This restriction extends to the use of the EAS codes or Attention Signal in Public Service Announcements.¹⁶

B. The WEA

4. The WEA system, codified in Part 10 of the Commission's rules,¹⁷ allows authorized government agencies to send geographically targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial wireless service provider has elected to offer the service.¹⁸ Federal, state and local authorized emergency management entities send CAP-formatted alerts to FEMA's IPAWS alert distribution system, which in turn distributes the alert to applicable participating commercial wireless service providers.¹⁹

5. The Commission's WEA rules require, among other things, that WEA-capable mobile devices use a unique Attention Signal and vibration cadence to alert the subscriber of an incoming WEA message.²⁰ The WEA Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses fre-

¹⁴ See 47 C.F.R. § 11.31(a).

¹⁵ See 47 C.F.R. § 11.45.

¹⁶ 47 C.F.R. § 11.46.

¹⁷ See 47 C.F.R. §§ 10.1–10.540.

¹⁸ See The Commercial Mobile Alert System, PS Docket No. 07-287, *Third Report and Order*, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the election requirements for carriers volunteering to participate in WEA). The WEA is a joint public-private partnership between the Commission, FEMA and the wireless industry. See *PSA Waiver*, 28 FCC Rcd 8176, 8177, para. 2; see also *FCC Consumer Guide: Wireless Emergency Alerts (WEA)*, FCC.gov, 1 (2013), <http://transition.fcc.gov/cgb/consumerfacts/wea.pdf>.

¹⁹ See, e.g., INTEGRATED PUBLIC ALERT & WARNING SYSTEM OPEN PLATFORM FOR EMERGENCY NETWORKS available at <https://www.fema.gov/integrated-public-alert-warning-system-open-platform-emergency-networks> (last visited Sept. 1, 2015). Since the WEA system was deployed in April 2012, authorized government agencies have sent several thousand WEA alerts to consumers, including weather, evacuation, shelter-in-place and AMBER alerts. See, e.g., Daniel Honker, *The Need to Standardize WEA Settings on Mobile Devices*, ALERTS, WARNINGS & RESPONSE TO EMERGENCIES (AWARE) (Mar. 7, 2013), <http://www.awareforum.org/2013/03/the-need-to-standardize-wea-settings-on-mobile-devices/#more-4092>; Rick Wimberly, *Wireless Emergency Alerts Used in Boston Bombings*, EMERGENCY MANAGEMENT (Apr. 22, 2013), <http://www.emergencymgmt.com/emergency-blogs/alerts/Wireless-Emergency-Alerts-Used-042213.html?showAddComment=1>; Sarah Rich, *National SMS System Successful During Superstorm Sandy*, GOVERNMENT TECHNOLOGY (Nov. 8, 2012), <http://www.govtech.com/public-safety/National-SMS-System-Successful-During-Superstorm-Sandy.html>; Minnesota Department of Public Safety, Office of Communications, News Release, *Successful AMBER Alert Resolution First in Nation Using Wireless Emergency Alerts* (Feb. 21, 2013), <https://dps.mn.gov/divisions/ooc/news-releases/Pages/Successful-AMBER-Alert-Resolution-First-in-Nation-Using-Wireless-Emergency-Alerts.aspx>.

²⁰ See 47 C.F.R. §§ 10.520, 10.530.

quencies and sounds identical to the distinctive and familiar Attention Signal used by the EAS.²¹ The Commission adopted the WEA Attention Signal and vibration cadence requirements to ensure that subscribers, particularly those with hearing and vision disabilities, would notice when their mobile devices receive a WEA alert.²² Similarly to the EAS, Commission rules bar the use of the WEA Attention Signal except for actual alerts.²³

C. The Waiver Request

6. The Commission has long appreciated the balance between the need to educate the public on the benefits and operational mechanics of these alerting systems and the need to protect the integrity of these systems from inappropriate use. In its *PSA Waiver Order*, released in May 2013, the Bureau granted a request by FEMA for waiver of the Commission's rules prohibiting the non-emergency use of the WEA and EAS Attention Signals, to allow FEMA to use the Attention Signal in a series of PSAs, as part of a WEA public education campaign to familiarize the public with WEA alerts.²⁴

7. On August 20, 2015, ECHO filed the instant request, describing circumstances similar to those underlying the *PSA Waiver Order*. ECHO indicates that it has developed a series of multilingual PSAs for broadcast, social media and Internet use as part of a "public education program to inform English and non-English speakers statewide in Minnesota, including those in the Minneapolis-St. Paul metropolitan areas, about emergency alerts, including [WEA] and the [EAS]."²⁵ ECHO further indicates that this public education program "is part of an [IPAWS] initiative coordinated with FEMA by ECHO and Twin Cities Public Television in Minnesota."²⁶ ECHO explains that these PSAs "would be available in English,

²¹ Compare 47 C.F.R. § 10.520(b) with 47 C.F.R. § 11.31(a)(2). Both the WEA and EAS Attention Signals consist of the fundamental frequencies of 853 Hz and 960 Hz transmitted simultaneously.

²² See Commercial Mobile Alert System, PS Docket 07-287, *First Report and Order*, 23 FCC Rcd 6144, 6168-69, paras. 64-67 (2008).

²³ See 47 C.F.R. §§ 10.520(d).

²⁴ See Waiver of Section 11.45 of the Commission's Rules To Allow Broadcast of Public Service Announcements Produced by the Federal Emergency Management Agency to Educate the Public on the Wireless Emergency Alert System, PS Docket No. 07-287, *Order*, 28 FCC Rcd 8176, 8179, para. 9 (2013) (*PSA Waiver Order*). The Bureau subsequently extended the *PSA Waiver Order* until November 21, 2015. See Waiver of Section 11.45 of the Commission's Rules To Allow Broadcast of Public Service Announcements Produced by the Federal Emergency Management Agency to Educate the Public on the Wireless Emergency Alert System, PS Docket No. 07-287, *Order*, 29 FCC Rcd 5373 (2014) (*PSA Waiver Order Extension*).

²⁵ *ECHO Waiver Request* at 1. ECHO is a nonprofit organization that creates multilingual programming for television and radio broadcast, as well as phone, print, Internet, DVD, and partner distribution platforms covering emergency, health and well-being information for limited- and non-English speaking persons in the state of Minnesota. See ECHO, About ECHO, <http://www.echominnesota.org/about> (last visited Sept. 1, 2015). ECHO's web site indicates that its "communication tools also function as an emergency infrastructure available to public health and safety agencies during a crisis." *Id.* By way of example, ECHO explains that "[i]n the event of an emergency, such as a flood or a disease outbreak, ECHO has a proven system in place to deliver critical messages in the most urgently needed languages rapidly and effectively through television, radio, print, web and partner relays." *Id.*

²⁶ *ECHO Waiver Request* at 1.

Spanish, Hmong and Somali, and [ECHO] would like each to contain a 5-seconds-or-less use of the EAS codes (recreated without activation data), and the Attention Signal that is used both for the EAS and WEA.”²⁷ ECHO contends that “[i]ncluding these familiar sounds in educational media materials is essential to ensure that all our citizens, residents and visitors, including those not proficient in English, are familiar with EAS and WEA as primary alert and warning methods.”²⁸ In a letter dated September 11, 2015, ECHO supplemented its request in three areas: first, by adding a request for a waiver of section 11.46 of the rules for the reasons stated in its initial request; second, by limiting the duration of its request to one year; and third, by offering specific assurance that the sounds in the PSAs that simulate the EAS code would not trigger a false alert.²⁹

III. DISCUSSION

8. Section 11.45 of the Commission’s rules provides, in pertinent part, that “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.”³⁰ Section 11.46 of the EAS rules allows use of PSAs to explain the EAS to the public, but requires that “[s]uch announcements and programs . . . may not simulate or attempt to copy alert tones or codes.”³¹ Accordingly, a waiver of these sections is required to authorize use of the EAS Attention Signal and EAS codes (as audible tones) or simulation thereof in ECHO’s EAS PSAs. Section 10.520(d) similarly restricts the use of the WEA Attention Signal to “Alert Messages under part 10.”³² Thus, a PSA that uses the WEA Attention Signal would require a waiver of section 10.520(d). Furthermore, because the WEA and EAS Attention Signals use identical frequencies,³³ it is possible that the broadcast or transmission of the WEA Attention Signal in an ECHO WEA PSA may violate section 11.45, particularly insofar as the respective signals may be indistinguishable to the listener.³⁴ Accordingly, ECHO requires a waiver of sections 10.520(d), 11.45 and 11.46 in order to broadcast or transmit its PSAs.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *ECHO Waiver Request Supplement* at 1 (noting that the Frequency Shift Key (FSK) sounds in the PSA are in a different frequency from that specified in section 11.31(a)(1) of the Commission’s EAS rules, contain none of the EAS Protocol data set forth in section 11.31 (c) of the rules, and have caused no reaction when tested on ECHO’s equipment).

³⁰ 47 C.F.R. § 11.45.

³¹ 47 C.F.R. § 11.46.

³² 47 C.F.R. § 10.520(d) (“[The WEA] audio Attention Signal must be restricted to use for Alert Messages under Part 10.”). To the extent this Section imposes a broad restriction against the non-alerting use of the WEA audio Attention Signal, we grant a limited waiver of this Section as conditioned and specified herein.

³³ *See supra* note 20.

³⁴ For example, a casual listener might mistake hearing a broadcast of the WEA Attention Signal in an ECHO WEA PSA as an actual EAS alert, or advertisers might think that they could avoid the prohibition against using the EAS Attention Signal by claiming that they are using the WEA Attention Signal instead. *See PSA Waiver*, para. 5.

9. Section 1.3 of the Commission's rules provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."³⁵ The Commission may find good cause to extend a waiver "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."³⁶ As discussed below, we find that good cause exists to grant a limited waiver of Sections 11.45, 11.46 and 10.520, to allow ECHO to broadcast or transmit a simulation of the WEA and EAS Attention Signals and EAS codes in PSAs produced by ECHO as part of the multi-lingual education campaign that it is conducting in coordination with FEMA and Twin Cities Public Television in Minnesota.³⁷

10. In reaching this decision, we find that ECHO's proposed PSAs, which will be "directed at individuals who do not speak English as a primary language and ESL residents," would provide a public benefit comparable to that of the FEMA PSAs granted in the *PSA Waiver Order*.³⁸ Similar to the FEMA public education campaign at issue in the *PSA Waiver Order*, ECHO's public education campaign is part of an IPAWS initiative conducted in coordination with FEMA and designed to enhance the public's understanding and awareness of the EAS and WEA. Therefore, the broadcast or transmission of a simulation of the familiar WEA and EAS Attention Signals and EAS codes to be used in the ECHO-sponsored PSAs is an integral part of that campaign. Because the point of the PSAs is to educate and familiarize the public about what the sounds mean, much of their educational value would be lost without the actual rendition of these sounds within the PSAs. We recognize that ECHO also intends to play a simulation of the audible tones associated with the EAS codes, which was not at issue in the *PSA Waiver Order*. However, ECHO in its supplementary filing has adequately demonstrated to our satisfaction that it has developed an audible simulation of the EAS codes that is different from the codes in the EAS rules and which will be incapable of activating EAS equipment and thus generating a false alert.³⁹ Our review of ECHO's proposal indicates that the PSAs are constructed in such a manner that the simulations of the WEA and EAS Attention Signals and the EAS code make clear that no actual alert is taking place but rather that the sounds will be used for the sole purpose of educating the public about the WEA and EAS alerting systems. Finally, ECHO has indicated that it will be using the PSAs for a period of time limited to one year.

11. Given the specific purpose, technical assurances and limited duration and use of the simulated WEA and EAS Attention Signals and EAS codes in the PSAs, we believe that the overall benefit

³⁵ 47 C.F.R. § 1.3.

³⁶ See *Northeast Cellular v. FCC*, 897 F.2d 1164, 1166 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir.1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

³⁷ See 47 C.F.R. § 0.191(e) and § 0.392(a).

³⁸ *ECHO Waiver Request* at 1. We observe that FEMA's PSA educational program has been ongoing since May 2013 and there have been no reported mishaps associated with the use of the WEA and EAS Attention Signal in those PSAs.

³⁹ *ECHO Waiver Request Supplement* at 1.

to the public of the PSAs outweighs any potential dissipation of recognition value that may accrue from their use. Educating those who communicate in a language other than English or who may have a limited understanding of the English language about the significance of the WEA and EAS Attention Signals will help ensure that all persons hearing these signals will understand that an emergency condition exists, thus constituting a special circumstance to warrant deviation from the rules. We also observe that the multilingual focus of ECHO's educational campaign is consistent generally with the Commission's current efforts to enhance accessibility of the EAS and WEA.⁴⁰ At the same time, however, we re-emphasize our concern that false EAS alerts not be transmitted to the public. Accordingly, we require that, should ECHO receive any complaints regarding false alerts arising from the broadcast or transmission of the WEA and EAS Attention Signals and EAS code audible tones used as part of its PSAs, it shall immediately cease transmission, broadcast or use of the PSAs and submit a report describing the situation to the Public Safety and Homeland Security Bureau no later than twenty-four (24) hours after a notice of such complaint.

IV. CONCLUSION

12. Based on the facts before us, we conclude that ECHO has demonstrated good cause to warrant limited waiver relief for one year from date of release of this Order to allow it to issue public service announcements that contain simulations of the WEA and EAS Attention Signals, as well as the audible portion of the EAS codes. We find that waiver relief in this instance would serve the public interest by enabling ECHO to educate English and non-English speakers about the EAS and WEA, thus enhancing the overall effectiveness of alerting the public to emergencies that threaten public health, safety and property, as well as child abduction emergencies.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the request for waiver filed by Emergency, Community, Health and Outreach (ECHO) of sections 10.520, 11.45, and 11.46 of the Commission's rules, 47 C.F.R. §§ 10.520, 11.45, 11.46, with respect to the transmission or broadcast of the WEA Attention Signal, EAS Attention Signal and EAS codes (as audible tones) contained within PSAs produced as part of the public education campaign coordinated by ECHO, FEMA and Twin Cities Public Television in Minnesota **IS GRANTED** for one year from date of release of this Order.

14. Accordingly, IT IS FURTHER ORDERED that, should ECHO receive any complaints regarding false alerts arising from the broadcast or transmission of the WEA and EAS Attention Signals and EAS code audible tones used as part of its PSAs, it shall immediately cease operation of the PSA and submit a

⁴⁰ For example, on August 27, 2015, the Public Safety and Homeland Security Bureau and the Consumer and Governmental Affairs Bureau held a workshop on ways to improve the EAS that examined, among other things, how to improve the accessibility of alerts to people with disabilities. See FCC Announces Workshop to Promote Wider Use of the Emergency Alert System, PS Docket No. 15-94, Public Notice, DA 15-881 (rel. Aug. 4, 2015).

report describing the situation to the Public Safety and Homeland Security Bureau no later than twenty-four (24) hours of notice of such complaint.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David G. Simpson

Rear Admiral, USN (ret.)

Chief, Public Safety and Homeland Security Bureau