

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 20, 2019

Released: May 20, 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 test of WEA to be conducted by the Alamosa Regional Communications Center (ARCC). This proposed test is scheduled for Thursday, June 6, 2019, at 11:00 a.m. Mountain Daylight Time (MDT), with a backup date of Thursday, June 13, 2019, at 11:00 a.m. MDT, and would occur within six counties in Colorado's San Luis Valley region. For the reasons discussed below, we grant the ARCC 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 Ashley Frost, MSAG Coordinator, San Luis Valley E911 (filed Apr. 25, 2019) (on file in PS Docket No. 15-91), as amended by Letter from Ashley Frost, MSAG Coordinator, San Luis Valley E911, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed May 15, 2019) (on file in PS Docket No. 15-91) (revising the date and adding a backup date for the proposed test) (Amended ARCC Letter).

3 Id. at 1. The proposed test would occur within the counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache. Id.

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 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. In its letter, ARCC requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on Thursday, June 6, 2019, at 11:00 a.m. MDT, with a backup date of Thursday, June 13, 2019, also at 11:00 a.m. MDT.¹⁰ ARCC states in its letter that the San Luis Valley is susceptible to wildfires and spring flooding and suffered the third largest wildfire in Colorado's history last year. ARCC believes there is a severe risk of flooding to the area, especially in the areas hit by last year's wildfires, because it received higher than average snowfall through the winter, and forecasts show above average moisture during the spring and summer.¹¹ ARCC wishes to "test the readiness, capability and procedures of our emergency alert systems" and "allow our agency, our partners and the public to better recognize and understand how emergency alerting will look in our unique area."¹² ARCC also notes that the test's objective is to ensure that, as the sole originating authority for IPAWS in the San Luis Valley, the agency is able to notify residents and visitors alike through WEA in the event of an emergency.¹³

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 *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 Amended ARCC Letter at 1.

¹¹ *Id.* at 1-2.

¹² *Id.* at 1.

¹³ *Id.*

4. The ARCC proposed WEA test will be conducted within the six counties that constitute the San Luis Valley.¹⁴ The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the SLV Wireless Emergency Alert System. No action required.”¹⁵ ARCC staff have previously conducted two successful WEA tests within the IPAWS lab.¹⁶

5. As the sole Public Safety Answering Point (PSAP) in the San Luis Valley, ARCC staff and partners have been made aware of the proposed test in order to make necessary preparations.¹⁷ The Amended ARCC Letter indicates that ARCC intends to conduct an extensive public outreach campaign to inform the public about the test, including when it will happen and what to expect.¹⁸ ARCC states that it will use media outlets such as radio, newspaper, and social media, including the accounts of its emergency preparedness partners, to increase public awareness.¹⁹ They will also ensure that area hospitals, nursing centers, and schools within the test area are aware of the test.²⁰ ARCC has also pledged to notify FEMA and the Colorado Department of Homeland Security and Emergency Management. It also plans to contact other PSAPs, law enforcement, fire departments, and EMS services outside the test area of its plans to conduct a WEA test.²¹ ARCC has also begun contacting the Participating CMS Providers in the area to ensure there are no conflicts with the proposed WEA test.²² Lastly, ARCC will ask the public for feedback on the test.²³

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.”²⁴ 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.”²⁵ We conclude that there is good cause to grant the ARCC waiver request for the WEA end-to-end test.

7. In light of the severe risk of flooding and the history of wildfires, we are persuaded by the Amended ARCC Letter that the proposed test will help educate the public about WEA and improve the proficiency of ARCC in sending a WEA message to both residents and visitors in the San Luis Valley before an emergency necessitates its use.²⁶ 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

¹⁴ *Id.* (the San Luis Valley consists of the counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache).

¹⁵ *Id.* The proposed message is 78 characters.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 47 CFR § 1.3.

²⁵ 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)).

²⁶ See Amended ARCC Letter at 1.

IPAWS,²⁷ because of the importance to test WEA before a weather or natural emergency arises. Accordingly, we conclude that limited waiver of the Commission's WEA rules is warranted, and it is in the public interest to test in Colorado's San Luis Valley.²⁸

8. We observe, however, that the proposed ARCC 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 multimedia campaign and outreach plan described in the Amended ARCC 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 June 6, 2019, at 11:00 a.m. MDT, or on the backup date of June 13, 2019, also at 11:00 a.m. MDT, as referenced in the Amended ARCC 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) ARCC has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and surrounding area 911 PSAPs within Colorado's Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties 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 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;
- (4) use of "test" wording as described by the Amended ARCC 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 ARCC 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.³⁰ We encourage ARCC 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

²⁷ *May 1 WEA Deadline PN*.

²⁸ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁹ 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.

³⁰ *See* 47 U.S.C. § 222.

<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 Colorado's Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties on June 6, 2019, at 11:00 a.m. MDT, with a backup date of June 13, 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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