

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: May 1, 2019

Released: May 1, 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 and County of Denver, Colorado Office of Emergency Management (Denver OEM). This proposed test is scheduled for Wednesday, May 8, 2019, at 11:00 a.m. Mountain Daylight Time (MDT), with a backup date of Thursday, May 16, 2019, at 11:00 a.m. MDT, and would occur exclusively within Denver County, Colorado. For the reasons discussed below, we grant the Denver OEM 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 certain public service announcements. Additionally, the Commission's rules allow testing of WEA

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 Ryan Broughton, Executive Director, Office of Emergency Management and Homeland Security, Denver Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Apr. 29, 2019) (on file in PS Docket No. 15-91) (Denver OEM Letter).

3 Id. at 1.

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).

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).

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 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 recently informed the Bureau that IPAWS will not be ready to support additional features, including State/Local WEA Tests, until June 10, 2019.⁹ Accordingly, alert originators wishing to conduct end-to-end WEA tests prior to IPAWS' 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 Denver OEM Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test on Wednesday, May 8, 2019, at 11:00 a.m. MDT, with a backup date of May 16, 2019, also at 11:00 a.m. MDT.¹⁰ The Denver OEM Letter notes that the WEA test will be conducted in parallel with the annual test of its outdoor warning siren system for the first time.¹¹ In a phone conversation with Bureau staff, Denver OEM conveyed that Colorado is susceptible to tornados and tests its countywide siren system each May at the start of the tornado season.¹² Denver OEM wishes to conduct a coordinated test to ensure public awareness of both WEA and the siren system in the event of a tornado or other emergency, and intends to conduct a survey following the test to determine the success of the test and how to improve Denver County's alerting systems.¹³ According to the Denver OEM Letter, "[t]he purpose of this test is to ensure that the WEA system will work" during emergencies and incidents that impact life, safety, and property.¹⁴ Therefore, according to the Denver OEM Letter, "[i]t is essential that the public be familiar with WEA, and that Denver OEM be proficient in the use of sending a WEA message before initiation of an actual alert."¹⁵

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 See *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) (*May 1 WEA Deadline PN*).

¹⁰ Denver OEM Letter at 1.

¹¹ *Id.*

¹² Phone call from Loa Esquilín-García, Public Information Officer, Office of Emergency Management, City and County of Denver, to Elizabeth Cuttner, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (Apr. 30, 2019) (April 30th Call with Denver OEM).

¹³ April 30th Call with Denver OEM.

¹⁴ Denver OEM Letter at 1.

¹⁵ *Id.*

4. The Denver OEM proposed WEA test will be conducted within the geographical boundaries of the City and County of Denver, Colorado.¹⁶ Denver OEM staff intend to use WebEOC to issue the test message through the IPAWS-OPEN module between 11:00 and 11:30 a.m. MDT.¹⁷ The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the Public Alert and Warning Systems for Denver, CO. This is a test.”¹⁸ Denver OEM does not intend for the proposed WEA test to substitute for other scheduled WEA tests.¹⁹

5. The Denver OEM Letter indicates that Denver OEM intends to conduct an extensive public outreach campaign to inform the public about the test.²⁰ Denver OEM’s Public Information Officer has prepared a “multi-media marketing plan for the proposed upcoming Denver WEA test to ensure public understanding of the function and utility of the Wireless Emergency Alerts.”²¹ Such marketing focuses on messaging and awareness so that the public is aware that the WEA test is only a test, and will be shared on social media.²² Denver OEM has also shared its marketing plan with City and County of Denver staff, major local media outlets, neighboring jurisdictions, and Public Information Officers.²³ Additionally, Denver OEM has coordinated with Denver police, fire, 311 and 911 call centers, and Denver International Airport to ensure their awareness of the planned test.²⁴ Lastly, Denver OEM has also coordinated with Participating CMS Providers in the area to inform them of the proposed test.²⁵

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.”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 Denver OEM waiver request for the WEA end-to-end test.

7. In light of the threat of tornados and the coordination with the annual test of the outdoor warning siren system, we are persuaded by the Denver OEM Letter that the proposed WEA test will help

¹⁶ *Id.*

¹⁷ *Id.* In the event the alert fails to send correctly through WebEOC, Denver International Airport staff will utilize the Everbridge platform as a backup system. *Id.*

¹⁸ *Id.* The proposed message is 86 characters.

¹⁹ *Id.*

²⁰ *Id.* Conversations with Denver OEM staff indicate that Denver OEM has already begun advertising and marketing the test to the public and completed coordination with relevant local government entities. Phone call from Elizabeth Cuttner, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, to Loa Esquilin-García, Public Information Officer, Office of Emergency Management, City and County of Denver (Apr. 29, 2019) (April 29th Call with Denver OEM).

²¹ Denver OEM Letter at 1; April 29th Call with Denver OEM.

²² Denver OEM Letter at 1-2; April 29th Call with Denver OEM.

²³ *Id.*

²⁴ Denver OEM Letter at 2; April 29th Call with Denver OEM. Denver OEM has coordinated with marketing staff at the Denver International Airport, which is located within Denver County, to educate airport employees about the proposed test and ensure that the public, many of whom are not residents, are aware of the test. April 30th Call with Denver OEM.

²⁵ Email from Loa Esquilin-García, Public Information Officer, Office of Emergency Management, City and County of Denver, to Elizabeth Cuttner, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (Apr. 29, 2019, 5:49 p.m. Eastern Daylight Time); April 30th Call with Denver OEM.

²⁶ 47 CFR § 1.3.

educate the public about WEA and improve the proficiency of Denver OEM in sending a WEA message in coordination with alerts distributed via the outdoor public warning system.²⁸ We are also persuaded that the proposed end-to-end test of WEA has value now, as opposed to after the State/Local WEA Test functionality is supported in IPAWS,²⁹ because of the importance to test WEA in conjunction with Denver's annual outdoor warning siren system test and to help ensure that WEA can be effectively deployed by Denver OEM before the initiation of an actual alert and, if needed, in conjunction with other alerting systems.³⁰ Accordingly, we conclude that limited waiver of the Commission's WEA rules is warranted and in the public interest to test in the City and County of Denver.³¹

8. We observe, however, that the proposed Denver OEM 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.³² We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Denver OEM 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 May 8, 2019 at 11:00 a.m. MDT, or on the backup date of May 16, 2019, also at 11:00 a.m. MDT, as referenced in the Denver OEM 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 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) Denver OEM has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 Public Safety Answering Points within the City and County of Denver 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 City and County of Denver staff, major local media outlets, neighboring jurisdictions, and Public Information Officers;
- (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 the backup test, and an awareness that the WEA alert is just a test;

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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 See Denver OEM Letter at 1; April 30th Call with Denver OEM.

²⁹ *May 1 WEA Deadline PN*.

³⁰ Denver OEM Letter at 1.

³¹ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

³² 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.

- (4) use of “test” wording as described by the Denver OEM 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 Denver OEM 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.³³ We encourage Denver OEM 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 the City and County of Denver, Colorado, on May 8, 2019, at 11:00 a.m. MDT, with a backup date of May 16, 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

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission

³³ See 47 U.S.C. § 222.