

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 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) Providers to participate in simultaneous tests to be conducted by the Cities of Aliso Viejo (Aliso Viejo) and Laguna Beach, California (Laguna Beach) on March 6, 2019 at 3:00 p.m. Pacific Standard Time (PST), with a backup date of March 27, 2019 at the same time. For the reasons discussed below, we grant the Aliso Viejo and Laguna Beach requests, 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

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 David Doyle, City Manager, City of Aliso Viejo, to Marlene Dortch, Secretary, Federal Communications Commission (filed Jan. 2, 2019) (on file in PS Docket No. 15-91), as amended by Letter from David Doyle, City Manager, City of Aliso Viejo, to Marlene Dortch, Secretary, Federal Communications Commission (filed Jan. 29, 2019) (on file in PS Docket No. 15-91) (Amended Aliso Viejo Letter) (revising the date for the proposed test); Letter from John Pietig, City Manager, City of Laguna Beach, to Marlene Dortch, Secretary, Federal Communications Commission (filed Jan. 3, 2019) (on file in PS Docket No. 15-91), as amended by Letter from John Pietig, City Manager, City of Laguna Beach, to Marlene Dortch, Secretary, Federal Communications Commission (filed Jan. 29, 2019) (on file in PS Docket No. 15-91) (Amended Laguna Beach Letter) (revising the date for the proposed test) (collectively, "Amended Letters").

3 Aliso Viejo and Laguna Beach conveyed the addition of the backup date, March 27, 2019, at 3:00 p.m. Pacific Daylight Time (PDT) to Bureau staff via email. Additionally, California observes daylight saving time, which begins at 2:00 a.m. local time on March 10, 2019.

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).

prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and 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

3. The Amended Letters request waiver of the Commission's rules to allow Participating CMS Providers to participate in simultaneous WEA tests on Wednesday, March 6, 2019, with a backup date of Wednesday, March 27, 2019 in the neighboring cities of Aliso Viejo and Laguna Beach.⁹ The Amended Letters note that both Laguna Beach and Aliso Viejo face a variety of natural hazards such as wildfires which, due to years of drought, are at a higher-than-average threat, with areas in both communities designated as "Cal Fire Very High Fire Severity Zone[s]."¹⁰ According to the Amended Letters, "WEA would be a vital tool in communicating with our residents and visitors" in the event of an evacuation due to a wildfire, including those who have not subscribed to the county's voluntary emergency notification system.¹¹ Therefore, the Amended Letters assert that "it is important that we test the system now, rather than waiting until May 2019 for the end-to-end testing" rules to go into effect to ensure that citizens are familiar with the WEA message format.¹²

4. The proposed simultaneous WEA tests on March 6 would distribute similar WEA test messages to both the Cities of Aliso Viejo and Laguna Beach, neighboring communities located in Orange County, California.¹³ The proposed WEA test message to be delivered to mobile devices in Aliso Viejo would be: "Aliso Viejo Emergency Alert TEST. No action required. Feedback to www.cityofaliso Viejo.com".¹⁴ The proposed WEA test message to be delivered to mobile devices in Laguna Beach would be: "Laguna Beach Emergency Alert TEST. No action required. Details

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 Amended Aliso Viejo Letter at 1; Amended Laguna Beach Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Amended Aliso Viejo Letter at 1; Amended Laguna Beach Letter at 1-2.

¹⁴ Amended Aliso Viejo Letter at 1. 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

(continued...)

www.lagunabeachcity.net.¹⁵ Both cities have prepared a short, four-question survey to capture data regarding location reach, the time the alert was received, and cell carrier that they will distribute to citizens following the tests.¹⁶

5. Both Aliso Viejo and Laguna Beach plan to conduct considerable public outreach prior to the test date to inform their respective communities about the tests.¹⁷ Such outreach for both cities will include press releases, social media postings, text messages distributed through each city's subscription-based alerting system, and announcements on each city's website.¹⁸ Additionally, Laguna Beach will conduct outreach through local radio station broadcasts and electronic message boards.¹⁹ The City of Aliso Viejo will also communicate its outreach plan through local schools, churches, and the Chamber of Commerce.²⁰ Both cities have collaborated and coordinated with Participating CMS Providers, public safety answering points (PSAPs) both within their cities and in neighboring cities, emergency response organizations, and the Orange County Operational Area.²¹

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."²² 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."²³ We conclude that there is good cause to grant the Aliso Viejo and Laguna Beach waiver requests for the simultaneous WEA end-to-end tests.

7. Given the natural hazards such as wildfires facing Aliso Viejo and Laguna Beach, we are persuaded by the Amended Letters that the proposed simultaneous WEA tests 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.²⁴ We are also persuaded that the proposed end-to-end tests of WEA have value now, as opposed to after May 1, 2019, because they would help ensure that WEA can be effectively deployed within each city during an emergency in light of the heightened fire threat that Aliso Viejo and Laguna Beach face. Accordingly, we conclude that limited waiver of the Commission's WEA rules is warranted and in the public interest to conduct tests in the City of Aliso Viejo and the City of Laguna Beach.²⁵

8. We observe, however, that the proposed simultaneous WEA tests would not be in the

(Continued from previous page) _____
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.

¹⁵ Amended Laguna Beach Letter at 1.

¹⁶ *Id.* at 2; Amended Aliso Viejo Letter at 2.

¹⁷ Amended Aliso Viejo Letter at 1-2; Amended Laguna Beach Letter at 1-2.

¹⁸ Amended Aliso Viejo Letter at 1-2.

¹⁹ Amended Laguna Beach Letter at 1.

²⁰ Amended Aliso Viejo Letter at 1-2.

²¹ *Id.* at 2; Amended Laguna Beach Letter at 2.

²² 47 CFR § 1.3.

²³ 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)).

²⁴ Amended Aliso Viejo Letter at 1; Amended Laguna Beach Letter at 1.

public interest if they 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.²⁶ We therefore condition this waiver upon the full implementation of the outreach plans described in the Amended Letters, 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 simultaneous tests may only be conducted on March 6, 2019, as referenced in the Amended Letters, or on the backup date of March 27, 2019 and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) these tests are 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) Aliso Viejo and Laguna Beach have collaborated and coordinated with the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs, including those in neighboring cities, to ensure that they are aware of the tests 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, social media postings, text messages distributed through each city's subscription-based alerting system, and announcements on each city's website; and
- (4) use of "test" wording as described by the Amended Letters will be used in the test messages.

10. We also require that the tests and any post-test analysis and reports that Aliso Viejo and Laguna Beach 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.²⁷ We encourage Aliso Viejo and Laguna Beach to report their test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to share feedback on their experience with these tests to do so by filing them with the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

(Continued from previous page) _____

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

²⁶ 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.

²⁷ 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 Aliso Viejo, California, and a one-time test of the WEA in the City of Laguna Beach, California, on March 6, 2019, at 3:00 p.m. PST, with a backup date of March 27, 2019, at 3:00 p.m. PDT, which tests 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

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission