

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: February 5, 2019

Released: February 5, 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 a test to be conducted by the City of Dallas, Texas Office of Emergency Management (Dallas OEM). This proposed end-to-end test of WEA is scheduled for March 4, 2019 between 10:00 a.m. and 10:30 a.m. Central Standard Time (CST), with a backup date of March 8, 2019 at 10:00 a.m. CST, and would occur within the City of Dallas, Texas. For the reasons discussed below, we grant the Dallas 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 functionality only in limited circumstances that currently do not include end-to-end WEA tests to 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 Rocky Vaz, Managing Director, City of Dallas Office of Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Jan. 28, 2019) (on file in PS Docket No. 15-91) (Dallas Letter).

3 Commercial Mobile Alert System, PS Docket No. 07-287, Third Report and Order, 23 FCC Red 12561, 12575, para. 32 (2008) (stating the requirements for wireless providers volunteering to participate in WEA).

4 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).

public.<sup>5</sup> 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.<sup>6</sup> The rules allowing such tests will not be effective until May 1, 2019.<sup>7</sup>

3. The Dallas Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test on Monday, March 4, 2019, with a backup date of Friday, March 8, 2019.<sup>8</sup> The Dallas Letter notes that the City of Dallas faces a "wide variety" of hazards, including tornados, emergencies at chemical facilities, or law enforcement activity, that could impact residents and visitors to the city and thus requests a waiver to conduct a test to "ensure that the WEA system will work during such emergencies."<sup>9</sup> According to the Dallas Letter, as demonstrated by recent events in Hawaii and California, it is essential that the public be familiar with WEA and, similarly, that emergency managers be proficient in initiating a WEA message before an actual emergency necessitates its use.<sup>10</sup> Therefore, the Dallas Letter asserts that "it is imperative to test the system now, rather than wait until May 2019 for the FCC's end-to-end testing rules to become effective."<sup>11</sup> The Dallas Letter also states that it has conducted a successful test of WEA using FEMA's Integrated Public Alert and Warning System (IPAWS) Lab and will conduct an additional IPAWS Lab test prior to March 4, 2019.<sup>12</sup>

4. The proposed Dallas WEA test on March 4, the first live test of the WEA system in Dallas, would distribute the WEA test message to a targeted polygon encompassing the Central Business District in Dallas, Texas.<sup>13</sup> According to the Dallas Letter, the Central Business District polygon includes cell towers for all major wireless providers and should provide Dallas OEM with enough test message recipients to gauge delivery success via a survey following the test.<sup>14</sup> The proposed WEA test message to be delivered to mobile devices would be: "This is a test of City of Dallas Wireless Emergency Alerts. No Action is required."<sup>15</sup> Dallas OEM does not intend this test to substitute for other scheduled tests.<sup>16</sup>

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<sup>5</sup> 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.*

<sup>6</sup> *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*).

<sup>7</sup> *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).

<sup>8</sup> Dallas Letter at 1.

<sup>9</sup> *Id.* Dallas OEM conveyed to Bureau staff that the July 7, 2016 police shootings in downtown Dallas are an example of a type of emergency that could impact the area where the March 4 WEA test will be conducted. See F. Brinley Bruton, et al., *Dallas Police 'Ambush': 12 Officers Shot, 5 Killed During Protest*, NBC NEWS, (Jul. 7, 2016, updated Jul. 8, 2016, 9:11 a.m. EDT), <https://www.nbcnews.com/storyline/dallas-police-ambush/protests-spawn-cities-across-u-s-over-police-shootings-black-n605686>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

5. To ensure public understanding of the function and utility of WEA, and increase awareness that the March 4<sup>th</sup> WEA message is only a test, Dallas OEM is developing a multimedia public announcement advertisement and marketing plan.<sup>17</sup> Among other things, Dallas OEM has already taken steps to conduct outreach surrounding the test, including a region-wide briefing to emergency management partners on October 11, 2018 and coordination with Participating CMS Providers in the region, and will conduct a secondary briefing on February 11, 2019.<sup>18</sup> According to the Dallas Letter, Dallas OEM will share the plan with Public Information Officers in surrounding jurisdictions for distribution to all media outlets in the Dallas-Fort Worth area, including daily newspapers, radio and television outlets, and social media.<sup>19</sup> Additionally, Dallas OEM will coordinate information about the test with emergency authorities in and surrounding the City of Dallas, including first responder organizations such as fire and police agencies and 911 public safety answering points (PSAPs).<sup>20</sup> Due to the density of jurisdictions bordering the city and its wide geographic coverage, Dallas OEM anticipates that some members of the public from neighboring jurisdictions may receive the WEA test message and has addressed that possibility in its outreach materials.<sup>21</sup>

### 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."<sup>22</sup> 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."<sup>23</sup> We conclude that there is good cause to grant the Dallas OEM waiver request for the WEA end-to-end test.

7. We are persuaded by Dallas OEM that the proposed WEA test will help educate the public about WEA and improve the proficiency of emergency managers in the use of WEA before the initiation of an actual alert during an emergency.<sup>24</sup> 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 to targeted areas within the city during an emergency in light of the various emergencies such as severe weather or law enforcement activity that may impact life, safety, and property in the City of Dallas. Accordingly, we conclude that limited waiver of the Commission's WEA rules is warranted and in the public interest to test in the City of Dallas.<sup>25</sup>

8. We observe, however, that the proposed Dallas 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

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 47 CFR § 1.3.

<sup>23</sup> 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)).

<sup>24</sup> Dallas Letter at 1.

<sup>25</sup> This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

transmitted, or would otherwise confuse the public.<sup>26</sup> We therefore condition this waiver upon the full implementation of the outreach plan described in the Dallas 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 March 4, 2019, as referenced in the Dallas Letter, or on the backup date of March 8, 2019, 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 accuracy of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) the Dallas OEM has notified, and will coordinate with, the relevant Participating CMS Providers and 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 WEA message is a test;
- (3) pre-test publicity efforts will include a comprehensive media campaign to ensure public understanding of the function and utility of WEA, which will be shared with Public Information Officers in the surrounding jurisdictions for distribution to all Dallas-Fort Worth media outlets, including daily newspapers and radio and television outlets, and posted on social media;
- (4) use of “test” wording as described by the Dallas Letter will be used in the test message; and
- (5) this test will not be a substitute for other scheduled tests of WEA.

10. We also require that the test and any post-test analysis and reports that Dallas 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.<sup>27</sup> We encourage Dallas 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>.

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<sup>26</sup> 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.

<sup>27</sup> 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 Dallas, Texas on March 4, 2019, between 10:00 a.m. and 10:30 a.m. CST, with a backup date of March 8, 2019, 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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