

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: September 7, 2018

Released: September 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 Puerto Rico Emergency Management Bureau (PREMB).³ This test will be a combined live EAS and end-to-end WEA test, scheduled for September 12, 2018, with a backup date of September 13, 2018. For the reasons discussed below, we grant the PREMB 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 Carlos Acevedo, Commissioner, Puerto Rico Emergency Management Bureau, to Marlene Dortch, Secretary, Federal Communications Commission (filed August 30, 2018) (on file in PS Docket No. 15-91) (PREMB 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 PREMB 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 between 11:00 a.m. and 11:30 a.m. Atlantic Standard Time, on September 12, 2018, with a backup date of September 13, 2018.¹⁵ The PREMB Letter indicates that the purpose of this test is "to assess the readiness and effectiveness of our public warning system, plans and infrastructure and to raise public awareness about our alerting capability."¹⁶ According to the PREMB Letter, since the two major hurricanes in 2017 severely damaged the island's communications, Puerto Rico has been rebuilding its communications

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 PREMB Letter at 1.

¹⁶ *Id.* at 2.

infrastructure.¹⁷ Specifically, the PREMB Letter notes that, PREMB, FEMA, PR State Emergency Communications Committee (SECC), National Oceanic Atmospheric Administration, Caribbean Seismic Network, EAS, and WEA participants have been working diligently to develop an effective, resilient, and sustainable public warning capability.¹⁸ The PREMB Letter also notes that FEMA Integrated Public Alert Warning System (IPAWS) has been providing training to PREMB and the PREMB 911 Bureau, and that FEMA has recently installed origination technologies and is supporting the development of IPAWS-compatible siren systems.¹⁹ The PREMB Letter notes that, as the peak of hurricane season approaches, it is “important that PREMB be able to test and validate its IPAWS origination capabilities and the participants’ ability to disseminate emergency messages to the public.”²⁰ Accordingly, PREMB believes that “it is imperative that it test the system now, rather than wait until May 1, 2019 for the FCC’s WEA end-to-end testing rules to become effective.”²¹

5. PREMB’s request is supported by the Puerto Rico Telephone Company (Claro).²² Claro indicates that it intends to fully participate in the PREMB proposed test.²³ According to the Claro Letter, it has been “preparing and adjusting its systems to be able to guarantee that alerts and warnings are transmitted efficiently, in order to make sure that the residents of Puerto Rico have fast and credible information available in times of emergencies.”²⁴ Claro believes that the proposed PREMB test and the required monthly test will serve as indications that it is ready for the nationwide combined test of the WEA and EAS scheduled for September 20, 2018.²⁵

6. PREMB’s combined EAS and WEA test on September 12, would be sent in Spanish and English by the PREMB, and target all of Puerto Rico.²⁶ The PREMB Letter states that the EAS test will use a live event code for a Civil Emergency Message to be broadcast on radio, television and cable.²⁷ The proposed WEA test message to be delivered to mobile devices would be: “PRUEBA DE SISTEMA DE ALERTA. NO TOME ACCION. WIRELESS EMERGENCY ALERT TEST. TAKE NO ACTION.”²⁸ The PREMB does not intend this test to substitute for other scheduled tests of the EAS or WEA.

7. According to the PREMB Letter, the PREMB will coordinate the test with the relevant Participating CMS providers and the EAS SECC, and the public safety answering points (PSAPs) are already “intimately involved with the public warning efforts and this test.”²⁹ The PREMB Letter describes an extensive public outreach campaign to be conducted by the PREMB Public Information Officer (PIO) in coordination with FEMA, other Puerto Rico PIOs and public safety agencies, including

¹⁷ *Id.* at 1.

¹⁸ *Id.*

¹⁹ *Id.* at 1-2.

²⁰ *Id.* at 1.

²¹ *Id.*

²² Letter from Mario R. Barrera Orozco, Chief Operating Officer, Puerto Rico Telephone Company, to Marlene Dortch, Secretary, Federal Communications Commission (filed September 6, 2018) (on file in PS Docket No. 15-91) (Claro Letter).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ PREMB Letter at 2.

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *Id.* at 2.

police and fire departments.³⁰ Among other things, the public outreach campaign would include a press conference, television, radio and print interviews, public service announcements and social media.³¹

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."³² 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."³³ We conclude that there is good cause to grant the PREMB waiver request for the combined EAS and WEA end-to-end test.

9. We believe that the proposed test of the EAS and WEA will help educate and prepare the public and will help the PREMB to determine the readiness and effectiveness of Puerto Rico's public warning system, plans, and infrastructure as it prepares for the peak of the 2018 hurricane season. Given the disasters suffered by Puerto Rico during last year's hurricanes and in preparation for this year's peak hurricane season, we find waiver relief is warranted. Rather than wait until after May 2019, we believe the proposed test would provide alert initiators and emergency managers information of immediate value to ongoing restoration and emergency preparedness efforts. Finally, we are persuaded by the filing by Claro that participation in the September 12 test will help wireless providers in Puerto Rico prepare for the nationwide test that will be conducted eight days later. Accordingly, we conclude that limited waivers of the Commission's EAS and WEA rules are in the public interest.³⁴

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 would otherwise confuse the public.³⁵ We therefore condition this waiver upon the full implementation of the outreach plan described in the PREMB 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 PREMB Letter, or on the back-up date of September 13, 2018, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) this test is necessary to assess and validate the readiness and effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) PREMB will coordinate information about the test with relevant Participating CMS Providers and EAS Participants, 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

³⁰ *Id.*

³¹ *Id.*

³² 47 CFR § 1.3.

³³ 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)).

³⁴ 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.

³⁵ 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.

(3) pre-test publicity efforts will include a comprehensive media campaign, and communication with appropriate public information officers to ensure widespread distribution of information to local broadcasters, newspapers, and cable providers.

12. We note that the proposed test by PREMB would take place eight days before the nationwide combined test of the WEA and EAS on September 20, 2018 and are concerned that two major EAS and WEA tests in such close proximity could be confusing to the public. Accordingly, we strongly encourage PREMB to include information about the nationwide test in its public outreach.

13. We also require that the test and any post-test analysis and reports that PREMB 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.³⁶ We encourage PREMB 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>.

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 Puerto Rico; which combined test must be conducted subject to the conditions described herein, on September 12, 2018, with a backup date of September 13, 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
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission

³⁶ See 47 U.S.C. § 222.