

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: August 6, 2018

Released: August 6, 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 an end-to-end test to be conducted by the City and County of Denver's Office of Emergency Management and Homeland Security (OEM). This test will be conducted on Wednesday, September 5, 2018, at 11:00 AM Mountain Daylight Time (MDT) with a backup date of Thursday, September 13, 2018, at 11:00 AM MDT. For the reasons discussed below, we grant the OEM request, subject to certain conditions.

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. The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements. Additionally, the Commission's rules allow testing of WEA

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 Ryan Broughton, CEM, CBCP, Executive Director, Office of Emergency Management and Homeland Security, City and County of Denver, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed July 26, 2018) (on file in PS 15-91) (OEM Letter), as amended by Letter from Ryan Broughton, CEM, CBCP, Executive Director, Office of Emergency Management and Homeland Security, City and County of Denver, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed August 1, 2018) (on file in PS 15-91) (August 1 OEM Letter) (correcting the dates for the proposed test and backup test, and revising the proposed WEA test message).

3 August 1 OEM Letter at 1.

4 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).

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 with 47 CFR § 11.31(a)(2).

functionality only in limited circumstances that currently do not include end-to-end WEA tests to the public.⁶ 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.⁷ The rules allowing such tests will not be effective until May 1, 2019.⁸

3. The OEM Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test that will involve the public.⁹ Specifically, OEM proposes to use the WEA text portion of the Integrated Public Alert and Warning System (IPAWS) to broadcast the following message to cell phones within the geographical boundaries of the City and County of Denver: "This is a test of the Wireless Emergency Alert System for Denver, CO. This is only a test."¹⁰

4. The OEM Letter states that the purpose of this test is to "ensure that the WEA system will work during such emergencies."¹¹ It explains that it must conduct the test now rather than later because it is "essential that the public be familiar with WEA, and that Denver OEM be proficient in the use of sending a WEA message before the initiation of an actual alert is necessary for the City and County of Denver."¹² The OEM Letter notes that this test is not intended to replace other scheduled WEA tests.¹³

5. The OEM Letter describes an extensive pre-test outreach and coordination campaign. This includes a multi-media marketing plan by Denver OEM's Public Information Officer (PIO) to ensure public understanding of the function and utility of WEA, and awareness that the September 5th WEA message is just a test.¹⁴ The OEM Letter indicates that this plan will be posted on social media, shared with all City and County of Denver staff, major local media outlets, and neighboring jurisdictions.¹⁵ In addition, the OEM Letter states that there will be special coordination with law enforcement, fire, 311, and 911 service providers, to ensure that they are all aware of the planned test.¹⁶ Denver OEM also commits to providing to the Commission a detailed account of any problems that occur in the distribution of the WEA test message.¹⁷

⁶ 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.*

⁷ *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*).

⁸ *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).

⁹ OEM Letter at 1.

¹⁰ August 1 OEM Letter at 1. In its original request, OEM initially proposed that the WEA message would read "This is a test of the City and County of Denver's Wireless Emergency Alert System. No action is required." See OEM Letter at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

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."¹⁸ 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."¹⁹ We conclude that there is good cause to grant the OEM waiver request for the WEA end-to-end test.

7. We are persuaded by the OEM Letter that the proposed test of WEA will help educate the public and ensure that OEM personnel are sufficiently well trained in how to use WEA, so that they can effectively initiate an actual alert when necessary. We agree with OEM that the proposed test for WEA has value now, as opposed to after May 2019, because it would help ensure that WEA can be effectively deployed before the initiation of an actual alert is necessary for the City and County of Denver. Accordingly, we conclude that a limited waiver of the Commission's WEA rules are warranted and in the public interest to conduct end-to-end testing of WEA in the City and County of Denver.²⁰

8. We observe, however, 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.²¹ Therefore, we condition this waiver upon the full implementation of the outreach plan described in the OEM Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive multiple test messages.

9. We further condition this waiver to require that the test may only be conducted on Wednesday, September 5, 2018, at 11:00 AM MDT with a backup date of Thursday, September 13, 2018, at 11:00 AM MDT, as referenced in the OEM 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 City and County of Denver;
- (2) OEM will coordinate information about the test with Participating CMS Providers that operate within the City and County of Denver, and first responder organizations such as police and fire agencies and 911 Public Safety Answering Points (PSAPs), 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 will include a multi-media plan that will be shared with all City and County of Denver staff, major local media outlets, social media, and neighboring jurisdictions;
- (4) use of "test" wording as described by the August 1 OEM Letter will be used in the test message;²² and

¹⁸ 47 CFR § 1.3.

¹⁹ 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)).

²⁰ These waivers do 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.

²¹ For example, transmitting a WEA test message without first informing emergency responders such as 911 call centers and the public about the test, could predictably result in confusion or panic.

²² The test wording contained in the original request exceeded the 90-character message length currently permitted in WEA messages. See 47 CFR § 10.430 ("A WEA Alert Message processed by a Participating CMS Provider must not exceed 90 characters of alphanumeric text."). We note that the Commission revised its rules to permit 360-character length messages as of May 1, 2019. Until this date, however, WEA messages may not exceed 90

- (5) this test will not be a substitute for other scheduled tests of WEA.

10. We also require that the test and any post-test analysis and reports that OEM 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.²³ We encourage OEM 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

11. 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 City and County of Denver, on Wednesday, September 5, 2018, at 11:00 AM MDT with a backup date of Thursday, September 13, 2018, at 11:00 AM MDT, which test must be conducted subject to the conditions described herein. 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
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission

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characters. *WEA R&O* at 11120, para. 11. The revised test wording satisfies the 90-character message length. The revised test wording also eliminates the use of an apostrophe, which reduces the likelihood of processing errors. A WEA message containing an apostrophe that is input as a single right quote mark from copy and paste data entry, rather than as a simple apostrophe, may be rejected because it is not part of the UTF-8 character set used by the Common Alerting Protocol. See OASIS Common Alerting Protocol Version 1.2 OASIS Standard, 01 July, 2010, at <http://docs.oasis-open.org/emergency/cap/v1.2/CAP-v1.2-os.html>.

²³ See 47 U.S.C. § 222.