

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

In the Matter of )
Improving Wireless Emergency Alerts and ) PS Docket No. 15-91
Community-Initiated Alerting )
Amendments to Part 11 of the Commission's ) PS Docket No. 15-94
Rules Regarding the Emergency Alert System )

ORDER

Adopted: October 18, 2018

Released: October 18, 2018

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 Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) rules to permit EAS Participants1 and Participating Commercial Mobile Service (CMS) Providers2 to participate in a test to be conducted by the Routt County Emergency Operations/Emergency Communications Center (Routt County).3 This test will be a combined live EAS and end-to-end WEA test, scheduled for October 24, 2018, at 8:30 a.m. Mountain Time (MT). For the reasons discussed below, we grant the Routt County request, subject to certain conditions.

II. BACKGROUND

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies.4 The primary purpose of the EAS is to provide the President of the United States with "the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national

1 The Commission's rules define EAS Participants as broadcast stations; cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. 47 CFR § 11.11(a).

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

3 See Letter from Jason Nettles, Emergency Communications Manager, Routt County Emergency Operations / Emergency Communications Center, to Michael J. Wilhelm, Chief, Policy Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed October 10, 2018) (on file in PS Docket No. 15-91) (Routt County Letter).

4 47 CFR § 11.1 et seq. See also Review of the Emergency Alert System, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015).

emergency.”<sup>5</sup> State and local authorities also use the EAS to distribute voluntary weather-related and other emergency alerts to the public.<sup>6</sup> EAS testing at the state and local level increases the proficiency of local emergency personnel, provides insight into the system’s functionality and effectiveness at the federal level, and enhances the public’s ability to respond to EAS alerts when they occur.<sup>7</sup> The Commission’s EAS rules contain procedures by which EAS Participants must test the system,<sup>8</sup> and prohibit the unauthorized use of the EAS Attention Signal and codes.<sup>9</sup>

3. The WEA system allows authorized government entities 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.<sup>10</sup> The Commission’s rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.<sup>11</sup> Additionally, the Commission’s rules allow testing of WEA functionality only in limited circumstances that currently do not include end-to-end WEA tests to the public.<sup>12</sup> On November 1, 2016, the Commission adopted a *Report and Order* that amends the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public to assess how WEA is working within their jurisdictions.<sup>13</sup> The rules allowing such tests will not be effective until May 1, 2019.<sup>14</sup>

4. The Routt County Letter requests a waiver of the Commission’s rules to allow Participating CMS Providers and EAS Participants to participate in a combined EAS and WEA test at

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<sup>5</sup> 47 CFR § 11.1. *See 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) (*First Report and Order*). The FCC, the Federal Emergency Management Agency (FEMA), and the National Weather Service (NWS) implement the EAS at the federal level. *See Presidential Communications with the General Public During Periods of National Emergency*, The White House (September 15, 1995).

<sup>6</sup> 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8. While EAS Participants are required to broadcast Presidential Alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis. *Id.*

<sup>7</sup> *See Communications Security, Reliability and Interoperability Council IV, Working Group Three, Emergency Alert System, State EAS Plans Subcommittee, Final Report at 14 (March 2014)*, [https://transition.fcc.gov/pshs/advisory/csric4/CSRIC\\_IV\\_WG3\\_EAS\\_Plans\\_Final\\_Report\\_032514.pdf](https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3_EAS_Plans_Final_Report_032514.pdf) (CSRIC EAS State Plan Report).

<sup>8</sup> 47 CFR § 11.61.

<sup>9</sup> 47 CFR §§ 11.45, 11.46.

<sup>10</sup> *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 wireless providers volunteering to participate in WEA).

<sup>11</sup> 47 CFR § 10.520(d). The WEA 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).

<sup>12</sup> 47 CFR § 10.350. Specifically, the Commission’s rules require Participating CMS Providers to participate in monthly tests initiated by FEMA and in periodic tests of WEA’s C-Interface. *Id.*

<sup>13</sup> *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 31 FCC Rcd 11112, 11154-11157, paras. 65-68 (2016) (*WEA R&O*).

<sup>14</sup> *Id.* at 11161, 11165, paras. 79, 85 (stating that the deadline for state and local testing is 30 months after the rule’s publication in the Federal Register); *Federal Communications Commission, Wireless Emergency Alerts, Amendments to Rules Regarding the Emergency Alert System*, 81 Fed. Reg. 75710 (Nov. 1, 2016) (establishing the date of Federal Register publication).

approximately 8:30 a.m. MT, on October 24, 2018.<sup>15</sup> According to the Routt County Letter, the purpose of conducting the test on October 24 is to ensure that emergency officials in Routt County have a clear understanding of how alerts would perform in Routt County's mountainous area, and to help the public become more familiar with WEA alerts.<sup>16</sup> The Routt County Letter further explains that Colorado has had a drought, and that Routt County has experienced two recent wildfires that required evacuation of several residences. In addition, Routt County contains the City of Steamboat Springs, which hosts a large number of tourists year-round, many of whom would not have subscribed to Routt County's emergency alert system. Accordingly, Routt County argues that the Integrated Public Alert and Warning System (IPAWS) would be the most effective way to reach tourists in the event of an emergency.<sup>17</sup>

5. The Routt County Emergency Operations/Emergency Communications Center is the county's only Public Safety Answering Point (PSAP) and originating authority for IPAWS messages and the combined test that it will conduct on October 24, would target the entire county.<sup>18</sup> According to the Routt County Letter, the proposed WEA test message would be: "This is a Routt County test. No action required. Provide feedback to Routt County Website." The Routt County Letter also indicates that the County would use the live EAS event code Local Area Emergency (LAE) for the EAS test and broadcast the following message: "This is a test of the Routt County Alerts System. If there had been an actual emergency, further instruction would have followed. This is only a test. No further action is required. Provide feedback to Routt County Website."<sup>19</sup>

6. The Routt County Letter describes a comprehensive outreach effort and notes that it has already coordinated this test with the relevant Participating CMS Providers, EAS Participants, and the Colorado Broadcasters Association.<sup>20</sup> Routt County also intends to inform all emergency response agencies operating within and adjacent to Routt County, including Law Enforcement, Fire/EMS, and other 911 PSAPs, to ensure that they are aware of the test and can confirm this to the public. Public outreach will include the Routt County website and social media outlets.<sup>21</sup> Routt County also indicates that it will engage the local newspaper and conduct news media interviews with local outlets.<sup>22</sup>

### III. DISCUSSION

7. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."<sup>23</sup> 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."<sup>24</sup> We conclude that there is good cause to grant the Routt County waiver request for the combined EAS and WEA end-to-end test.

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<sup>15</sup> Routt County Letter at 1.

<sup>16</sup> *Id.* at 1-2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

<sup>23</sup> 47 CFR § 1.3.

<sup>24</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (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)).

8. Routt County is in the midst of the wildfire season that has already required it to evacuate some of its residents. Further, Routt County contains the City of Steamboat Springs, a destination popular with tourists, most of whom are not likely to have subscribed to the local alert warning system.<sup>25</sup> The County argues that WEA is the only way to ensure effective warning to these members of the public. We agree and find that these circumstances warrant a waiver to allow an October 24, 2018 combined EAS and WEA test. We believe that the proposed test would not only help educate and prepare the public but would assist emergency management officials to validate the alert origination and dissemination capabilities of all participants at a crucial time. Rather than wait until after May 2019, when the Commission's WEA end-to-end testing rules go into effect, we believe the proposed test would provide alert initiators and emergency managers information of immediate public safety value. Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's EAS and WEA rules to the Routt County in this instance.<sup>26</sup>

9. We observe, however, that the combined EAS and WEA test would not be in the public interest if it were presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public.<sup>27</sup> We therefore condition this waiver upon the full implementation of the outreach plan described in the Routt County Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive multiple test messages.

10. We further condition this waiver to require that the test may only be conducted on October 24, 2018, as referenced in the Routt County Letter, for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) this test is necessary to assess and validate the readiness and effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) Routt County has coordinated information about the test with relevant Participating CMS Providers and EAS Participants, including first responder organizations such as police and fire agencies and 911 PSAPs within and adjacent to Routt County, to ensure that they are aware of the test and can confirm to the public that the EAS and WEA messages are a test; and
- (3) pre-test outreach efforts will include a comprehensive media campaign to ensure widespread distribution of information to local broadcasters, newspapers, and social media outlets.

11. We also require that the test and any post-test analysis and reports that Routt County may conduct or cause to be produced, are done in a manner consistent with customers' expectations of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the EAS and WEA systems and infrastructure.<sup>28</sup> We encourage Routt County to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to report their results to do

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<sup>25</sup> Routt County Letter at 1.

<sup>26</sup> These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<sup>27</sup> For example, transmitting a WEA test message without first informing emergency responders, such as 9-1-1 call centers and the public about the test, could predictably result in confusion or panic.

<sup>28</sup> See 47 U.S.C. § 222.

so by filing them with the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

#### IV. ORDERING CLAUSE

12. 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), 11.45, and 11.61 of the Commission's rules, 47 CFR §§10.400, 10.520(d), 10.530(b), 11.45, and 11.61 of the Commission's rules, **ARE WAIVED**, to allow a one-time test of the EAS and WEA in Routt County, Colorado; which combined test must be conducted subject to the conditions described herein, on October 24, 2018 at approximately 8:30 a.m. MT. 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.

FEDERAL COMMUNICATIONS COMMISSION

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