

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 Rules) PS Docket No. 15-94
Regarding the Emergency Alert System)

ORDER

Adopted: October 7, 2019

Released: October 7, 2019

By the Deputy 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 Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in an end-to-end WEA test that the El Segundo, California Office of Emergency Management (El Segundo) proposes to conduct on October 17, 2019, between 10:00 and 10:30 a.m. Pacific Daylight Time (PDT), within the City of El Segundo, California. For the reasons discussed below, we grant the El Segundo 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 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 functionality

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 Randal A. Collins, Emergency Management Coordinator, Office of Emergency Management, City of El Segundo, to Michael Wilhelm, Federal Communications Commission, Public Safety and Homeland Security Bureau, Policy and Licensing Division (filed Oct. 4, 2019) (on file in PS Docket No. 15-91) (El Segundo Letter). El Segundo does not propose a back-up test date.

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).

only in limited circumstances that currently do not include end-to-end WEA tests to the 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 State/Local WEA Tests became effective on May 1, 2019,⁷ but the Department of Homeland Security's Federal Emergency Management Agency (FEMA), which administers the Integrated Public Alert and Warning System (IPAWS) infrastructure through which all alerts are authenticated, validated, and delivered to Participating CMS Providers, has informed the Bureau that IPAWS will not be ready to support additional features, including State/Local WEA Tests, pending further necessary technical changes to IPAWS.⁸ Accordingly, alert originators wishing to conduct end-to-end WEA tests prior to IPAWS's readiness to support State/Local WEA Tests must continue to request a waiver to use existing WEA message classifications to permit the alerts to be transmitted to the public.

3. The El Segundo Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on Thursday, October 17, 2019, between 10:00 and 10:30 a.m. PDT.⁹ This proposed test is scheduled to coincide with the annual statewide "Great Shake-out" earthquake exercise, which tests earthquake preparedness, operations, and emergency communications in the area.¹⁰ Additionally, the El Segundo Letter notes the new state statute which "requires El Segundo to be able to alert the public in the event of an incident at the oil refinery using an integrated [notification] system."¹¹ According to the El Segundo Letter, the proposed WEA end-to-end test is "vital" to understanding the capabilities and geographic range for the public's receipt of WEA in compliance with the new state law.¹² The El Segundo Letter further states, "[g]iven recent events within California and across the nation, it is imperative the City of El Segundo test and evaluate its ability to send WEA alerts using IPAWS and expose the public to the type of messages they may receive during times of crisis."¹³

4. The proposed WEA test will be conducted within the City of El Segundo, California.¹⁴ The proposed WEA test message to be delivered to mobile devices would be: "This is a test of the El

⁵ 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency 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*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-11157, paras. 65-68 (2016).

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 See *Public Safety & Homeland Security Bureau Announces Delay in Availability of Certain Improvements to Wireless Emergency Alerts*, Public Notice, DA 19-534 (PSHSB June 7, 2019); *Advisory Regarding May 1 Deadline for Improvements to Wireless Emergency Alerts and Guidance for State/Local Alert Originators*, Public Notice, DA 19-358, at 2 (PSHSB Apr. 30, 2019).

⁹ El Segundo Letter at 1.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.* at 1. Although the El Segundo Letter notes that the WEA test message is intended to be sent to mobile devices "in and adjacent to" the City of El Segundo, in a phone conversation between Bureau staff and El Segundo, El

(continued....)

Segundo Wireless Emergency Alerts System. No action is required.”¹⁵ The El Segundo Office of Emergency Management, which is the primary initiator of public alerts within the City of El Segundo, will initiate the test through IPAWS.¹⁶

5. The El Segundo Letter outlines an extensive media campaign for the city and surrounding jurisdictions “to ensure public understanding of the need and value for the scheduled WEA test.”¹⁷ El Segundo notes that it will work with public information officers in adjacent local jurisdictions to distribute information about the test, including messaging that members of the public outside of El Segundo may receive the test message, to local broadcasters, newspapers, and cable providers, and will post information to the City of El Segundo webpage and social media.¹⁸ Additionally, El Segundo will coordinate with emergency authorities within and adjacent to the testing area, including first responders such as law enforcement, fire/EMS agencies, and 911 public safety answering points (PSAPs), so that they are informed of the test and can confirm to the public that it is only a test.¹⁹ Lastly, via a phone conversation with Bureau staff, El Segundo confirms that it will reach out to Participating CMS Providers conducting business within the test area to coordinate about the test.²⁰

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.”²¹ 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.”²² We conclude that there is good cause to grant the El Segundo waiver request for the WEA end-to-end test.

7. In light of the opportunity to promote earthquake safety and preparedness in connection with the annual Great Shake-out exercise and to facilitate compliance with the new California state statute requiring El Segundo to notify the public of any incidents at the oil refinery, we find good cause to permit El Segundo to test the feasibility of using WEA to warn the public of such natural and civil emergencies. As El Segundo states, conducting this end-to-end WEA test will enable the city to test its emergency operations plan, earthquake plans, and crisis communications plan and, additionally, help it to better understand the capabilities and geographic range of WEA to further integrate its mass notification systems, as required by the new California law.²³ Accordingly, rather than wait until IPAWS is ready to support State/Local Tests, we believe the proposed test would provide alert initiators and emergency managers information of immediate value, and so conclude that it is in the public interest to grant a

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Segundo clarified that the WEA test message will only be sent to devices within the city limits but that it understands that the public in areas adjacent to the test area may receive the WEA test due to bleed-over.

¹⁵ *Id.* The test message is 89 characters.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Phone conversation between Elizabeth Cuttner, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, and Randal A. Collins, Emergency Management Coordinator, Office of Emergency Management, City of El Segundo (Oct. 4, 2019).

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 El Segundo Letter at 1-2.

limited waiver of the Commission's WEA rules to allow El Segundo to conduct a WEA end-to-end test as described in the El Segundo Letter.²⁴

8. We observe, however, that the proposed El Segundo 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.²⁵ Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the El Segundo 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 17, 2019, between 10:00 and 10:30 a.m. PDT, as referenced in the El Segundo Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

- (1) this test is necessary to ensure that emergency management officials in El Segundo have a clear understanding of how alerts would perform in their city, and the public becomes familiar with the format of WEA messaging;
- (2) El Segundo will coordinate with the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs within the City of El Segundo and surrounding jurisdictions 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 comprehensive multimedia campaign to ensure public understanding of the function and utility of WEA, the date and time of the test, and clear notification that the WEA alert will be just a test;
- (4) use of "test" wording as described by the El Segundo Letter will be used in the test message; and
- (5) the WEA test is not intended as a substitute for other scheduled WEA tests.

10. We also require that the test and any post-test analysis and reports that El Segundo 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.²⁶ We encourage El Segundo 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>.

²⁴ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁵ 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.

²⁶ See 47 U.S.C. § 222.

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 within the City of El Segundo, California, on October 17, 2019, between 10:00 and 10:30 a.m. PDT, 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

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