

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: June 7, 2019

Released: June 7, 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 WEA test that the California Governor's Office of Emergency Services (Cal OES) proposes to conduct on June 27, 2019, between 11:00 a.m. and 12:00 p.m. Pacific Standard Time (PST), with a backup test scheduled for July 12, 2019, between 11:00 a.m. and 12:00 p.m. PST, within San Diego County. For the reasons discussed below, we grant the Cal OES 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 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

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 Christina Curry, Deputy Director, California Governor's Office of Emergency Services, to Michael Wilhelm, Public Safety & Homeland Security Bureau, Federal Communications Commission (filed May 24, 2019) (on file in PS Docket No. 15-91) (Cal OES Letter).

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).

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).

only in limited circumstances that currently do not include end-to-end WEA tests to the 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 State/Local WEA Tests became effective on May 1, 2019,<sup>7</sup> but 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, pending further necessary technical changes to IPAWS.<sup>8</sup> Accordingly, alert originators wishing to conduct end-to-end WEA tests prior to IPAWS's 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 Cal OES Letter 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 27, 2019, between 11:00 a.m. and 12:00 p.m. PST, with a backup date of Friday, July 12, 2019, also between 11:00 a.m. and 12:00 p.m. PST.<sup>9</sup> The Cal OES Letter proposes to conduct the test within San Diego county.<sup>10</sup> This test is the second in a series of tests that assess the feasibility of using the Integrated Public Alert and Warning System (IPAWS) WEA alert system with the Early Earthquake Warning (EEW) system.<sup>11</sup> EEW requires notifications to be distributed within seconds of earthquake generation to allow people to take protective action.<sup>12</sup> According to Cal OES, this and the previous test provides data that may be used to refine EEW integration, decrease latency, increase accuracy, and provide notifications to people within seconds of generation.<sup>13</sup> Cal OES asserts that the San Diego region critically needs effective earthquake alerts and warnings because it lies on the Rose Canyon fault.<sup>14</sup> Cal OES states that this fault is capable of producing a magnitude 6.9 earthquake, which could result in over 2,000 lives lost and thousands more injured.<sup>15</sup> Accordingly, Cal OES believes that this series of tests could drastically reduce loss of life and serious

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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> See *Public Safety & Homeland Security Bureau Announces Delay in Availability of Certain Improvements to Wireless Emergency Alerts*, Public Notice, DA 19-534 (PSHSB, Jun. 7, 2019); *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).

<sup>9</sup> Cal OES Letter at 1-2. Phone call from Maureen Bizhko, Attorney Advisor, FCC, to Gabe Kearney, Alert and Warning Coordinator, California Governor's Office of Emergency Services (May 31, 2019) (*May 31 Phone Call*); Phone call from Maureen Bizhko, Attorney Advisor, FCC, to Ryan Arba, Chief, Cal OES Seismic Hazards Program (Jun. 6, 2019) (confirming that the backup date is Friday, July 12, 2019).

<sup>10</sup> Cal OES Letter at 1.

<sup>11</sup> *Id.* See also *Wireless Emergency Alerts and Community-Initiated Alerting*, Order, DA 19-56 (PSHSB Feb. 7, 2019) (authorizing Cal OES to conduct the first end-to-end WEA test of this series in the City of Oakland, California).

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

injury in the short term, and therefore it cannot wait until such time as IPAWS is ready to support State/Local Tests.<sup>16</sup>

4. The proposed Cal OES WEA test would send a test message to San Diego county. The proposed WEA test message to be delivered to mobile devices would be: “TEST of the CA Earthquake Warning System. No action required. THIS IS A TEST.”<sup>17</sup>

5. Cal OES indicates in its letter that it has developed a plan to conduct public outreach prior to the test.<sup>18</sup> Cal OES reports that it will coordinate with relevant wireless providers to administer the test. It will also conduct calls with and distribute educational materials to emergency managers in the test area. Cal OES pledges to work with the San Diego County Office of Emergency Services to: (1) conduct a stakeholder call with local, state, federal, and private partners in San Diego to announce the test, answer questions, and facilitate local participation; (2) conduct a media campaign in the immediate and surrounding areas, including a public service announcement on the radio; and (3) post pertinent information to websites and social media platforms.<sup>19</sup> The messaging of Cal OES’s multimedia plan will ensure that stakeholders and media are aware of the test and can confirm to the public that the WEA message is a test.<sup>20</sup> Cal OES has begun coordination with local wireless providers in preparation for the test.<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 Cal OES waiver request for the WEA end-to-end test.

7. In light of Cal OES’s assessment regarding the potential for a 6.7 magnitude or higher earthquake, and the manner in which Cal OES intends to use the findings from its second WEA test to send more effective and potentially life-saving early earthquake warnings, we find good cause to permit Cal OES to test the feasibility of using WEA to warn the public of such destructive events.<sup>24</sup> As Cal OES describes, the results of this test would provide useful information to help improve the development of Cal OES’s earthquake early warning system and to educate both emergency managers and the public about the system and its proper use. Accordingly, rather than wait until IPAWS is ready to support

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<sup>13</sup> Cal OES Letter at 1.

<sup>14</sup> *Id.* at 2.

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

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

<sup>17</sup> *Id.* The text of the message is 79 characters.

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

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

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

<sup>21</sup> Phone call from Gabe Kearney, Alert and Warning Coordinator, California Governor’s Office of Emergency Services, to Maureen Bizhko and Elizabeth Cuttner, Attorney Advisors, FCC (May 30, 2019).

<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> Cal OES Letter at 1.

State/Local Tests, we believe the proposed test would provide alert initiators and emergency managers information of immediate value, and so conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to allow Cal OES to conduct a second WEA end-to-end test as described in the Cal OES Letter.<sup>25</sup>

8. We observe, however, that the proposed Cal OES 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.<sup>26</sup> We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Cal OES 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 27, 2019, between 11:00 a.m. and 12:00 p.m. PST, or on the backup date of July 12, 2019, also between 11:00 a.m. and 12:00 p.m. PST, as referenced in the Cal OES Letter and the May 31 Phone Call, 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) Cal OES 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 San Diego 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 San Diego government 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;
- (4) use of "test" wording as described by the Cal OES 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 Cal OES 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 Cal OES 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>25</sup> This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<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 San Diego county, on June 27, 2019, between 11:00 a.m. and 12:00 p.m. PST, with a backup date of July 12, 2019, from 11:00 a.m. to 12:00 p.m. PST, 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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