

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: July 29, 2019

Released: July 29, 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 Hamilton County, Ohio Emergency Management and Homeland Security Agency (Hamilton County EMHSA) proposes to conduct on September 4, 2019, at 9:00 a.m. Eastern Daylight Time (EDT), with a backup test scheduled for September 10, 2019, also at 9:00 a.m. EDT, within Hamilton County. For the reasons discussed below, we grant the Hamilton County EMHSA 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 Nick Crossley, Director, Hamilton County Emergency Management and Homeland Security Agency, to Chief Lisa Fowlkes, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed July 18, 2019) (on file in PS Docket No. 15-91), as amended by Letter from Nick Crossley, Director, Hamilton County Emergency Management and Homeland Security Agency, to Chief Lisa Fowlkes, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed July 24, 2019) (on file in PS Docket No. 15-91) (Hamilton County EMHSA Amended 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).

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 State/Local WEA Tests became effective on May 1, 2019,⁷ 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 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.⁸ 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 Hamilton County EMHSA Amended Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a countywide end-to-end WEA test on Wednesday, September 4, 2019, at 9:00 a.m. EDT, with a backup date of Tuesday, September 10, 2019, also at 9:00 a.m. EDT.⁹ Hamilton County EMHSA states in its letter that the purpose of this proposed test is to "ensure that the WEA system will work during emergencies both natural and man-made in Hamilton County."¹⁰ According to Hamilton County EMHSA, the area is susceptible to natural disasters, including flash flooding and high-wind events, and man-made hazards, such as hazardous materials spills and active shooter incidents.¹¹ Hamilton County EMHSA notes that in June 2018, a chemical leak necessitated the distribution of a WEA message to the impacted public notifying them of the danger. The use of WEA in that instance further emphasized the significant need to explain and test this emergency public information tool.¹² Additionally, Hamilton County is a metropolitan area in a "Battleground State" and can expect high-profile visits from political candidates leading up to the 2020 presidential election.¹³ Therefore, according to Hamilton County EMHSA, conducting a live WEA test at this time "will help bolster confidence in the county's ability to effectively notify residents, business owners, and visitors of Hamilton County that an emergency is in progress."¹⁴

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

⁹ Hamilton County EMHSA Amended Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1-2.

¹³ *Id.* at 1.

¹⁴ *Id.*

4. The proposed WEA test, the first such live test in the county, will be conducted within the entirety of Hamilton County, Ohio. The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the Hamilton County Wireless Emergency Alert System. No action required.”¹⁵ The test will expire 30 minutes after origination and is not intended to be a substitute for other scheduled tests of Wireless Emergency Alerts.¹⁶ Hamilton County EMHSA staff have also successfully completed two WEA and EAS tests within the IPAWS lab and undergo weekly internal testing and training to ensure their preparedness to send alerts to the public.¹⁷

5. The Hamilton County EMHSA Amended Letter outlines an extensive multimedia public outreach effort to inform residents and other county stakeholders about the test.¹⁸ The outreach messaging will include: “the test message’s date and time; test purpose; expectations during the test; the date and time of the backup test date; and an awareness that the September 4, 2019 WEA alert is just a test” and that the public may receive duplicate test messages and in adjacent counties.¹⁹ According to the Amended Letter, Hamilton County EMHSA will develop a marketing plan that will include social media content and press releases, as well as notify emergency partners such as 911 communications centers, law enforcement, fire/EMS agencies, regional hospitals, the National Weather Service, local universities and public schools, and local elected and appointed officials about the test.²⁰ The Amended Letter states that Hamilton County EMHSA will also coordinate with county Public Information Officers and inform neighboring jurisdictions about the potential for alert bleed-over during the test.²¹ Lastly, according to the Amended Letter, Hamilton County EMHSA will notify and work with Participating CMS Providers in the area regarding the test.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 Hamilton County EMHSA waiver request for the WEA end-to-end test.

7. In light of the threat of natural and man-made hazards in Hamilton County, we are persuaded by the Hamilton County EMHSA Amended Letter that the proposed test will help to educate the public about WEA and improve the proficiency of Hamilton County EMHSA in sending a WEA message to residents, business owners, and visitors.²⁵ We also find persuasive Hamilton County’s claim that, as a metropolitan area that will likely host many high-profile candidates in the run-up to the 2020 national election, it will draw visitors to the area that may not have signed up for local mass notification

¹⁵ *Id.* The proposed message is exactly 90 characters.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

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)).

²⁵ Hamilton County EMHSA Amended Letter at 1.

services.²⁶ Accordingly, rather than wait until IPAWS is ready to support State/Local Tests, we believe the proposed test would provide alert initiators and emergency managers information and preparedness training 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 test in Hamilton County.²⁷

8. We observe, however, that the proposed Hamilton County EMHSA 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.²⁸ We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Hamilton County EMHSA Amended 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 September 4, 2019, at 9:00 a.m. EDT, or on the backup date of September 10, 2019, also at 9:00 a.m. EDT, as referenced in the Hamilton County EMHSA Amended Letter, 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) Hamilton County EMHSA 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 Hamilton 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 relevant Hamilton County government staff, 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 Hamilton County EMHSA Amended 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 Hamilton County EMHSA 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.²⁹ We encourage Hamilton County EMHSA 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

²⁶ *Id.* at 1-2.

²⁷ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁸ 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.

²⁹ *See* 47 U.S.C. § 222.

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 Hamilton County, Ohio, on September 4, 2019, at 9:00 a.m. EDT, with a backup date of September 10, 2019, at 9:00 a.m. EDT, 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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