

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

In the Matter of)	
)	
Improving Wireless Emergency Alerts and Community-Initiated Alerting)	PS Docket No. 15-91
)	
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 07-287
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ORDER

Adopted: November 19, 2015

Released: November 19, 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 from the Federal Emergency Management Agency (FEMA)¹ for a second extension of the Bureau's limited waiver (*PSA Waiver*)² of Section 11.45 of the Commission's rules.³ This extension allows the broadcast or transmission of a simulated Wireless Emergency Alert (WEA) Attention Signal⁴ in public service announcements (PSAs) developed by FEMA as part of its *Ready* campaign to educate the public about the WEA system.⁵ Consistent with our previous *PSA Waiver Extension*, we condition this extension of the *PSA Waiver* on the PSAs presenting the WEA Attention Signal in a non-misleading manner – that is, in a manner that does not mislead the listening or viewing public into erroneously concluding that an actual emergency message is being transmitted. This second extension is limited to the broadcast or transmission of FEMA's PSAs that include the WEA Attention Signal and does not extend to other circumstances involving the broadcast or transmission of

¹ See Letter from Roger L. Stone, Assistant Administrator (Acting) National Continuity Programs, Federal Emergency Management Agency, to David Simpson, Chief, Public Safety and Homeland Security Bureau, FCC (dated Nov. 6, 2015) (*FEMA Letter, Nov. 6, 2015*).

² The Bureau initially granted the *PSA Waiver* on May 31, 2013, and extended the waiver on May 21, 2014, for a period of 18 months, terminating on 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*, 28 FCC Rcd 8176 (2013) (*PSA Waiver*); 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 Extension*).

³ 47 C.F.R. § 11.45.

⁴ See 47 C.F.R. § 10.520(b).

⁵ See *FEMA Letter, Nov. 6, 2015*, at 1.

the WEA Attention Signal or the EAS codes and/or Attention Signal. We take this action pursuant to Section 1.3 of the Commission's rules,⁶ and the authority delegated to the Bureau under Sections 0.191 and 0.392 of the Commission's rules.⁷

II. BACKGROUND

2. The WEA Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the distinctive and familiar attention signal used by the Emergency Alert System (EAS).⁸ 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 device receives a WEA alert.⁹

3. The WEA is a joint public-private partnership between the Commission, FEMA and the wireless industry.¹⁰ 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 America's Missing: Broadcasting Emergency Response (AMBER) Alerts.¹¹ Despite WEA's value as an emergency alerting tool and expressions of support from many public safety officials, FEMA received feedback from other public safety officials, wireless carriers and the public that many consumers were startled or annoyed when hearing the WEA Attention Signal for the first time.¹² In response, FEMA initiated a public education campaign that included PSAs containing information on how WEA works and how WEA-capable mobile devices behave when they receive a WEA alert.¹³ The PSAs play the WEA attention signal to familiarize the public with the sounds that they may hear from their mobile devices when they receive a WEA alert.¹⁴

4. FEMA's use of the WEA attention signal in the PSAs, however, may require a waiver of Section 11.45 and 10.520 of the Commission's rules.¹⁵ 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."¹⁶ Part 10 of the Commission's rules, which governs the WEA, does not expressly include a comparably broad bar against the use of the WEA Attention Signal.¹⁷

⁶ 47 C.F.R. § 1.3.

⁷ 47 C.F.R. §§ 0.191, 0.392.

⁸ Compare 47 C.F.R. § 10.520(b) with 47 C.F.R. § 11.31(a)(2).

⁹ See Commercial Mobile Alert System, PS Docket 07-287, *First Report and Order*, 23 FCC Rcd 6144, 6168-69, ¶¶ 64-67 (2008).

¹⁰ See *PSA Waiver*, 28 FCC Rcd at 8177, ¶ 2.

¹¹ See *PSA Waiver Extension*, 29 FCC Rcd at 5374 ¶ 3.

¹² See *FEMA Letter, Mar. 18, 2014* and attachments thereto.

¹³ See *id.*

¹⁴ See *id.* FEMA reports that these PSAs would be placed in strategic local markets and would also be linked to www.ready.gov/alerts and distributed to its Integrated Public Alerts and Warning System (IPAWS) partners. See *id.*

¹⁵ 47 C.F.R. §§ 11.45 and 10.520.

¹⁶ 47 C.F.R. § 11.45.

¹⁷ See 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.

Nonetheless, because the WEA and EAS Attention Signals use identical frequencies,¹⁸ it is possible that the broadcast or transmission of the WEA Attention Signal in the FEMA PSAs may violate Section 11.45 of the Commission's rules, particularly insofar as the respective signals may be indistinguishable to the listener.¹⁹

III. DISCUSSION

5. 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."²⁰ 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."²¹

6. FEMA makes its request for extension of the *PSA Waiver Order* on the basis that the PSA continues to be a valuable element of its public safety outreach, and is currently the most prolific of FEMA PSAs, generating over \$30 million of free media.²² FEMA notes that some people continue to be startled or annoyed at the sound of the WEA tone, and that FEMA continues to need to take steps to ensure that the public is familiar with the program and that members of the public do not opt out of receiving these potentially life-saving alerts.²³ In that regard, FEMA states that the PSAs are now "a critical component for alert and warning education in FEMA's *Ready* campaign."²⁴ In light of FEMA's demonstrated success, significant investment in this public outreach campaign and the potential harm to the public of allowing the PSA waiver to expire, we conclude that FEMA has justified an extension of the *PSA Waiver Order* under Section 1.3 of the Commission's rules.

7. In our *PSA Waiver Extension Order* we found that the PSAs have been successful in educating the public about WEA, countering negative public reaction to the WEA Attention Signal.²⁵ We also noted that FEMA's public education campaign has shown that it can enhance the public's understanding of how the WEA functions and increase the public's benefits from the WEA and thereby benefit public safety generally.²⁶ We thus concluded that "[t]he broadcast or transmission of a simulated WEA Attention Signal as used in the FEMA-sponsored PSAs is an integral part of that campaign."²⁷ We believe that sufficiently similar circumstances exist today to justify another extension of the waiver.

8. Based on FEMA's current extension request, we find that sufficient public confusion and potential for public confusion exists regarding WEA that improving the public's understanding of WEA and its Attention Signal continue to constitute special circumstances that warrant a waiver extension. We further find that such extension will serve the public interest by enhancing the effectiveness of alerting the

¹⁸ See *supra* ¶ 2.

¹⁹ For example, a casual listener may mistake hearing a broadcast of the WEA Attention Signal in the FEMA 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*, 28 FCC Rcd at 8178 ¶5.

²⁰ 47 C.F.R. § 1.3.

²¹ 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)).

²² See *FEMA Letter*, Nov. 6, 2015 at 1, and metrics attachments thereto.

²³ *Id.*

²⁴ *Id.*

²⁵ *PSA Waiver Extension*, 29 FCC Rcd at 5376 ¶ 7.

²⁶ See *id.*

²⁷ *Id.*

public to emergencies that threaten public health, safety and property, as well as child abduction emergencies.²⁸ We also find, however, that extending the *PSA Waiver* would not be in the public interest if the PSAs were presented in a manner that could predictably lead the public to conclude that an actual alert is being transmitted.²⁹ We thus condition and limit this extension on the FEMA PSAs making it clear that the WEA Attention Signals are being used in the context of the PSA and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program.

9. Accordingly, to the extent the broadcast of the WEA Attention Signal during the PSAs could be construed as being subject to the Section 11.45 general prohibition on the transmission of the EAS Attention Signal other than during specified emergencies or lawfully authorized tests, or to the extent Section 10.520 can be read as including a similar prohibition regarding WEA Attention Signals, we hereby extend for a second time the limited waiver of Sections 11.45 and 10.520 of the Commission's rules for a period of 18 months from the release date of this *Order* (*i.e.* May 19, 2017), to allow the broadcast or transmission of the WEA Attention Signal in PSAs produced as part of FEMA's WEA public education campaign subject to the conditions and limitations discussed herein. In doing so, we recommend that FEMA take steps to ensure that such PSAs clearly state that they are part of FEMA's *Ready* public education campaign.³⁰

IV. ORDERING CLAUSES

10. 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, application of Sections 11.45 and 10.520 of the Commission's rules, 47 C.F.R. §§ 11.45, 10.520, with respect to the broadcast of the WEA Attention Signal contained within PSAs produced as part of FEMA's WEA public education campaign **IS WAIVED** to the extent and for the duration indicated herein.

11. 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

²⁸ Moreover, as noted in the *PSA Waiver Extension*, our understanding from FEMA is that use of the WEA Attention Signal in its PSAs poses no threat that properly functioning EAS encoder/decoder equipment maintained by broadcasters and other EAS Participants will be activated. *Id.* at n.30.

²⁹ For example, leading off a PSA with a WEA Attention Signal, without warning, may be an effective attention-getting device, but it would violate the conditions of this waiver because of the predictable effect that it could have on the listening or viewing public. *See id.* at n.31.

³⁰ We note that the Commission has sought comment on amending the rules to enable the use of the WEA Attention Signal in PSAs. *See Improving Wireless Emergency Alerts and Community-Initiated Alerting*, PS Docket 15-91, *Notice of Proposed Rulemaking*, FCC 15-154 (rel. Nov. 19, 2015).