

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: March 21, 2019

Released: March 21, 2019

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 Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in an end-to-end test of WEA to be conducted by the City of Helena and Lewis and Clark County, Montana (Helena and Lewis and Clark County). This proposed test is scheduled for April 10, 2019 at 11:00 a.m. Mountain Daylight Time (MDT), with a backup date of April 17, 2019 at 11:00 a.m. MDT, and would occur exclusively within Lewis and Clark County, Montana. For the reasons discussed below, we grant the Helena 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 the use of the WEA Attention Signal except during actual emergencies, authorized tests, and

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 Peter Callahan, Manager, City of Helena/Lewis and Clark County 911 Center, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Feb. 19, 2019) (on file in PS Docket No. 15-91), as amended by Letter from Peter Callahan, Manager, City of Helena/Lewis and Clark County 911 Center, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Mar. 11, 2019) (on file in PS Docket No. 15-91) (Amended Helena Letter).

3 The Amended Helena Letter incorrectly states that the test will be held at 11:00 a.m. Mountain Standard Time, which fails to account for the beginning of daylight savings time. Helena has confirmed that it intends to conduct the test at 11:00 a.m. MDT.

4 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).

certain public service announcements.⁵ 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.⁶ 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.⁷ The rules allowing such tests will not be effective until May 1, 2019.⁸

3. The Amended Helena Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test on Wednesday, April 10, 2019, with a backup date of Wednesday, April 17, 2019.⁹ The Amended Helena Letter notes that the City of Helena and Lewis and Clark County face a variety of hazards that could impact residents and visitors to the area, including seasonal hazards such as flooding or wildland fires, severe winter storms, grid failures, earthquakes, and hazardous materials releases.¹⁰ According to the Amended Helena Letter, "the focus of this live test is to ensure the [Integrated Public Alert and Warning System (IPAWS) and WEA] system is effective for future local emergencies that possess an imminent threat, the public is familiar with WEA and that local officials are proficient in the use of sending WEA messages before the initiation of a real-world crisis."¹¹ Therefore, the Amended Helena Letter asserts that "it is imperative to test the system now, rather than wait until the FCC's new WEA end-to-end testing rules become effective May 1, 2019."¹²

4. The proposed WEA test is intended to alert all enabled mobile phones within the geographic boundaries of Lewis and Clark County, which contains the City of Helena, Montana.¹³ The live WEA end-to-end test will expire 30 minutes after its initiation at 11:00 a.m. MDT and will not include the Emergency Alert System. The proposed WEA test message to be delivered to mobile devices would be: "A test of Lewis and Clark County's Wireless Emergency Alert System. No action required." In advance of the test date, public safety officials in Helena and Lewis and Clark County have successfully conducted a number of WEA tests in the IPAWS lab and attended a webinar tutorial from the IPAWS lab in preparation for the test. Additional tests in the IPAWS lab are scheduled prior to the April 10th test.¹⁴

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 EAS. *Compare* 47 CFR § 10.520 with 47 CFR § 11.31(a)(2).

⁶ 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.*

⁷ *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) (*WEA R&O*).

⁸ *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).

⁹ Amended Helena Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

5. To ensure public understanding of the function and utility of WEA, public safety officials in Helena and Lewis and Clark County will commence a detailed public outreach campaign fourteen days prior to the scheduled test.¹⁵ According to the Amended Helena Letter, the campaign will “ensure the public understands the purpose of the Wireless Emergency Alert; what [it’s] used for; what is expected; the date and time of the test; date and time of the alternate test and an awareness that the April 10, 2019 WEA alert is just a test.”¹⁶ Furthermore, Helena and Lewis and Clark County officials have notified public safety, public safety answering points (PSAPs), and emergency managers in the surrounding counties, as well as larger state, local, and private institutions within the City of Helena and Lewis and Clark County.¹⁷ Such institutions include “the public school district, state government, local government, state and local disaster and emergency services, VA and regional hospitals and the national weather service.”¹⁸ Lastly, Helena and Lewis and Clark County officials have reached out to commercial wireless providers in the area to inform them of the test. According to the Amended Helena Letter, no objections have been raised by the stakeholders.¹⁹

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.”²⁰ 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.”²¹ We conclude that there is good cause to grant the Helena and Lewis and Clark County waiver request for the WEA end-to-end test.

7. In light of the seasonal hazards, severe weather, and other potential emergencies facing the City of Helena and Lewis and Clark County, we are persuaded by the Amended Helena Letter that the proposed WEA test will help educate the public about WEA and improve the proficiency of emergency managers in the use of WEA to alert both residents and visitors to Lewis and Clark County during major emergencies and disasters.²² We are also persuaded that the proposed end-to-end test of WEA has value now, as opposed to after May 1, 2019, because it would help ensure that WEA can be effectively deployed county-wide during an emergency in light of the spring flooding and summer wildland fires Lewis and Clark County may face. Accordingly, we conclude that limited waiver of the Commission’s WEA rules is warranted and in the public interest to test in Helena and Lewis and Clark County.²³

8. We observe, however, that the proposed Helena and Lewis and Clark County 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.²⁴ We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 47 CFR § 1.3.

²¹ 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)).

²² Amended Helena Letter at 1.

²³ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁴ 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.

Amended Helena 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 April 10, 2019 at 11:00 a.m. MDT, as referenced in the Amended Helena Letter, or on the backup date of April 17, 2019, also at 11:00 a.m. MDT, and may only be conducted for the purposes described therein. Specifically, the waiver is based upon 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) Helena and Lewis and Clark County has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs within Lewis and Clark County and surrounding counties to ensure that they are aware of the test and can confirm to the public that the WEA message is a test; and will also notify state, local, and private institutions such as public school districts, state government, local government, state and local disaster and emergency services, VA and regional hospitals, and the National Weather Service;
- (3) pre-test publicity efforts will include a comprehensive media campaign to ensure the public understands the purpose of the WEA alert, what it is used for, what is expected during the test, the date and time of the test and the backup test, and an awareness that the WEA alert is just a test; and
- (4) use of “test” wording as described by the Amended Helena Letter will be used in the test message.

10. We also require that the test and any post-test analysis and reports that Helena and Lewis and Clark County 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.²⁵ We encourage Helena and Lewis and Clark County 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>.

²⁵ 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 in the City of Helena and Lewis and Clark County, Montana, on April 10, 2019, at 11:00 a.m. MDT, with a backup date of April 17, 2019, at 11:00 a.m. MDT, 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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Federal Communications Commission