

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 7, 2018

Released: August 7, 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 Sonoma County Fire and Emergency Services Department (FES).3 This test will be a combined live EAS and end-to-end WEA test, conducted on September 12, 2018. For the reasons discussed below, we grant the FES 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 Jim Colangelo, Interim Director, County of Sonoma, Fire and Emergency Services Department, to Marlene Dortch, Secretary, Federal Communications Commission (filed July 20, 2018) (on file in PS Docket No. 15-91) (July 20 FES Letter), as amended by Letter from Jim Colangelo, Interim Director, County of Sonoma, Fire and Emergency Services Department, to Marlene Dortch, Secretary, Federal Communications Commission (filed July 27, 2018) (on file in PS Docket No. 15-91) (July 27 FES 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).

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 July 27 FES 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 emergency management officials in Sonoma County have a clear understanding of how alerts would perform in their varied topography.¹⁶ According to the July 27 FES Letter, since the wildland fires last year, there has been a lack of faith in the emergency warning systems in Sonoma County.¹⁷ Sonoma County has since updated its policies and training, and the July 27 FES Letter indicates that it is vital that it now conduct a WEA test to inform its residents and build

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) (*WEA R&O*).

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 FES July 27 Letter at 1.

¹⁶ *Id.*

¹⁷ *Id.*

confidence.¹⁸ This would be the first end-to-end test of WEA in Sonoma County.

5. The combined EAS and WEA test would target multiple areas within Sonoma County. The July 27 FES Letter states that the proposed WEA test message to be delivered to the mobile devices would be: “TEST emergency message - Sonoma County. www.socopsa.org to provide feedback. No other action needed.”¹⁹

6. The July 27 FES Letter describes an extensive pre-test outreach and coordination plan that draws in part from the experiences of other jurisdictions, such as Washington D.C., which have already conducted these tests. FES’ comprehensive communication plan includes a media campaign to target its constituents, as well as surrounding counties, to ensure public understanding of the need and value of the scheduled WEA and EAS test.²⁰ Among other things, information would be posted on multiple websites and distributed on various social media accounts throughout Sonoma County and surrounding jurisdictions.²¹ The July 27 FES Letter also indicates that FES would contact the public information officers of the affected local jurisdictions to help with communication with local broadcasters, newspapers, and cable providers.²² In addition, Sonoma County would send Postcards to residents in targeted WEA test areas.²³

7. FES commits to coordinating with local wireless providers and EAS Participants that operate within Sonoma County.²⁴ According to the July 27 Letter, FES would also coordinate with all emergency authorities that operate within and adjacent to Sonoma County, including first responder organizations such as law enforcement, fire/emergency medical service 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/EAS message is a test.²⁵

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.”²⁶ 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.”²⁷ We conclude that there is good cause to grant the FES waiver request for the combined EAS and WEA end-to-end test.

9. We are persuaded by the FES July 27 Letter that the proposed test of the EAS and WEA will help educate the public, improve the understanding of FES personnel regarding how alerts would perform in their unique topography, and help build confidence in the emergency warning systems in Sonoma County. We are also persuaded that the proposed end-to-end test of 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 provide alert initiators and emergency managers valuable information on how the two systems can be used together to communicate to the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 CFR § 1.3.

²⁷ 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)).

public. Accordingly, we conclude that limited waivers of the Commission's EAS and WEA rules are warranted and in the public interest to test in Sonoma County.²⁸

10. 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 otherwise confuse the public.²⁹ We therefore condition this waiver upon the full implementation of the outreach plan described in the July 27 FES 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 on September 12, 2018, as referenced in the July 27 FES 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 emergency management officials in Sonoma County have a clear understanding of how alerts would perform in their varied topography;
- (2) FES will coordinate information about the test with Participating CMS Providers and EAS Participants that operate within Sonoma County and the surrounding counties, 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; and
- (3) pre-test publicity efforts will include a media campaign targeting Sonoma County, and communication with the public information officers of the affected jurisdictions to help with distribution of information to local broadcasters, newspapers, and cable providers.

12. We also condition this grant on FES modifying its proposed test message such that it does not exceed 90 characters in length.³⁰ In doing so, FES must ensure that the revised text continues to identify the message as only a "test."³¹

13. We also require that the test and any post-test analysis and reports that FES 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.³² We encourage FES 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 so by filing them with the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

²⁸ 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.

²⁹ 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.

³⁰ FES's proposed test message exceeds 90 characters. Under the Commission's rules, "[a] WEA Alert Message processed by a Participating CMS Provider must not exceed 90 characters of alphanumeric text." 47 CFR § 10.430. 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 characters. *WEA R&O* at 11120, para. 11.

³¹ For example, an acceptable revision to the test WEA message would be: "TEST message. Sonoma County www.socopsa.org to provide feedback. No other action needed."

³² See 47 U.S.C. § 222.

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), 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 Sonoma County; which combined test must be conducted subject to the conditions described herein, on September 12, 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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