

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 11, 2020

Released: September 11, 2020

By the Associate 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) denies the waiver request of the City of Irvine, California (Irvine). Specifically, Irvine seeks a 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 it proposes to conduct on October 15, 2020 at 10:30 a.m. Pacific Standard Time (PST) with a backup date of October 29, 2020 at 10:30 a.m. PST. For the reasons discussed below, we deny Irvine's waiver request and instead encourage them to move forward with the scheduled test using the available State/Local WEA Test category.

II. BACKGROUND

2. WEA allows authorized government entities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices, and whose commercial mobile 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. The Commission's rules allow WEA end-to-end tests that reach the public only when

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 Robert Simmons, Emergency Management Administrator, Irvine Police Department, to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Aug. 20, 2020) (on file in PS Docket No. 15-91) (Irvine 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).

the test is conducted using the State/Local WEA Test category.<sup>5</sup> State/Local WEA Test messages differ from actual alert messages in order to reduce public confusion and minimize any chance that they might be misconstrued as alerts about actual emergencies. Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test messages.<sup>6</sup> Further, tests conducted using State/Local WEA Tests must include conspicuous language sufficient to make it clear to the public that the WEA message is only a test.<sup>7</sup> While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,<sup>8</sup> Participating CMS Providers were not required to support State/Local WEA Tests until December 19, 2019, at which time the FEMA Integrated Public Alert and Warning System (IPAWS) infrastructure (through which all alerts are authenticated, validated, and delivered to Participating CMS Providers) was capable of fully supporting these enhancements.<sup>9</sup> Accordingly, as of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Tests category do not need to request a waiver from the FCC to permit such alerts to be transmitted to the public.<sup>10</sup>

3. Irvine requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on October 15, 2020 at 10:30 a.m. PST.<sup>11</sup> The proposed WEA end-to-end test would be targeted to the City of Irvine,<sup>12</sup> and the proposed alert message would read: "City of Irvine Emergency Alert TEST. No action required. Feedback requested at [www.cityofirvine.org/alert](http://www.cityofirvine.org/alert)."<sup>13</sup> Irvine seeks a waiver to use the Public Safety alert category to conduct its "live" end-to-end WEA test.<sup>14</sup> Irvine requests this test because of its large, transient population.<sup>15</sup> Irvine states that its population of approximately 300,000 nearly doubles during the day due to commuters,

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<sup>5</sup> 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 and in periodic tests of WEA's C-Interface. *Id.* On November 1, 2016, the Commission adopted a Report and Order that amended 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. *See 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, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

<sup>6</sup> *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

<sup>7</sup> *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

<sup>8</sup> *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).

<sup>9</sup> *See Public Safety and Homeland Security Bureau Announces New Enhancements to Wireless Emergency Alerts Are Now Available*, PS Docket No. 15-91, Public Notice, DA 19-1297 (PSHSB Dec. 19, 2019) (*Dec. 19<sup>th</sup> PN*).

<sup>10</sup> *Id.*

<sup>11</sup> *Irvine Letter* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> E-mail from Robert Simmons, Emergency Management Administrator, Irvine Police Department to Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (Sept. 1, 2020, 11:36 a.m. EDT).

<sup>15</sup> *Irvine Letter* at 1-2.

travelers, tourists, and other visitors.<sup>16</sup> It also highlights attractions within the City that draw high numbers of outside visitors to the City on a daily basis.<sup>17</sup> Irvine also states that “increasing risk of wildland fire and recent lessons learned [about] alert and warning has placed a significant emphasis on how the City communicates with its stakeholders during emergencies.”<sup>18</sup> The purpose of the test is to identify current capabilities through examination of WEA geographical coverage, including overreach; public reaction and feedback; and efficacy of internal policies.<sup>19</sup>

4. Irvine states that it intends to conduct outreach to the public about the WEA test.<sup>20</sup> Its outreach initiative includes press releases, social media posts (Facebook, Twitter, Instagram, Nextdoor), city website, and outreach through schools and the business community.<sup>21</sup> Irvine reports that it has developed a short, five-question survey for citizens to fill following the test that will “capture data about their location (zip code), cell carrier, time received, whether they are an Irvine resident or not, and whether they believe the test was beneficial.”<sup>22</sup>

### III. DISCUSSION

5. 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.”<sup>23</sup> 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.”<sup>24</sup> As stated in the Bureau’s decision in Los Angeles World Airports (LAWA) and subsequent recent decisions, given the availability of State/Local WEA Tests, the Bureau does not expect to routinely grant waiver requests from alert originators seeking to conduct end-to-end WEA tests.<sup>25</sup> Based on the circumstances set forth in the Irvine Letter, we do not find good cause exists to grant a waiver in this instant case.

6. Irvine wishes to conduct its test to see how WEA functions in light of recently implemented enhancements and to gauge both public reaction and the efficacy of its internal policies.<sup>26</sup> We agree that public preparedness and proficiency training exercises are helpful tools that allow the public, city officials, and alert originators to determine alert propagation, public feedback, and effectiveness of internal policies. That is why the Commission’s rules now provide for end-to-end WEA

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<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*

<sup>23</sup> 47 CFR § 1.3.

<sup>24</sup> 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)).

<sup>25</sup> *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Order, DA 20-2, 35 FCC Rcd 333, 335-36 (PSHSB 2020) (*LAWA Waiver Order*). See also *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Order, DA 20-190, 35 FCC Rcd 1527 (PSHSB 2020); *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Order, DA 20-612, 35 FCC Rcd 5827 (PSHSB 2020).

<sup>26</sup> *Irvine Letter* at 2.

tests using the State/Local WEA Test category. Irvine fails to explain why it must conduct a live end-to-end WEA test using the Public Safety alert category, rather than the State/Local WEA Test category, and importantly fails to explain why an end-to-end WEA test using the State/Local WEA Test category would not satisfy its objectives. The Commission specifically adopted the State/Local WEA Test category to provide emergency managers with a way “to test in an environment that mirrors actual alert conditions and evaluate, for example, the accuracy with which various Participating CMS Providers geo-target Alert Messages in their community,” while also protecting wireless consumers from alert fatigue, which could lead them to opt out of receiving WEA messages entirely.<sup>27</sup> State/Local WEA Tests are “live” tests that act like any other WEA alert,<sup>28</sup> with the exception that the public must affirmatively opt in to receive them.<sup>29</sup> Because Irvine provides no reason why it cannot achieve its objectives using the State/Local Test WEA category or why conducting a test using a message category other than the State/Local WEA Test category would serve the public interest, we deny the request.

7. We observe that with the proposed test scheduled for mid-October, Irvine has sufficient lead time to inform the public how to opt in to receive a State/Local WEA Test alert. Given that Irvine states that it already plans to engage in considerable public outreach to inform the public about the test,<sup>30</sup> it could use this extensive public outreach campaign to encourage its community, and the communities from which it draws commuters, to opt in to receive the State/Local WEA Test message. Such participation also will afford residents and visitors alike with the opportunity to become familiar with the county’s emergency alert systems, and its WEA alerts in particular, in non-emergency circumstances. In contrast, on January 2, 2020, we granted LAWA’s waiver request to conduct a test on January 15, 2020, because we were persuaded that consumers would have had an insufficient opportunity to learn about and choose to receive State/Local WEA Tests – a new WEA test message category that had become available for use less than a month earlier, on December 19, 2019.<sup>31</sup> We believe that Irvine can still gauge the efficacy of WEA, Irvine’s internal policies, and assess the geographic reach of the test through feedback from those who opted in to receive a State/Local WEA Test alert. Finally, we remind Irvine that we require State/Local WEA Tests to include conspicuous language in the WEA alerts sufficient to make clear to the public that the message is only a test to minimize any chance that such test messages might be misconstrued as actual emergencies.

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<sup>27</sup> *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

<sup>28</sup> See Alliance for Telecommunications Industry Solutions (ATIS), Wireless Emergency Alert (WEA) 3.0 Federal Alert Gateway to CMSP Gateway Interface Specification, ATIS 070037.v002 (2019).

<sup>29</sup> 47 CFR § 10.350(c)(4).

<sup>30</sup> *Irvine Letter* at 1-2.

<sup>31</sup> *C.f.*, *LAWA Waiver Order* at 335 (granting Los Angeles World Airport’s WEA waiver where “given the short amount of time since the State/Local Test category became available for use...members of the public would not have the opportunity to learn about and know to ‘opt in’ to receive State/Local tests by LAWA’s proposed test dates.”)

**IV. ORDERING CLAUSE**

8. 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 of the Commission's rules, the City of Irvine's request for waiver IS DENIED. 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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