

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

ORDER

Adopted: January 13, 2017

Released: January 13, 2017

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 limited waiver of the Commission's Wireless Emergency Alert (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in a WEA test conducted by the District of Columbia's Homeland Security and Emergency Management Agency (DCHSEMA), Joint Forces Headquarters National Capitol Region (JFHQ-NCR), United States Secret Service (USSS), United States Capitol Police (UCSP), United States Park Police, and other federal agencies. This test will be part of a dress rehearsal for the 2017 Presidential Inauguration, will occur at 3:00 p.m. on January 15, 2017, and will be limited to an area corresponding to the National Mall in Washington, D.C. For the reasons discussed below, we grant the waiver subject to certain conditions.

II. BACKGROUND

2. The WEA system allows authorized government authorities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial wireless service providers are Participating CMS Providers. The Commission's rules

1 See 47 CFR §§ 10.400, 10.520(d), 10.530 (b), and 11.45.

2 Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. See 47 CFR § 10.10 (d), (f).

3 See Letter from Chris Geldart, Director, DCHSEMA, to Thomas J. Beers, Public Safety & Homeland Security Bureau, FCC (Dec. 29, 2016) (DCHSEMA Letter).

4 DCHSEMA originally requested to conduct the test at 11:00 a.m. In a subsequent letter, DCHSEMA revised its request to conduct the test at 3:00 p.m. Letter from Chris Geldart, Director, DCHSEMA, to Zenji Nakazawa, Chief, Policy & Licensing, Public Safety & Homeland Security Bureau, FCC (Jan. 12, 2017) (DCHSEMA Letter 2).

5 See DCHSEMA Letter. This recognizes that the existing geo-fence capabilities for WEA are limited and that the WEA coverage will potentially extend to wireless cells adjacent to the Mall.

6 See Commercial Mobile Alert System, PS Docket No. 07-287, Third Report and Order, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the requirements for carriers volunteering to participate in WEA).

prohibit the use of the WEA Attention Signal⁷ except during actual emergencies, authorized tests, and certain public service announcements.⁸ Additionally, the Commission's rules allow testing of WEA functionality only in limited circumstances.⁹

3. On December 29, 2016, DCHSEMA sent a letter to the Bureau requesting a waiver to allow it to test the WEA alert message system and city official e-mail list portion of the IPAWS as part of a dress rehearsal for the Presidential Inauguration.¹⁰ According to DCHSEMA, the test would occur at 3:00 p.m. on January 15, 2017, on the National Mall in Washington, D.C., with e-mails to city officials identified by DCHSEMA for the test.¹¹ The WEA test message will read, "This is a test of the District of Columbia Emergency Alert System. No action is required."¹² According to DCHSEMA, if the Commission approves its request, the District of Columbia will work on multi-media public announcements of the upcoming WEA test, and would annotate problems that occur with sending the WEA and e-mail messages, if any occur.¹³

III. DISCUSSION

4. Any provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefore is shown."¹⁴ 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."¹⁵

5. In light of unique potential threats to public safety presented in this waiver request, we conclude that a limited waiver of the Commission's WEA rules is warranted to permit Participating CMS Providers to take part in a one-time WEA test. Over a million visitors are expected to assemble on or near the National Mall for the Presidential Inauguration on January 20, 2017.¹⁶ In the event of an emergency, DCHSEMA and its federal partners must be able to communicate quickly and effectively to the crowd. WEA offers this unique capability, and its use could be essential to ensure public safety in the event of an emergency. A live test would ensure that WEA can reach the entire National Mall yet be "geo-fenced" to minimize any extension beyond this intended area. Thus, the proposed test not only will

⁷ The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. *Compare* 47 CFR § 10.520, *with* 47 CFR § 11.31(a)(2).

⁸ *See* 47 CFR § 10.520(d).

⁹ *See id.* § 10.350. Specifically, the Commission's rules require Participating CMS Providers to (1) participate in monthly tests initiated by the Federal Emergency Management Agency (FEMA), (2) participate in periodic tests of WEA's C-Interface, and (3) support end-to-end system tests and distribute test Alert Messages that are initiated by state and local emergency managers to consumers who "opt in" to receive such test messages. *See id.*

¹⁰ *See* DCHSEMA Letter at 1; DCHSEMA Letter 2 at 1.

¹¹ *See supra* note 10.

¹² *See* DCHSEMA Letter at 1.

¹³ *See id.*

¹⁴ 47 CFR § 1.3. Although the Bureau agrees with DCHSEMA that the requested waiver is justified, it is the Participating CMS Providers, not DCHSEMA, that are subject to the Commission's WEA regulations. Thus, the Bureau grants a waiver, *sua sponte*, to the Participating CMS Providers who are subject to the Commission's regulations and will transmit the WEA test message described in the DCHSEMA Letter. *See id.*

¹⁵ *See Northeast Cellular Telephone Co. 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)).

¹⁶ *See, e.g.,* Nicholas Fandos, *Trump Inauguration Security Planners Brace for Wave of Protestors*, N.Y. Times (Dec. 27, 2016), http://www.nytimes.com/2016/12/27/us/politics/donald-trump-inauguration-security.html?_r=0.

help ensure that WEA can be effectively deployed during the actual Inauguration; the test will also provide alert initiators and emergency managers valuable information regarding the geo-fencing capabilities and accuracy by which Participating CMS Providers can geographically target WEA. Furthermore, we note that this is only the second Presidential Inauguration since the WEA system has been fully deployed. The crowds and potential for disturbance and the deployment of temporary cellular infrastructure (COWS/COLTS) are expected to surpass that of the previous Presidential Inaugurations, justifying additional preparations and precautions. Accordingly, we find that special circumstances weigh in favor of granting a one-time waiver, limited strictly to the January 15 dress rehearsal for the Presidential Inauguration, to test the WEA system.¹⁷

6. We applaud DCHSEMA for incorporating a WEA test as a part of their preparation for this significant event.¹⁸ We observe, however, that the WEA test would not be in the public interest if it was presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or otherwise confuse the public.¹⁹ We, therefore, condition this waiver upon the conducting of appropriate pre-test outreach to notify emergency personnel and the public about the WEA test, including the time and date at which the test is scheduled.²⁰ In this regard, the test must be conducted at the time scheduled, but no earlier than 2:00 p.m. EST and no later than 4:00 p.m. EST. Likewise, we condition this waiver upon the use of “test” wording in the WEA message as described by DCHSEMA. As a further condition of this waiver, we require that the test and any post-test analysis and reports that DCHSEMA may conduct be done in a manner consistent with customers’ expectation of privacy, the confidentiality of Participating CMS Providers’ network information, and the overall security of the WEA system and infrastructure.²¹ We encourage DCHSEMA to report test results in electronic format to the Bureau. Finally, we encourage members of the public who experience issues with this test WEA alert to report the matter to the FCC by filing at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

7. 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 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission’s rules, 47 CFR §§ 10.400, 10.520(d), 10.530(b), and 11.45, **ARE WAIVED** to allow a one-time test of the WEA system, conducted subject to the conditions described herein, within the limited time period between 2:00 p.m. and 4:00 p.m. on January 15, 2017, on the National Mall in Washington, D.C., as part of the dress rehearsal for the Presidential Inauguration. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 CFR §§ 0.191 and 0.392.

¹⁷ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal, the Emergency Alert System (EAS) codes, and/or the EAS Attention Signal.

¹⁸ See generally *Wireless Emergency Alerts, Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-91, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11155-57, paras. 67-68 (2016).

¹⁹ For example, transmitting a WEA test message without first informing emergency responders (e.g., 9-1-1 call centers) and the public about the test could predictably result in confusion or panic.

²⁰ DCHSEMA has noted that it will, in coordination with the Mayor’s Office of the District of Columbia, begin working on multi-media public announcements of the January 15 WEA Test.

²¹ See 47 U.S.C. § 222.

FEDERAL COMMUNICATIONS COMMISSION

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