

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)	
)	
Improving Wireless Emergency Alerts and Community-Initiated Alerting)	PS Docket No. 15-91
)	
Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System)	PS Docket No. 15-94
)	
)	

ORDER

Adopted: February 7, 2019

Released: February 7, 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) Providers¹ to participate in an earthquake early warning test to be conducted by the California Governor’s Office of Emergency Services (Cal OES) in conjunction with the United States Geological Survey.² This proposed end-to-end test of WEA is scheduled for March 27, 2019, between 11:00 a.m. and 12:00 p.m. Pacific Daylight Time (PDT), with a backup date of April 10, 2019, between 11:00 a.m. and 12:00 p.m. PDT, and would occur within the City of Oakland in Alameda County, California. 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

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 J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Feb. 4, 2019) (on file in PS Docket No. 15-91) (Cal OES Amended Letter). This amends Cal OES’s waiver request submitted on January 2, 2019. See Letter from Christina Curry, Deputy Director, California Governor’s Office of Emergency Services, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Jan. 2, 2019) (on file in PS Docket No. 15-91). Cal OES had submitted an earlier waiver request in November 2018 to conduct an earlier WEA test but withdrew the request due to wildfire recovery efforts. See Letter from Christina Curry, Deputy Director, California Governor’s Office of Emergency Services, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Nov. 9, 2018) (on file in PS Docket No. 15-91), *withdrawn by* Letter from Christina Curry, Deputy Director, California Governor’s Office of Emergency Services, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Nov. 28, 2018) (on file in PS Docket No. 15-91).

commercial wireless service providers are Participating CMS Providers.³ The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and 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 Cal OES Amended Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test of earthquake early warning alerts on Wednesday, March 27, 2019, with a backup date of Wednesday, April 10, 2019, prior to the May 2019 effective date of the Commission's rules.⁸ According to the Cal OES Amended Letter, the purpose of the end-to-end WEA test is to assess "the feasibility for using the Integrated Public Alert and Warning System (IPAWS) WEA alert system to warn the public of imminent ground motion during an earthquake."⁹ The Cal OES Amended Letter explains that there is a need for a waiver to allow the test to take place in advance of the May 2019 effective date of the Commission's testing rules because "the next large, damaging earthquake could occur tomorrow."¹⁰ According to the Cal OES Amended Letter, earthquake early warning requires notifications to be distributed within seconds of generation to allow people to take protective actions prior to destructive shaking; thus, it is critical that live testing be conducted to evaluate the current capability and future feasibility of end-to-end earthquake early warnings over WEA.¹¹ Cal OES anticipates that its proposed test will provide critical information that may be used to refine the future development of earthquake early warning integration with IPAWS.¹²

4. The Cal OES WEA test would target the City of Oakland, California.¹³ 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."¹⁴

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).

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*, Report and Order and Further Notice of Proposed Rulemaking, 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 Cal OES Amended Letter at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

5. The Cal OES Amended Letter describes an extensive outreach plan. Among other things, Cal OES has already shared detailed information and held discussions about the test with the California Earthquake Early Warning Advisory Board and wireless service providers members of the Cellular Telecommunications Industry Association (CTIA).¹⁵ In addition, Cal OES has conducted regional conference calls with and will distribute educational materials to emergency managers in the surrounding area to ensure that first responders and public safety answering points (PSAPs) are aware of the test and can address the test in calls they may receive from the public.¹⁶ Cal OES will also join local, state, federal and private partners in Oakland to further discuss the test and solicit feedback regarding the test's execution.¹⁷ Additionally, Cal OES will also conduct a media campaign that will include press releases, public service announcements, communication with local broadcasters and newspapers, and information posted about the test on various websites and social media outlets.¹⁸

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."¹⁹ 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."²⁰ 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 that "there is up to a 99 percent probability that a magnitude 6.7 or higher earthquake will occur within the state anytime within the next 30 years," we find these circumstances warrant a waiver to permit Cal OES to test the feasibility of using WEA to warn the public of such destructive events.²¹ We are also persuaded that 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 after May 1, 2019, 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 the WEA end-to-end test in this instance.²²

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.²³ We therefore condition this waiver upon the full implementation of the outreach plan described in the Cal OES Amended Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive

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¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 47 CFR § 1.3.

²⁰ 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)).

²¹ Cal OES Amended Letter at 1.

²² These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²³ 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.

multiple test messages.

9. We further condition this waiver to require that the test may only be conducted on March 27, 2019, as referenced in the Cal OES Amended Letter, or on the backup date of April 10, 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 the feasibility for using IPAWS WEA for earthquake early warning;
- (2) Cal OES has notified, and will coordinate with the relevant Participating CMS Providers, including CTIA, 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, including press releases to local broadcasters and newspapers, public service announcements on local radio stations, and posts of pertinent information to websites and social media platforms; and a stakeholder meeting with local, state, federal, and private partners in the Oakland area;
- (4) use of “test” wording as described by the Cal OES Amended 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 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.²⁴ 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>.

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 Oakland, California, on March 27, 2019, between 11:00 a.m. and 12:00 p.m. PDT, with a backup date of April 10, 2019, between 11:00 a.m. and 12:00 p.m. PDT, 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

²⁴ See 47 U.S.C. § 222.

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