

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)

ORDER

Adopted: November 18, 2019

Released: November 19, 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 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 proposed test would be a live end-to-end WEA test at 1:00 PM Pacific Standard Time on Friday, December 6, 2019 with a backup date of December 11, 2019 at 1:00 PM Pacific Standard Time. 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 allow testing of WEA functionality only in limited circumstances that currently do not include end-to-end WEA tests to the public.⁴ The Commission's rules prohibit use of 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 November 6, 2019) (on file in PS Docket No. 15-91) (Napa OES Letter).

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 § 10.350. 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.*

WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁵

3. 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.⁶ 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 further necessary technical changes to IPAWS.⁷ 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.

4. The Napa OES Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a live WEA test that will deliver a text message to the public, following a Regional Alert and Warning Functional Exercise on December 6, 2019.⁸ The Napa OES Letter notes that over the past two years, California has been devastated by wildfires and floods, which have led to new state alert and warning mandates and public concern about emergency warnings.⁹ Consequently, Napa County OES notes, it and local and Bay Area partners are updating their mass notification plans and policies.¹⁰ According to the Napa OES Letter, the purpose of the requested 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."¹¹

5. The requested end-to-end WEA test would target a portion of Napa County and deliver the following text message to the mobile devices of the public: "TEST message Napa County. www.countyofnapa.org/IPAWS for feedback. No other action needed."¹²

6. The 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),

⁵ 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 Emergency Alerting System (EAS). Compare 47 CFR § 10.520 with 47 CFR § 11.31(a)(2).

⁶ See *supra* note **Error! Bookmark not defined.**

⁷ 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).

⁸ Napa OES Letter at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

to ensure that they are aware of the test and can confirm this to the public.¹³ The 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.¹⁴

III. DISCUSSION

7. 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."¹⁵ 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."¹⁶ We conclude that there is good cause to grant the Napa OES request for waiver of the WEA rules so that it may conduct its WEA end-to-end test.

8. We believe that the proposed test of the WEA system will help educate and prepare the public and will help Napa County to determine the readiness and effectiveness of Napa County's public warning system, plans, and infrastructure. Given the recent California wildfire devastations, we find waiver relief is warranted. Accordingly, we conclude that a limited waiver of the Commission's WEA rules is in the public interest.¹⁷

9. We observe, however, that the 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.¹⁸ We therefore condition this waiver upon the full implementation of the outreach plan described in the Napa OES Letter, including outreach to the public, press, and relevant government agencies, making clear that members of the public could receive multiple test messages.

10. We further condition the WEA waiver to require that the test may only be conducted on the date(s) and time referenced in the Napa OES 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 Wireless Emergency Alert system plans and infrastructure, and to educate the public;
- (2) Napa OES will coordinate information about the test with relevant Participating CMS Providers, including first responder organizations such as

¹³ *Id.* at 2. We note the following phrase on page 2 of the Napa OES letter: "confirm to the public the WEA, EAS and NOAA Weather Radio message is a test." We believe this reference to EAS and NOAA Weather Radio is a scrivener's error. There was a proposal to test the Emergency Alert System and NOAA Weather Radio in a previous Napa OES letter dated October 26, 2019. That letter, however, was superseded by the November 6, 2019 letter which clearly indicates that Napa OES intends only a WEA test.

¹⁴ *Id.*

¹⁵ 47 CFR § 1.3.

¹⁶ 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)).

¹⁷ This waiver does not extend to any other circumstances, dates or times involving the transmission of the WEA Attention Signal.

¹⁸ 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.

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.

11. We also require that the test and any post-test analysis and reports that 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 system and infrastructure.¹⁹ We encourage Napa OES to report its test results in electronic format to the Commission's 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

12. 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), and 10.530(b) of the Commission's rules, 47 CFR §§ 10.400, 10.520(d), and 10.530(b) **ARE WAIVED** to allow a one-time test of the Wireless Emergency Alert system within Napa County, on the date(s) and at the time above stated.

FEDERAL COMMUNICATIONS COMMISSION

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

¹⁹ See 47 U.S.C. § 222.