

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 19, 2019

Released: February 19, 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 a test to be conducted by the Waldo County, Maine Emergency Management Agency (Waldo County EMA). This proposed end-to-end test of WEA is scheduled for March 22, 2019 at 3:00 p.m. Eastern Daylight Time (EDT), with a backup date of April 5, 2019 at 3:00 p.m. EDT, and would occur exclusively within Waldo County, Maine. For the reasons discussed below, we grant the Waldo County EMA 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 the 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 only in limited circumstances that currently do not include end-to-end WEA tests to the

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 Dale Rowley, Director, Waldo County Emergency Management Agency, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed February 11, 2019) (on file in PS Docket No. 15-91) (Waldo County EMA 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).

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 Waldo County EMA Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test on Friday, March 22, 2019, with a backup date of Friday, April 5, 2019.⁸ The Waldo County EMA Letter notes that Waldo County is susceptible to a variety of emergencies such as blizzards, "noreasters," ice storms, hurricanes, wildfires, grid failures, and hazardous materials releases and would use WEA "to alert the public of approaching hazards, to provide emergency directions, and to inform [the public about] what other information sources are available" for emergency information.⁹ According to the Waldo County EMA Letter, because the Waldo County EMA is responsible for communicating such emergency information and warning to the public, the purpose of the proposed WEA test is to "ensure that emergency management staff are able to test and validate its [Integrated Public Alert and Warning System (IPAWS) and] WEA origination capabilities and the scope and area of coverage by the transmissions systems of the CMS Providers."¹⁰ Therefore, the Waldo County EMA Letter asserts that "it is imperative to test the system now, rather than wait until May 2019 when the FCC's WEA end-to-end testing rules become effective."¹¹

4. The proposed WEA test on March 22 would be the first live test of the WEA system in Waldo County and would cover the entirety of Waldo County, Maine.¹² The proposed WEA test message to be delivered to mobile devices would be: "This is a test of the Waldo County Wireless Emergency Alert System. No action is required."¹³

5. To ensure public understanding of the function and utility of WEA, the Waldo County EMA will implement a detailed public outreach campaign.¹⁴ According to the Waldo County EMA Letter, the plan will "inform the public about what the WEA system is; what the system is used for; what is expected of the public following an alert, the date and time of the scheduled live test (and backup date and time); and how the public can provide input following the test."¹⁵ Waldo County EMA intends to publicize the outreach plan through press releases to local newspapers, television, and FM radio; posts to

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 Waldo County EMA Letter at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.*

social media; and through emails and posters distributed to public safety departments, schools, and other public facilities.¹⁶ Additionally, Waldo County EMA has coordinated information about the test with Participating CMS Providers operating within Waldo County, as well as with all emergency authorities within and surrounding the county, including first responders and 911 public safety answering points (PSAPs), “to ensure that they are aware of the test and can confirm to the public that the WEA message is a test.”¹⁷ Following the test, Waldo County EMA will coordinate with emergency management and response personnel located around Waldo County to evaluate the scope and area of coverage by the transmissions systems of Participating CMS Providers, and will provide the public with opportunities to share comments and feedback following the conclusion of the test.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 Waldo County EMA waiver request for the WEA end-to-end test.

7. In light of the severe weather and other local hazards facing Waldo County, we are persuaded by the Waldo County EMA Letter that the proposed WEA test will help educate the public about WEA and improve the proficiency of emergency managers in the use of WEA to alert the both residents and visitors to Waldo County during major emergencies and disasters.²¹ We are also persuaded that the proposed end-to-end test of WEA has value now, as opposed to after May 1, 2019, because it would help ensure that WEA can be effectively deployed county-wide during an emergency in light of the severe storms Waldo County may face. Accordingly, we conclude that limited waiver of the Commission’s WEA rules is warranted and in the public interest to test in Waldo County.²²

8. We observe, however, that the proposed Waldo County 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 Waldo County EMA Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive multiple test messages.

¹⁶ *Id.* at 1-2.

¹⁷ *Id.* at 2.

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 Waldo County EMA Letter at 1.

²² This waiver does 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.

9. We further condition this waiver to require that the test may only be conducted on March 22, 2019 at 3:00 p.m. EDT, as referenced in the Waldo County EMA Letter, or on the backup date of April 5, 2019, also at 3:00 p.m. EDT, 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) the Waldo County EMA has notified, and will coordinate with, the relevant Participating CMS Providers 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 for local newspapers, television, and FM radio; posts on social media; and emails and posters distributed to public safety departments, schools, and other public facilities; and
- (4) use of “test” wording as described by the Waldo County EMA Letter will be used in the test message.

10. We also require that the test and any post-test analysis and reports that the Waldo County EMA 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 the Waldo County EMA 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 Waldo County, Maine, on March 22, 2019, at 3:00 p.m. EDT, with a backup date of April 5, 2019, at 3:00 p.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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²⁴ See 47 U.S.C. § 222.