

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 26, 2020

Released: February 26, 2020

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) denies the waiver request of the City of Aliso Viejo, California (Aliso Viejo). Specifically, Aliso Viejo 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 March 18, 2020 at 3:00 p.m. Pacific Standard Time (PST) with a backup date of March 25, 2020 at 3:00 p.m. PST. For the reasons discussed below, we deny the Aliso Viejo waiver request.

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 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 testing of WEA functionality only in limited circumstances, allowing end-to-end tests that reach the public only in the case of State/Local WEA Tests.

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 David Doyle, City Manager, City of Aliso Viejo, to Ms. Marlene Dortch, Secretary, Federal Communications Commission (filed Jan. 28, 2020) (on file in PS Docket No. 15-91) (Aliso Viejo 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).

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. 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 (continued....)

State/Local WEA Test messages differ from actual alert messages to reduce confusion and minimize any chance that they might be misconstrued as actual alerts. Consumers will not receive State/Local WEA Tests by default; instead, they must affirmatively opt in to receive these test messages.⁶ Further, State/Local WEA Tests must include conspicuous language sufficient to make clear to the public that the message is only a test.⁷ While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,⁸ Participating CMS Providers were not required to support State/Local WEA Tests until December 19, 2019, at which time the 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.⁹ 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 to permit such alerts to be transmitted to the public.¹⁰

3. Aliso Viejo requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on March 18, 2020, at 3:00 p.m. PST.¹¹ The proposed WEA end-to-end test would be targeted to the City of Aliso Viejo,¹² and the proposed alert message would read: "Aliso Viejo emergency alert test. No action required. Details and feedback www.avcity.org."¹³ Aliso Viejo seeks a waiver to use a Public Safety Message to conduct its "live" end-to-end WEA test.¹⁴ Aliso Viejo states that it relies on WEA to warn the public of the threats posed by several natural hazards, including wildfires in the area.¹⁵ According to Aliso Viejo, the purpose of the test is to help public officials understand how WEAs "perform in our community" and to ensure its citizens are familiar with the format of a WEA message.¹⁶ Aliso Viejo also states that it intends to test the WEA enhancements that became available in the *Dec. 19th PN*.¹⁷ This is the second "live" end-to-end WEA test requested by Aliso Viejo. The first was approved by the Bureau on February 7, 2019 and conducted on March 6, 2019.¹⁸

4. Aliso Viejo states that it intends to conduct outreach to the public about the WEA test.¹⁹

(Continued from previous page) _____
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*).

⁶ *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).

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

⁸ *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).

⁹ 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. 19th PN*).

¹⁰ *Id.*

¹¹ Aliso Viejo Letter at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ Telephone call between Sarah Limones, Senior Emergency Management Program Coordinator, Orange County Sheriff's Department, City of Aliso Viejo, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (February 20, 2020).

According to Aliso Viejo, the outreach initiative includes advance notification and collaboration with stakeholders, surrounding communities, and businesses.²⁰ Specifically, Aliso Viejo states that it plans to engage in considerable public outreach to inform the public of the test through, for example, press releases, social media posts, local news media, and other means, as well as to collaborate and coordinate with CMS providers, PSAPs, neighboring cities and their PSAPs, emergency response organizations, and the County's Operational area.²¹ It also states that it intends to use surveys to capture feedback from the public following the test.²²

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."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 Based on the circumstances set forth in the Aliso Viejo Letter, we do not find good cause to grant a waiver in this case.

6. Aliso Viejo wishes to conduct its test to see how WEA functions in light of the WEA system's recently enacted enhancements and the region's risk of wildfires.²⁵ In conducting its test, Aliso Viejo seeks to ensure its public officials have a clear understanding of how WEA functions in its community and that its citizens are familiar with the format of a WEA message.²⁶ Aliso Viejo essentially states that it wishes to conduct both a public preparedness and proficiency training exercise to test and see how WEA functions in light of the WEA system's recently enacted enhancements and the region's risk of wildfires. We agree that public preparedness and proficiency training exercises are a helpful tool for the public, city officials, and alert originators. And that is why the Commission's rules now provide end-to-end WEA tests using State/Local WEA Test messages. But Aliso Viejo fails to explain why it must

(Continued from previous page) _____

¹⁵ Aliso Viejo Letter at 1.

¹⁶ *Id.*

¹⁷ For example, longer WEA Alert Messages (from 90 to 360 characters) for 4G LTE and future networks; a new class of Alert Message ("Public Safety Messages") to convey recommended actions for saving lives or property (e.g., emergency shelter locations after a disaster); Spanish-language Alert Messages; and the presentation of WEA Alert Messages on the mobile device as soon as they are received. *See WEA R&O*, 31 FCC Rcd at 11119-26, 11130-43.

¹⁸ Aliso Viejo Letter at 1. *See also Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, PS Docket 15-91, DA 19-57, 34 FCC Rcd 268, (PSHSB 2019).

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1-2.

²¹ *Id.*

²² *Id.* at 2.

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 Aliso Viejo Letter at 1.

²⁶ *Id.*

conduct an end-to-end test using a Public Safety Message,²⁷ rather than the State/Local test category.²⁸ 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 the public to opt out of receiving WEA messages entirely.²⁹ Because Aliso Viejo provides no reason why it cannot achieve its objectives using the State/Local Test category, or why its interest in conducting a test using a Public Safety Message would serve the public interest, we deny the request.

7. Given that Aliso Viejo states that it already plans to engage in considerable public outreach to inform them of the test,³⁰ it could use this opportunity to encourage its community to opt-in to receive a 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 alerts systems and its WEA alerts in particular in non-emergency circumstances.³¹ Finally, we remind Aliso Viejo 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, in fact, only a test to minimize any chance that such test messages might be misconstrued as actual Alert Messages.

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 Aliso Viejo’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

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

²⁷ Telephone call between Sarah Limones, Senior Emergency Management Program Coordinator, Orange County Sheriff’s Department, City of Aliso Viejo, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (February 20, 2020).

²⁸ 47 CFR §10.400(d) (describing the public safety message classification that Aliso Viejo would use in an end-to-end test).

²⁹ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

³⁰ Aliso Viejo Letter at 1-2.

³¹ *C.f.*, *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, PS Docket No. 15-91, DA 20-2, 2020 WL 132472 (Jan. 2, 2020) (granting Los Angeles World Airport’s WEA waiver where consumers would have had an insufficient opportunity to learn about and choose to receive State/Local WEA Tests by the proposed test dates).