

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: October 1, 2018

Released: October 1, 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) Providers¹ to participate in a test to be conducted by the Napa County Office of Emergency Services (Napa OES).² This end-to-end test of WEA is scheduled for October 9, 2018, at 9:30 a.m. Pacific Standard Time (PST), with a backup date of October 23, 2018. For the reasons discussed below, we grant the Napa OES 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.³ The Commission’s rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁴ 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

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 Kerry John Whitney, Napa County Risk & Emergency Services Manager, to Marlene Dortch, Secretary, Federal Communications Commission (filed September 17, 2018) (on file in PS Docket No. 15-91) (Napa OES Letter), *as amended by* Letter from Kerry John Whitney, Napa County Risk & Emergency Services Manager, to Marlene Dortch, Secretary, Federal Communications Commission (filed September 27, 2018) (on file in PS 15-91) (Amended Napa OES Letter) (deleting the request for waiver of the Commission’s EAS rules, and adding the time and backup dates for the proposed test).

³ *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).

⁴ 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).

public.⁵ 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.⁶ The rules allowing such tests will not be effective until May 1, 2019.⁷

3. The Amended Napa OES Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test at 9:30 a.m. PST, on October 9, 2018, with a backup date of October 23, 2018.⁸ The Amended Napa OES Letter notes that Napa County was devastated by wildfire in October of 2017, is in the peak of wildfire season, and that neighboring counties have already experienced devastating fires.⁹ According to the Amended Napa OES Letter, "the purpose of conducting the test at this time is to ensure that emergency management officials are able to test and validate its IPAWS origination capabilities and the participant's abilities to disseminate emergency messages to the public."¹⁰ The Amended Napa OES Letter asserts that because of these factors, "it is imperative to test the system now rather than wait until May 2019 when the FCC's WEA end-to-end testing rules become effective."¹¹

4. The Napa OES WEA test on October 9, would target the entire area of Napa County.¹² The proposed WEA test message to be delivered to mobile devices would be: "TEST - Napa County www.napaoespsa.org to provide feedback. No other action needed."¹³ The Napa OES does not intend this test to substitute for other scheduled tests.¹⁴

5. The Amended Napa OES Letter indicates that it has notified the relevant Participating CMS Providers, and will inform all emergency response agencies operating within and adjacent to Napa County, including Law Enforcement, Fire/EMS, and 911 Public Safety Answering Points (PSAPS), to ensure that they are aware of the test and can confirm this to the public.¹⁵ The Amended Napa OES Letter describes an extensive public outreach plan that will include coordination with the public information officers of the affected local jurisdictions, local school districts and colleges, press releases, public service announcements, public messages, websites and a social media campaign.¹⁶ The Amended Napa OES Letter also notes that the target audience will be those in Napa County, as well as surrounding counties, to

⁵ 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Alert management Agency (FEMA) and in periodic tests of WEA's C-Interface. *Id.*

⁶ *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*).

⁷ *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).

⁸ Amended Napa OES Letter at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

directly inform them of the test and that no action is required.¹⁷ According to the Napa OES Letter, the messaging will also ensure public understanding of the need for, and value of the scheduled test.¹⁸

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."¹⁹ 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."²⁰ We conclude that there is good cause to grant the amended Napa OES waiver request for the WEA end-to-end test.

7. According to the Amended Napa OES Letter, Napa County is in the peak of wildfire season, and given the devastation that it suffered due to wildfires in October 2017,²¹ we find waiver relief is warranted. We believe that the proposed test would not only help educate and prepare the public, but would assist emergency management officials validate the alert origination and dissemination capabilities of all participants at a crucial time. Unlike the nationwide WEA test on October 3, 2018, which will be initiated by FEMA and delivered nationally, the proposed test will ensure that emergency managers are fully prepared and able to initiate and deliver an alert to their local community in the event of an emergency. Rather than wait until after May 2019, we believe the proposed test would provide alert initiators and emergency managers information of immediate value. Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to the Napa OES in this instance.²²

8. We observe, however, that the proposed Napa OES 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.²³ We therefore condition this waiver upon the full implementation of the outreach plan described in the Amended Napa OES 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 October 9, 2018, as referenced in the Amended Napa OES Letter, or on the backup date of October 23, 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;

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ 47 CFR § 1.3.

²⁰ 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)).

²¹ Amended Napa OES Letter at 1.

²² These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²³ 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.

(2) the NAPA OES has notified, and will coordinate with, the relevant Participating CMS Providers and 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 WEA message is a test; and

(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.

10. We also require that the test and any post-test analysis and reports that the Napa OES 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 WEA systems and infrastructure.²⁴ We encourage the Napa OES to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to share feedback on their experience with the test 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 Napa County, on October 9, 2018, at 9:30 a.m. PST with a backup date of October 23, 2018, 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
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Federal Communications Commission

²⁴ See 47 U.S.C. § 222.