

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 Alert (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in a test to be conducted by the Montgomery County Office of Homeland Security and Emergency Management (MCOHSEM) in Montgomery County, Texas. The coordinated, three-part end-to-end test of WEA is scheduled for March 19, 2019, at 10:15 a.m., 11:15 a.m., and 11:30 a.m. Central Daylight Time (CDT), with a backup date of March 26, 2019. For the reasons discussed below, we grant the MCOHSEM 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 Darren Hess, Director of Homeland Security and Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Nov. 29, 2018) (on file in PS Docket No. 15-91), as amended by Letter from Darren Hess, Director of Homeland Security and 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) (Amended MCOHSEM Letter) (revising the date and backup date for the proposed test).

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).

certain public service announcements.⁴ 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.⁵ 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.⁶ The rules allowing such tests will not be effective until May 1, 2019.⁷

3. The Amended MCOHSEM Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a coordinated, three-part WEA test at 10:15 a.m., 11:15 a.m., and 11:30 a.m. CDT, on March 19, 2019, with a backup date of March 26, 2019 to be conducted on the same schedule.⁸ The Amended MCOHSEM Letter notes that Montgomery County's large land area and growing population, encompassing both densely populated and rural populations, necessitate its preparedness to respond to catastrophic incidents that may occur within the county, such as hurricanes, wildfires, or man-made catastrophes.⁹ Furthermore, during Hurricane Harvey, constituents in Montgomery County informed MCOHSEM that they did not receive alerts.¹⁰ According to the Amended MCOHSEM Letter, "[i]n the best interest of public safety we want to conduct the test at this time [] to ensure that emergency management officials are able to test and validate its [Integrated Public Alert and Warning System (IPAWS)] origination capabilities and the participant's abilities to disseminate emergency messages to the public."¹¹ The Amended MCOHSEM Letter asserts that because of these factors, "it is imperative to test the system now rather than wait until May 2019 when the FCC's WEA end-to-end testing rules become effective."¹²

4. The MCOHSEM WEA test on March 19, the first live test of the WEA system in Montgomery County, Texas, would consist of three closely timed test messages distributed to different targeted areas within Montgomery County. The first WEA message, issued at 10:15 a.m. CDT, targets the entire area of Montgomery County.¹³ The subsequent WEA messages, issued at 11:15 a.m. and 11:30 a.m. CDT, target areas within Montgomery County that MCOHSEM has determined are rural and more

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).

⁵ 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.*

⁶ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 31 FCC Rcd 11112, 11154-11157, paras. 65-68 (2016) (*WEA R&O*).

⁷ *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).

⁸ Amended MCOHSEM Letter at 1.

⁹ *Id.* at 1-2. Montgomery County encompasses 1041.74 square miles and has a population of over 550,000 and neighbors Harris County, which contains the City of Houston. *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

densely populated, respectively.¹⁴ According to MCOHSEM, “there is a vital need to test Montgomery County as a whole, but we also want to make sure that we test our ability to geo-locate an area,” noting as well that such area-based alerting would be the common way to distribute WEA messages during an actual emergency.¹⁵ The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the Montgomery County Wireless Emergency Alerts. No action is required.”¹⁶ MCOHSEM does not intend this test to substitute for other scheduled tests.¹⁷

5. The Amended MCOHSEM Letter indicates that MCOHSEM has notified the relevant Participating CMS Providers and that they are in agreement with the testing schedule.¹⁸ Additionally, MCOHSEM will inform public information officers operating within and adjacent to Montgomery County, including emergency response agencies and 911 Public Safety Answering Points (PSAPs), local school districts, and colleges.¹⁹ The Amended MCOHSEM Letter describes an extensive public outreach plan that will include multimedia public announcements, including press releases, social media postings, and informing the local radio station and print media of the WEA test.²⁰ The Amended MCOHSEM Letter also notes that the target audience will be those in Montgomery County, as well as surrounding counties, to directly inform them of the test and that no action is required.²¹ Furthermore, to address concerns regarding alert fatigue, MCOHSEM understands the need to notify the public of the possibility of receiving multiple test messages in a short amount of time and “will make sure to inform them that this testing will not become the norm, but is necessary to ensure their safety.”²²

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.”²³ 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.”²⁴ We conclude that there is good cause to grant the MCOHSEM waiver request for the WEA end-to-end test.

7. We note that Montgomery County, Texas was impacted by the devastation caused by Hurricane Harvey and, by its size and proximity to larger metropolitan areas like the City of Houston, is susceptible to catastrophic incidents that may require the coordinated dissemination of emergency

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2. The test wording contained in the amended request exceeded the 90-character message length currently permitted in WEA messages. See 47 CFR § 10.430 (“A WEA Alert Message processed by a Participating CMS Provider must not exceed 90 characters of alphanumeric text.”). We note that the Commission revised its rules to permit 360-character length messages as of May 1, 2019. Until this date, however, WEA messages may not exceed 90 characters. *WEA R&O* at 11120, para. 11. The revised test wording, conveyed to Bureau staff via a phone call, satisfies the 90-character message length.

¹⁷ *Id.*

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ 47 CFR § 1.3.

²⁴ 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)).

information to a wide and diverse population.²⁵ Given Montgomery County's mix of rural and densely populated areas and the ongoing threat of hurricanes, wildfires, or man-made catastrophes in the region, we find waiver relief is warranted now as opposed to after May 1, 2019. We believe that the proposed test would help educate and prepare the public, as well as assist emergency management officials to understand the alert origination and dissemination capabilities of all participants at a crucial time. Unlike the nationwide WEA test on October 3, 2018, which was initiated by FEMA and delivered nationally, the proposed test will ensure that emergency managers are fully prepared and able to initiate and deliver multiple alerts to their affected local communities in the event of an emergency. Rather than wait until after May 2019, we believe the proposed test would provide alert initiators and emergency managers information of immediate value. Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to MCOHSEM in this instance.²⁶

8. We observe, however, that the proposed MCOHSEM 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.²⁷ We therefore condition this waiver upon the full implementation of the outreach plan described in the Amended MCOHSEM 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 19, 2019, as referenced in the Amended MCOHSEM Letter, or on the backup date of March 26, 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 effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public common to how WEA messages would be distributed in an actual emergency;
- (2) MCOHSEM 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 and multimedia public announcements, including press releases, social media postings, and information distributed to local radio station and print media; communication with public information officers in the affected and surrounding jurisdictions, local school districts, and colleges; and notification to the public that they may receive multiple test messages in a short amount of time;
- (4) use of "test" wording as described by the Amended MCOHSEM Letter will be used in the test message; and
- (5) this test will not be a substitute for other scheduled tests of WEA.

²⁵ Amended MCOHSEM Letter at 1-2.

²⁶ These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁷ 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.

10. We also require that the test and any post-test analysis and reports that MCOHSEM 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.²⁸ We encourage MCOHSEM 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 coordinated, three-part test of the WEA in Montgomery County, Texas on March 19, 2019, at 10:15 a.m., 11:15 a.m., and 11:30 a.m. CDT, with a backup date of March 26, 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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²⁸ See 47 U.S.C. § 222.