

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: July 20, 2018

Released: July 20, 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,¹ to require Participating Commercial Mobile Service (CMS) Providers² to participate in a nationwide end-to-end test to be conducted by the Federal Emergency Management Agency (FEMA).³ This will be the first nationwide end-to-end test of WEA, and will be delivered using the Presidential level alert classification.⁴ As proposed by FEMA, the test would originate at 2:18 p.m. Eastern Daylight Time (EDT) on Thursday, September 20, 2018, with a back-up date of October 3, 2018 at the same time, and would involve sending a WEA message to mobile devices throughout the entire United States and territories.⁵ The WEA test would be conducted in coordination with a nationwide test of the Emergency Alert System (EAS) that would immediately follow the WEA test.⁶ 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 voluntarily participate in the WEA program (*i.e.* are Participating CMS Providers).⁷ The Commission’s rules prohibit the use of the WEA Attention Signal

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

² Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f). *Cf.* 47 CFR § 10.350 (Commission’s rules requiring Participating CMS Providers to participate in monthly tests initiated by FEMA and in periodic tests of WEA’s C-Interface).

³ See Letter from Alfred Kenyon, Chief, Customer Support Branch, IPAWS Program Office, National Continuity Programs Department of Homeland Security - FEMA, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (filed July 10, 2018) (on file in PS Docket No. 15-91 *et al.*) (FEMA Letter).

⁴ FEMA Letter at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *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).

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 that currently do not include end-to-end WEA tests to the public.⁹ 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.¹⁰ The rules allowing end-to-end tests will not be effective until May 1, 2019.¹¹

3. The FEMA Letter requests a waiver to use the WEA to send a test message to WEA-capable wireless devices nationwide to determine “if carrier WEA configuration, systems, and networks can and will process a Presidential WEA delivering the message *via* all WEA enabled cell sites with minimal latency,” and to assess the effectiveness of WEA message delivery overall.¹² According to FEMA, unlike the end-to-end WEA tests allowable starting in May 2019, the nationwide WEA test will be sent under the Presidential classification.¹³ FEMA also notes that “[p]ublic safety officials need to be sure that in times of an emergency or disaster, they have methods and systems that will deliver urgent alerts and warnings to the public when needed. Periodic testing of public alert and warning systems is a way to assess the operational readiness of the infrastructure for distribution of a national message and determine what technological improvements need to be made.”¹⁴ According to FEMA, the WEA test message would state: “THIS IS A TEST of the National Wireless Emergency Alert System. No action is needed.”¹⁵ FEMA indicates that immediately following the WEA end-to-end test, it would conduct a live nationwide EAS test at 2:20 p.m. EDT on Thursday, September 20, 2018, with a back-up date of October 3, 2018 at the same time.¹⁶

4. The FEMA Letter describes a pre-test outreach and coordination plan, which includes developing multi-media public announcements, and assigning roles to stakeholders within their area of operation and expertise.¹⁷ FEMA represents that its IPAWS Program Management Office has categorized its test partners into five major functional groups,¹⁸ and established a timeline to provide each with

⁸ 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).

⁹ 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.*

¹⁰ *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).

¹¹ *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). The deadline was established in part to provide Participating CMS Providers with time to construct a means for consumers to opt-in to relevant WEA tests. *Id.*

¹² FEMA Letter at 1.

¹³ *Id.* The public cannot opt out of a Presidential WEA message. *See* 47 CFR § 10.280(a).

¹⁴ FEMA Letter at 1.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ FEMA Letter at 2 (stating that the five major functional groups are: “(1) the American people; (2) Federal governance; (3) Federal, State, territorial, tribal, and local alerting authorities, or ‘alerting authorities’ including 911 public safety answering positions; (4) private sector industry; and (5) nonprofit and advocacy organizations”).

information on the test and its purpose.¹⁹ The FEMA Letter also indicates that FEMA and Department of Homeland Security employees throughout the country will be asked to respond to a short questionnaire to provide feedback regarding delivery of the test message.²⁰

III. DISCUSSION

5. 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."²¹ The Commission may find good cause to grant a waiver, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."²² We find that a nationwide test of the WEA's capability to deliver a message utilizing the Presidential-level classification presents a unique circumstance that justifies a waiver of the Commission's rules. We agree with FEMA, as noted in its letter, that it is important to "determine if carrier WEA configuration, systems, and networks can and will process a Presidential WEA delivering the message via all WEA enabled cell sites with minimal latency."²³ Ensuring the delivery of a Presidential WEA message serves a primary national public safety policy goal.²⁴ Accordingly, we find that it would serve the public interest to grant FEMA's request for a one-time waiver to conduct a nationwide end-to-end test of the WEA system's capability of delivering a Presidential alert. We are also persuaded that the proposed test also would help ensure that WEA can be effectively deployed more generally during an emergency, and that the proposed test would educate the public on what the WEA Presidential alert is and how to respond to it. Finally, we are persuaded by FEMA's request to conduct a test of the two systems together because we believe that they are likely to be used together in an actual emergency.

6. However, we observe that the 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 otherwise confuse the public.²⁵ Therefore, our grant of the waiver is conditioned as follows:

- The test may only be conducted for the purposes and as otherwise described in the FEMA Letter.
- FEMA must fully implement the outreach and coordination plan described in the FEMA Letter.
- The WEA test must originate at 2:18 p.m. EDT on Thursday, September 20, 2018, with a back-up date of October 3, 2018 at the same time.

7. We also require that the test and any post-test analysis and reports that FEMA 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

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 CFR § 1.3.

²² 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)).

²³ FEMA Letter at 1.

²⁴ See IPAWS Modernization Act of 2015, 6 U.S.C. § 321o(a)(1) (The Department of Homeland Security Administrator shall "help ensure that under all conditions the President . . . can alert and warn the civilian population in areas endangered by natural disasters, acts of terrorism, and other man-made disasters or threats to public safety"). See also Executive Order No. 13407, Public Alert and Warning System, Sec. 2(a)(iv), 71 Fed. Reg. 36975 (June 28, 2006) ("It is the policy of the United States . . . to ensure that under all conditions the President can communicate with the American people").

²⁵ 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.

and WEA systems and infrastructure.²⁶ We encourage FEMA to provide feedback on its experience with the nationwide test to the Bureau, and encourage members of the public to provide their feedback on the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

8. 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 nationwide end-to-end test of the WEA system, conducted subject to the conditions described herein, originating at 2:18 p.m. EDT on Thursday, September 20, 2018, with a back-up date of October 3, 2018 at the same time. 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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²⁶ See 47 U.S.C. § 222.