

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: August 21, 2019

Released: August 22, 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) Providers¹ to participate in an end-to-end WEA test that the Gunnison County Office of Emergency Management (Gunnison County OEM), in coordination with the Gunnison – Hinsdale Emergency Telephone Service Authority and the Gunnison Regional Communications Center proposes to conduct on September 26, 2019, at 2:00 p.m. Mountain Time (MT).² For the reasons discussed below, we grant the Gunnison County OEM 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.³ The Commission's rules prohibit 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

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 Scott Morrill, CO-CEM, Gunnison County Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed August 12, 2019) (on file in PS Docket No. 15-91), as amended by Letter from Scott Morrill, CO-CEM, Gunnison County Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed August 15, 2019) (on file in PS Docket No. 15-91) (Gunnison County OEM Amended 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.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 Gunnison County OEM 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 Thursday, September 26, 2019, at 2:00 p.m. MT.⁹ Gunnison County OEM states in its letter that the purpose of this proposed test is to "ensure that emergency management officials in Gunnison County have a clear understanding of how alerts would perform" in their mountainous area.¹⁰ According to the Gunnison County OEM, the county is susceptible to wildfires and flash flooding.¹¹ The Gunnison County OEM also wants the public to become familiar with the format of WEA messaging.¹² The Gunnison County OEM Amended Letter notes that Gunnison County hosts a large number of tourists year-round, who most likely would not have subscribed to the county's emergency alert system; thus, WEA might be the only system that could reach them, especially in large crowds at special events.¹³

4. The proposed WEA test will be conducted within the entirety of Gunnison County, Colorado. The Gunnison County OEM is the sole alert originator authorized to use IPAWS in the County. The proposed WEA test message to be delivered to mobile devices would be: "Gunnison

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 Gunnison County OEM Amended Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

County OEM: TEST emergency msg. Feed-back to eoc@gunnisoncounty.org TEST only.”¹⁴

5. The Gunnison County OEM Amended Letter outlines an extensive multimedia public outreach plan to inform residents and other county stakeholders about the test.¹⁵ The pre-test outreach will not only include details about the test and emphasize that it is only a test, it will also notify the public that they may receive duplicate test messages and in adjacent counties.¹⁶ The pre-test publicity will involve considerable public outreach via the Gunnison County website and social media outlets of many other agencies throughout Gunnison County.¹⁷ The Gunnison County OEM Amended Letter indicates that the outreach plan also includes ads in local newspapers, and interviews with local radio stations.¹⁸ According to the Gunnison County OEM Amended Letter, information will be shared with neighboring Public Service Answering Points and Emergency Management Offices, so that they are prepared for potential inquiries by their residents.¹⁹ The Gunnison County OEM Amended Letter states that there will also be pre-test coordination with CMS Providers and the Colorado Department of Transportation, which will display information about the test on their overhead variable message signs on the primary and major routes through Gunnison County.²⁰

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.”²¹ 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.”²² We conclude that there is good cause to grant the Gunnison County OEM waiver request for the WEA end-to-end test.

7. In light of the threat of natural hazards in Gunnison County, we are persuaded by the Gunnison OEM Amended Letter that the proposed test will help to educate the public about WEA and improve the proficiency of Gunnison County emergency management officials in sending WEA messages to the public.²³ We also find persuasive the fact that Gunnison County hosts a large number of tourists year round who may not have signed up for local mass notification services.²⁴ 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 Gunnison County.²⁵

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 CFR § 1.3.

²² 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)).

²³ Gunnison County OEM Amended Letter at 1.

²⁴ *Id.* at 1-2.

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

8. We observe, however, that the proposed Gunnison County OEM 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.²⁶ Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Gunnison County OEM 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 26, 2019, at 2:00 p.m. MT, as referenced in the Gunnison County OEM 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 ensure that emergency management officials in Gunnison County have a clear understanding of how alerts would perform in their mountainous area, and the public becomes familiar with the format of WEA messaging;
- (2) Gunnison County OEM 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 Gunnison 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;
- (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 clear notification that the WEA alert will be just a test;
- (4) use of “test” wording as described by the Gunnison County OEM 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 Gunnison County OEM 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 Gunnison County OEM 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 Gunnison County, Colorado, on September 26, 2019, at 2:00 p.m. MT, which test must be conducted subject to the conditions described herein. This action is taken under delegated authority

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.

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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