

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: May 1, 2018

Released: May 1, 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 Wireless Emergency Alert (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in a test to be coordinated by the Vail Public Safety Communications Center in Colorado (VPSCC). This end-to-end WEA test will be conducted at 12:30 PM (MT) on May 2, 2018. According to the VPSCC Letter requesting the waiver, the WEA message will be broadcast only to mobile devices within the Town of Vail city limits.

II. BACKGROUND

2. 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. Generally, use of the WEA system must conform to the requirements in part 10. For example, the WEA rules prohibit any person from transmitting or causing to transmit the Attention Signal, or a recording or simulation of it in any circumstance other than in an actual National, State or Local Area emergency or authorized test. Unauthorized use of the WEA Attention Signal is also prohibited under the Commission's Emergency Alert System rules. Additionally, the Commission's rules allow testing of WEA functionality only in

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

2 See Letter from Jennifer Kirkland, 911 Operations Administrator, Vail Public Safety Communications Center, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau Federal Communications Commission, (filed May 1, 2018) (on file in PS 15-91) (VPSCC Letter).

3 Id. at 1.

4 See 47 CFR part 10.

5 47 CFR § 10.520(d). 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(d), with 47 CFR § 11.31(a)(2).

6 Id.

7 47 CFR § 11.45.

limited circumstances that currently do not include end-to-end WEA tests to the public.<sup>8</sup> On September 29, 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>9</sup> The rules allowing such tests will not be effective until May 1, 2019.<sup>10</sup>

3. The VPSCC Letter requests a limited waiver of the Commission's rules on behalf of Participating CMS Providers to conduct a WEA test in the Town of Vail city limits in advance of the effective date of the rules adopted in the *WEA R&O*.<sup>11</sup> The letter represents that the proposed WEA message will be: "EC EMO: TEST emergency message. Go to ec-e.org to provide feedback. No other action needed."<sup>12</sup>

4. The VPSCC Letter offers several reasons for conducting this WEA test now, rather than waiting until the May 1, 2019 effective date of the rules. It notes, among other things that the purpose of the proposed test is to "ensure that emergency management officials in Eagle County have a clear understanding of how alerts would perform in our mountainous area."<sup>13</sup> The letter further states that the test is necessary because Eagle County hosts a large number of tourists year-round, and many of them do not subscribe to the county's emergency alert system; thus, WEA might be may be the only effective tool to reach them.<sup>14</sup> The VPSCC Letter also states that Colorado will be facing drought conditions this summer, and it appears that there will be a higher than average chance for large wildfires in the area.<sup>15</sup> The letter explains that, "WEA would be a vital tool in getting the word out to as many citizens and guests as possible in a timely manner."<sup>16</sup>

5. The VPSCC Letter describes its pre-test outreach and coordination plans.<sup>17</sup> Specifically, it represents that there has been considerable public outreach via the Town of Vail website, Vail Police Department Facebook page, the Vail Police Department Twitter account, and the social media outlets of many agencies throughout Eagle County.<sup>18</sup> The letter notes that there have been news ads in the local newspaper, and television interviews with local and regional outlets.<sup>19</sup> According to the VPSCC Letter, neighboring 911 Public Safety Answering Points (PSAPs) have been notified, and the Colorado Department of Transportation will display information about the test on their overhead variable message signs on the primary and major routes through Eagle County.<sup>20</sup> The letter commits to providing the

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<sup>8</sup> 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency Management Agency (FEMA) and in periodic tests of WEA's C-Interface. *Id.*

<sup>9</sup> *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112 (*WEA R&O*) (2016).

<sup>10</sup> *Id.* at 11161, para. 79, and 11165, para. 85.

<sup>11</sup> VPSCC Letter at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> VPSCC Letter at 2.

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

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

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

Commission with the results of the survey that it will conduct to capture data about location reach, cell carrier, handset operating system, and general awareness of the test.<sup>21</sup>

### III. DISCUSSION

6. 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>22</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>23</sup>

7. For the following reasons, we conclude that there is good cause to grant the VPSCC waiver request for the WEA test. According to the VPSCC Letter, this test is to ensure that the emergency management officials in Eagle County understand how alerts would perform in mountainous area, and that the public in the area are familiar with the format of the WEA messaging. Further, in light of VSPCC's statement that Colorado will be facing drought conditions this summer, and that it appears that there will be a higher than average chance for large wildfires in the area, we agree with VSPCC that "WEA would be a vital tool in getting the word out to as many citizens and guests as possible in a timely manner." Given the experience of the western states in last year's wildfires, the need to warn its populace during wildfires this summer provides good cause to test the WEA local now, rather than waiting until after May 1, 2019.

8. The letter further indicates that there will be coordination of information about the test with Participating CMS Providers that operate within the Town of Vail city limits.<sup>24</sup> It also makes clear that the VPSCC has coordinated the test with emergency authorities that operate within and neighboring Vail, including first responder organizations such as Police, Fire/EMS agencies and 911 PSAPs, to ensure that they are aware of the test and can confirm to the public that the WEA message is a test.<sup>25</sup>

9. We appreciate the importance of balancing the need to ensure that the alerting systems will work in an emergency, and the need to protect the integrity of these systems from inappropriate and overuse.<sup>26</sup> We agree with VPSCC that emergency managers must be proficient in the use of alerting technologies, before the initiation of an actual alert is necessary. We are persuaded that the end-to-end WEA tests would not only help ensure that WEA can be effectively deployed during an emergency, it would also provide alert initiators and emergency managers valuable information on the geo-fencing capabilities and accuracy with which Participating CMS Providers can geographically target WEA. Accordingly, in granting the VPSCC request, we have concluded that a limited waiver of the Commission's WEA rules is warranted and in the public interest.<sup>27</sup>

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

<sup>22</sup> 47 CFR § 1.3.

<sup>23</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)).

<sup>24</sup> VPSCC Letter at 1.

<sup>25</sup> VPSCC Letter at 2.

<sup>26</sup> See e.g. *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, 32 FCC Rcd. 343 (PSHSB 2017) (granting the request for a similar test that was successfully conducted on January 15, 2017, by the District of Columbia, as part of planning for the 58th Presidential Inauguration); and *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, PS Docket No. 15-91, Order, DA 18-262 (PSHSB Mar. 16, 2018) (granting the request for a similar test that was conducted on April 5, 2018, by the Metropolitan Washington Council of Governments Emergency Managers' Committee, for 20 jurisdictions in the National Capital Region).

<sup>27</sup> These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal, the EAS codes, and/or the EAS Attention Signal.

10. Based on the representations in the VPSCC Letter, we grant a limited, one-time waiver of Sections 10.400,<sup>28</sup> 10.520(d),<sup>29</sup> 10.530(b),<sup>30</sup> and 11.45<sup>31</sup> of the Commission's rules, to permit the end-to-end WEA test. We emphasize that this waiver is subject to the information dissemination requirements below, and conditioned upon compliance with all the requirements for end-to-end testing identified in the *WEA R&O* other than subscriber opt-in.<sup>32</sup> Further, this waiver is limited to the test to be conducted on May 2, 2018, and applies only as that test is described in the VPSCC Letter dated May 1, 2018.

11. 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 confused the public.<sup>33</sup> We therefore condition this waiver upon an appropriate pre-test outreach being conducted to notify emergency personnel and the public that the WEA message is in fact a test, including the time and date at which the test is scheduled. Specifically, we condition the waiver on the full implementation of the outreach plan described in the VPSCC Letter, including outreach to the public, press, and relevant government agencies, making clear that members of the public may receive multiple test messages.

12. We further condition this waiver to require that the test may only be conducted at 12:30 PM on May 2, 2018, as referenced in the VPSCC Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

(1) this test is necessary to ensure that WEA will work during an emergency within the area identified in the VPSCC Letter;

(2) VPSCC will coordinate information about the test with Participating CMS Providers and EAS Participants that operate within the Town of Vail city limits, and surrounding counties including first responder organizations such as police and fire agencies and 911 public safety answering points, to ensure that they are aware of the test and can confirm to the public that the WEA message is a test;

(3) pre-test publicity efforts, including a multi-media public announcement advertisement and marketing plan for the proposed upcoming Vail test, will be shared with the Public Information Officers in all affected jurisdictions for distribution to all surrounding county media outlets, including newspapers, radio and television and cable outlets, and posting on social media; and

(4) use of "test" wording as described by the VPSCC Letter will be used throughout the warning.

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<sup>28</sup> 47 CFR § 10.400 (requiring Participating CMS Providers to receive and transmit four classes of Alert Messages: Presidential Alert; Imminent Threat Alert; Child Abduction Emergency/AMBER Alert; and Public Safety Message and conditions of use).

<sup>29</sup> 47 CFR § 10.520(d) (stating that "no person may transmit or cause to transmit the WEA common audio 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, except as designed and used for Public Service Announcements").

<sup>30</sup> 47 CFR § 10.530(b) (requiring Participating CMS Providers and equipment manufacturers to only market devices for public use under part 10 of the Commission's rules that include a vibration cadence capability that meets the requirements of this section, and describing conditions for use).

<sup>31</sup> 47 CFR § 11.45 (stating that "no 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, or as specified in §10.520(d) [WEA rules regarding the attention signal] of this chapter.").

<sup>32</sup> See, e.g., *WEA R&O supra* at 11154-55, para. 65; 47 CFR § 10.350.

<sup>33</sup> 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.

13. We also require that the test and any post-test analysis and reports that VPSCC may conduct or cause to be produced are done in a manner consistent with customers' expectation of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA system and infrastructure.<sup>34</sup> We encourage VPSCC to report test results in electronic format to the Bureau. Finally, we encourage members of the public that wish to report their results to do so by filing them with the FCC's Public Safety Support Center (PSSC) at <https://www.fcc.gov/general/public-safety-support-center>.

#### IV. ORDERING CLAUSE

14. 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 of the Commission's rules, **ARE WAIVED**, to allow: a one-time test of the WEA in the Town of Vail city limits, which test must be conducted subject to the conditions described herein, at 12:30 PM (MT) on May 2, 2018. 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

Lisa M. Fowlkes  
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<sup>34</sup> See 47 U.S.C. § 222.