

**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 18, 2019

Released: October 21, 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 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 (Puerto Rico).³ This test will be a combined live EAS and end-to-end WEA test on October 23, 2019 between 2:00 P.M. and 2:30 P.M. Atlantic Standard Time with a backup date of October 24, 2019 between 2:00 P.M. and 2:30 P.M. Atlantic Standard Time. For the reasons discussed below, we grant the Puerto Rico 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

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 Caballero, Commissioner, Puerto Rico Emergency Management Bureau, to Michael Wilhelm, Federal Communications Commission, (Oct. 10, 2019). The letter is on file in the Commission's Electronic Comment Filing System (ECFS) under Docket No. 15-91 (Puerto Rico Letter). We note that Puerto Rico requested waiver of both the EAS and WEA rules, Puerto Rico Letter at 1, however effective July 23, 2019, entities may conduct EAS test alerts, subject to certain conditions, without need to request a waiver. See *Public Safety and Homeland Security Bureau Announces Effective Date of Certain Emergency Alert System Rules*, Public Notice, _____ FCC Rcd _____ (PSHSB July 25, 2019); see also *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 33 FCC Rcd 7086, 7094, para. 16, 7100, para. 31 (2018).

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).

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 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

4. On November 1, 2016 the Commission adopted a *Report and Order* that amended the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public, without obtaining a waiver, to assess how WEA works within their jurisdictions.¹³ The rules allowing such State/Local WEA Tests became effective on May 1, 2019 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 Public Safety and Homeland Security Bureau that IPAWS will not be ready to support additional features, including State/Local WEA tests, pending

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).

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 *See supra* note 3.

further necessary technical changes to IPAWS.¹⁴ 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.

5. The Puerto Rico Letter recites 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,"¹⁵ and notes that Puerto Rico was "devastated by two major hurricanes in 2017,"¹⁶ damaging the Commonwealth's communications infrastructure.¹⁷ According to the PREMB Letter, since then, Puerto Rico has been rebuilding its communications infrastructure.¹⁸ Specifically, the Puerto Rico Letter notes that, Puerto Rico, the Federal Emergency Management Agency (FEMA), the Puerto Rico State Emergency Communications Committee (SECC), the National Oceanic Atmospheric Administration, the Caribbean Seismic Network, and EAS, and WEA participants have been working diligently to develop an effective, resilient, and sustainable public warning capability.¹⁹ The Puerto Rico Letter also notes that personnel from the FEMA IPAWS system have been training staff of Puerto Rico and its 911 Bureau, which administers Public Safety Answering Points (PSAP), in use of the system.

6. The Puerto Rico Letter states that the EAS test will use a live event code for a Civil Emergency Message (CEM) to be broadcast on radio, television and cable.²⁰ 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."²¹ Puerto Rico does not intend this test to substitute for other scheduled tests of the EAS or WEA.²² If severe weather threatens the area within a day or two of the test, it will be canceled and Puerto Rico will inform the Commission.²³

7. Puerto Rico advises that all participants have been notified of the planned test and that a "robust and aggressive public outreach campaign will precede the test by no less than one week." Outreach will be conducted by the Puerto Rico Public Information Officer (PIO) in coordination with FEMA ESF 15 and other Commonwealth of Puerto Rico PIOs, including police and fire departments, PSAPs and other public safety agencies. Outreach will include a press conference, television, radio and print interviews, public service announcements and a social media campaign.²⁴ The EAS and WEA test messages will be sent by Puerto Rico and will cover all of Puerto Rico utilizing the 072000 FIPS code. Although Puerto Rico will not be conducting a formal survey, it undertakes to gather as many results as

¹⁴ 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).

¹⁵ Puerto Rico Letter at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 2.

possible from industry participants and its social media outlets and will report any problems that occur to the Commission.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 Puerto Rico request for waiver of the WEA rules so that it may conduct its 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 Puerto Rico to determine the readiness and effectiveness of Puerto Rico's public warning system, plans, and infrastructure. Given the recent disasters suffered by Puerto Rico, we find waiver relief is warranted. Accordingly, we conclude that a limited waiver of the Commission's WEA rules is in the public interest.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 would otherwise confuse the public.²⁹ We therefore condition this waiver upon the full implementation of the outreach plan described in the Puerto Rico Letter, including outreach to the public, press, and relevant government agencies, making clear that members of the public could receive multiple test messages.

11. We further condition the WEA waiver to require that the test may only be conducted on the planned and backup dates and times referenced in the Puerto Rico 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 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) Puerto Rico 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
- (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.

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)).

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.

12. We also require that the test and any post-test analysis and reports that Puerto Rico 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.³⁰ We encourage Puerto Rico to report its test results in electronic format to the Public Safety and Homeland Security 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

13. 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, that 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, ARE WAIVED, to allow a one-time test of the Wireless Emergency Alert system, which test will be conducted in conjunction with a test of the Emergency Alert System, within the Commonwealth of Puerto Rico, on the dates and at the times above stated.

FEDERAL COMMUNICATIONS COMMISSION

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³⁰ See 47 U.S.C. § 222.