

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
)	
Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System)	PS Docket No. 15-94
)	

ORDER

Adopted: June 11, 2018

Released: June 11, 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 Missouri State Highway Patrol (MSHP).³ This test will be a combined live EAS and end-to-end WEA test, conducted between 10:00 AM - 10:30 AM (CDT) on July 17, 2018, with a backup date of July 19, 2018. For the reasons discussed below, we grant the MSHP 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 emergency.”⁵ State and local authorities also use the EAS to distribute voluntary weather-related and

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 Sandra K. Karsten, Colonel Superintendent, Missouri State Highway Patrol, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed May 10, 2018) (on file in PS 15-91) (May 10 MSHP Letter), *as amended by* Letter from Sandra K. Karsten, Colonel Superintendent, Missouri State Highway Patrol, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed May 18, 2018) (on file in PS 15-91) (May 18 MSHP Letter).

⁴ 47 CFR § 11 *et seq.* See also *Review of the Emergency Alert System*, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015).

⁵ 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).

other emergency alerts to the public.⁶ 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.⁷ The Commission's EAS rules contain procedures by which EAS Participants must test the system,⁸ and prohibit the unauthorized use of the EAS Attention Signal and codes.⁹

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.¹⁰ The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.¹¹ 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.¹² 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.¹³ The rules allowing such tests will not be effective until May 1, 2019.¹⁴

4. The May 18 MSHP 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.¹⁵ The purpose of the test is to ensure that the public can have confidence in the state's ability to send emergency notifications to their cellular phones and local broadcasters.¹⁶ It is not intended to replace other scheduled EAS or WEA tests.¹⁷

5. For the EAS test, the MSHP proposes to use the "live code," Civil Emergency Message (CEM), in Cole County, and the following surrounding counties: Boone, Callaway, Miller, Moniteau,

⁶ 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.*

⁷ 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 (CSRIC EAS State Plan Report).

⁸ 47 CFR § 11.61.

⁹ 47 CFR §§ 11.45, 11.46.

¹⁰ *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).

¹¹ 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 with 47 CFR § 11.31(a)(2).

¹² 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.*

¹³ *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).

¹⁴ *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).

¹⁵ May 18 MSHP Letter at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

Morgan, and Osage.¹⁸ The live test would be sent by the Missouri State Highway Patrol Troop F dispatch center in Jefferson City, Missouri, using an MSHP-developed system for accessing IPAWS.¹⁹ The proposed EAS test message would be: “This is a test of the Missouri State Highway Patrol Alert System. If there had been an actual emergency further instruction would have followed. This is only a test. No action is required.”²⁰

6. For the WEA test, MSHP proposes to send the WEA test message only to cell phones in the county of Cole, Missouri.²¹ According to the May 18 MSHP Letter, the record of success of previous WEA alerts sent by the state has been sufficiently inconsistent that MSHP believes that, given recent events across the nation, “it is imperative the MSHP test its ability to send WEA alerts to IPAWS and expose the public to the type of messages they may receive during times of crisis,” and such testing cannot be delayed until the May 2019 effective date of the new WEA rules.²² The proposed WEA test message would be: “TEST. This is a test of the Missouri Wireless Emergency Alerts. No action is required.”²³

7. The May 18 MSHP Letter describes an extensive pre-test outreach and coordination plan, including a media campaign targeting the primary test county (Cole County), as well as the surrounding counties, to ensure public understanding of the importance of the scheduled WEA/EAS test.²⁴ The May 18 MSHP Letter also indicates that MSHP would contact the public information officers of the affected jurisdictions to help with distribution of information to local broadcasters, newspapers, and cable providers.²⁵ MSHP plans to post the information on its web sites and distribute it on social media.²⁶ MSHP commits to coordinating with local wireless providers and EAS Participants that operate within the area of Cole County, and all emergency authorities that operate within and adjacent to Cole County, including first responder organizations such as law enforcement, fire/emergency medical service agencies, and 911 public safety answering points (PSAPS), to ensure they are aware of the test and can confirm to the public that the WEA/EAS message is a test.²⁷ The MSHP also commits to providing to the Commission a detailed account of any problems that occur in the distribution of the WEA and EAS test messages.²⁸

III. DISCUSSION

8. 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.”²⁹ 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

¹⁸ *Id.* at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 1. As noted by T-Mobile, USA, Inc., the May 10 MSHP Letter proposed to send a message that exceeded the 90-character limit of a WEA message. Letter from Steve Sharkey, Vice President, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 15-91, (filed May 15, 2018). This error was corrected in the May 18 MSHP Letter. May 18 MSHP Letter at 1.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 47 CFR § 1.3.

the public interest.”³⁰ We conclude that there is good cause to grant the MSHP waiver request for the combined EAS and WEA test.

9. We are persuaded by the MSHP Letter that the proposed test of the EAS and WEA will help educate the public, and ensure that MSHP personnel are sufficiently well trained in how to use the EAS and WEA, so that they can effectively initiate an actual alert when necessary. We agree with MSHP that a coordinated and combined test of the two systems is a likely reflection of what would occur in an actual emergency; that is, both WEA and the EAS would be used. We also are persuaded that the proposed test for WEA has value now, as opposed to after May 2019, because it would help ensure that WEA and the EAS can be effectively deployed in a coordinated manner during an emergency, and would provide alert initiators and emergency managers valuable information on how the two systems can be used together to communicate to the public. Accordingly, we conclude that limited waivers of the Commission’s EAS and WEA rules are warranted and in the public interest to test the EAS in Cole County and the surrounding counties of Boone, Callaway, Miller, Moniteau, Morgan, and Osage; and conduct end-to-end testing of WEA in Cole County.³¹

10. We observe, however, that the combined EAS and 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.³² We therefore condition this waiver upon the full implementation of the outreach plan described in the May 18 MSHP Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive multiple test messages.

11. We further condition this waiver to require that the test may only be conducted between 10:00 AM and 10:30 AM (CDT) on July 17, 2018, with a backup date of July 19, 2018, as referenced in the May 18 MSHP 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 the EAS and WEA will work during an emergency within the area identified in the May 18 MSHP Letter;
- (2) MSHP will coordinate information about the test with Participating CMS Providers and EAS Participants that operate within Cole County and the surrounding counties of Boone, Callaway, Miller, Moniteau, Morgan, and Osage, including first responder organizations such as police and fire agencies and 911 PSAPs, to ensure that they are aware of the test and can confirm to the public that the EAS and WEA messages are a test;
- (3) pre-test publicity efforts will include a media campaign targeting the primary test county and surrounding counties, communication with the public information officers of the affected jurisdictions to help with distribution of information to local broadcasters, newspapers, and cable providers, web postings and social media;
- (4) use of “test” wording as described by the May 18 MSHP Letter will be used throughout the warning; and
- (5) this test will not be a substitute for other scheduled tests of EAS or WEA.

³⁰ 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)).

³¹ 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.

³² 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.

12. We also require that the test and any post-test analysis and reports that MSHP 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.³³ We encourage MSHP to report test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to report their results to do 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

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 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 in Cole County and the surrounding counties of Boone, Callaway, Miller, Moniteau, Morgan, and Osage; and a WEA test directed to cell phones in Cole County, Missouri; which combined test must be conducted subject to the conditions described herein, between 10:00 AM and 10:30 AM (CDT) on July 17, 2018, with a backup date of July 19, 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

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³³ See 47 U.S.C. § 222.