

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: September 24, 2019

Released: September 24, 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 San Francisco Department of Emergency Management (San Francisco) proposed to conduct on October 17, 2019, between 5:15 and 5:45 p.m. Pacific Daylight Time (PDT), with a backup test scheduled for October 24, 2019, between 3:00 and 3:30 p.m. PDT, within the City and County of San Francisco, California. For the reasons discussed below, we grant the San Francisco 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

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 Mary Ellen Carroll, Executive Director, San Francisco Department of Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Aug. 26, 2019) (on file in PS Docket No. 15-91), as amended by Letter from Mary Ellen Carroll, Executive Director, San Francisco Department of Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Sept. 19, 2019) (on file in PS Docket No. 15-91) (San Francisco 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).

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 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 San Francisco Amended 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, October 17, 2019, between 5:15 and 5:45 p.m. PDT, with a backup date of Thursday, October 24, 2019, between 3:00 and 3:30 p.m. PDT.⁹ This proposed test is scheduled to coincide with the 30th anniversary of the Loma Prieta earthquake which, according to the San Francisco Amended Letter, was the "last and most significant disaster impacting San Francisco," and the Great California ShakeOut, an annual earthquake drill with nearly nine million registered participants statewide.¹⁰ According to the San Francisco Amended Letter, "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."¹¹ The San Francisco Amended Letter emphasizes the opportunities presented by both events to highlight the importance of earthquake safety and preparedness in the region, including the critical role that effective alerts and warnings serve to empower residents to make informed decisions and take action during an emergency.¹² According to the San Francisco

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).

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 San Francisco Amended Letter at 1.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 1.

¹² *Id.*

Amended Letter, “[w]ithout this waiver, critical live testing cannot be conducted to evaluate the current capability of WEA within the City and County of San Francisco.”¹³

4. The proposed WEA test will be conducted within the City and County of San Francisco, California.¹⁴ The proposed WEA test message to be delivered to mobile devices would be: “TEST SF Wireless Emergency Alert test. 30 yrs since ’89 quake. Prepare @ www.SF72.org TEST”.¹⁵ According to the San Francisco Amended Letter, the text of the test message is “strategically designed” to direct recipients of the test to visit the city’s emergency preparedness website, which contains information about the WEA live code test, earthquake preparedness and safety, registration for additional public information through the city’s subscription-based alert system, and a survey regarding the respondent’s experience receiving the WEA test.¹⁶ The San Francisco Amended Letter also notes that it has used FEMA’s IPAWS Lab to practice and test the proposed WEA test message.¹⁷

5. The San Francisco Amended Letter outlines an extensive multimedia public outreach plan to inform residents and other stakeholders about the test.¹⁸ By conducting the WEA test on the same day as other earthquake preparedness-related events, namely, the ShakeOut drill and the anniversary of the 1989 Loma Prieta earthquake, San Francisco states that it can leverage the existing media coverage generated by these events to further inform and educate the public about the test.¹⁹ In addition, San Francisco will coordinate with and hold discussions about the test with wireless service provider members of the Cellular Telecommunications Industry Association (CTIA) and other stakeholders, including local, state, federal, and private partners in the San Francisco area.²⁰ San Francisco will also share information relevant to the test with neighboring jurisdictions whose communities may also receive the test due to proximity to the test area, as well as first responders, California Highway Patrol, and 911 call centers, to ensure that the public is aware the activity is only a test.²¹ Lastly, San Francisco will develop a public-targeted communications strategy that will include social and traditional media, local broadcasters and newspapers, in-person media events during the ShakeOut drill, and cross-promotion through partner social media and public service platforms.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 San Francisco waiver request for the WEA end-to-end test.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 2. The proposed message is exactly 90 characters.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 1-3.

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 3.

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)).

7. In light of San Francisco's assessment regarding the potential for a 6.7 magnitude or higher earthquake to occur at any time, and the opportunity to promote earthquake safety and preparedness in connection with the anniversary of the 1989 Loma Prieta earthquake and the annual statewide ShakeOut exercise, we find good cause to permit San Francisco to test the feasibility of using WEA to warn the public of such destructive events.²⁵ As San Francisco describes, effective alert and warning can serve as a critical tool for emergency managers to empower the public to make informed decisions and act to save lives and reduce property loss when faced with a natural disaster.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 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 San Francisco to conduct a WEA end-to-end test as described in the San Francisco Amended Letter.²⁷

8. We observe, however, that the proposed San Francisco 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 Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the San Francisco 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 October 17, 2019, between 5:15 and 5:45 p.m. PDT, or on the backup date of October 24, 2019, between 3:00 and 3:30 p.m. PDT, as referenced in the San Francisco 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 the San Francisco have a clear understanding of how alerts would perform in their city and county, and the public becomes familiar with the format of WEA messaging;
- (2) San Francisco 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 the City and County of San Francisco and surrounding jurisdictions 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 San Francisco 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 San Francisco may conduct or cause to be produced are done in a manner consistent with customers' expectations of

²⁵ San Francisco Amended Letter at 1-2.

²⁶ San Francisco Amended Letter at 1.

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.

privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA systems and infrastructure.²⁹ We encourage San Francisco 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 within San Francisco County, California, on October 17, 2019, between 5:15 and 5:45 p.m. PDT, with a backup date of October 24, 2019, between 3:00 and 3:30 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

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²⁹ See 47 U.S.C. § 222.