

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: January 2, 2020

Released: January 2, 2020

By the Deputy Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) grants Los Angeles World Airports (LAWA) a limited waiver of the Commission's rules to conduct a public-facing test of the Wireless Emergency Alert (WEA) system at the Los Angeles International Airport (LAX) using a WEA message category intended for actual emergencies. In light of the public safety incidents that have occurred at LAX, LAWA has demonstrated a real need to understand how alerts are transmitted and received by the transient and international populations LAX serves. We are persuaded that such 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 became available for use last month and that requires consumers to affirmatively opt in to receive test messages - by LAWA's proposed test dates. Accordingly, we permit LAWA to use the Public Safety Message category, which would be transmitted to all members of the public with WEA-capable devices and who are opted in, by default, to receive WEA messages.

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

1 See Letter from Justin Pierce, Director, Emergency Management Division, Los Angeles World Airports, to Michael Wilhelm, Chief, Policy & Licensing Division, Public Safety & Homeland Security Bureau, Federal Communications Commission, PS Docket 15-91 (Dec. 19, 2019) (LAWA Letter).

2 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). Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f).

3 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).

circumstances, allowing end-to-end tests that reach the public only in the case of State/Local WEA Tests.<sup>4</sup> State/Local WEA Test messages differ from actual alert messages to 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.<sup>5</sup> Further, State/Local WEA Tests must include conspicuous language sufficient to make clear to the public that the message is, in fact, only a test.<sup>6</sup> While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,<sup>7</sup> 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.<sup>8</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 to permit such alerts to be transmitted to the public.<sup>9</sup>

3. The LAWA Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on January 15, 2020, at 10:00 a.m. PST, with a backup date of January 29, 2020 at 10:00 AM PST, using the Public Safety Message category, rather than the State/Local WEA Test category.<sup>10</sup> LAWA is the City of Los Angeles department that owns and operates the LAX and Van Nuys (VNY) general aviation airports.<sup>11</sup> LAWA notes that both LAX and VNY serve not only the local transportation needs of the surrounding community but also the transportation needs of an extensive international community arriving at, or travelling through, the airport.<sup>12</sup> LAWA further emphasizes that LAWA wants to ensure an alert would be effectively delivered to international travelers who would not know to "opt in" to get state/local WEA test alerts.<sup>13</sup> The LAWA Letter highlights that providing services to a temporary, diverse, and transient population coupled with the two public safety incidents that occurred at LAX in 2013 and in 2016 has led LAWA staff to place a far greater emphasis on researching and developing effective, innovative ways to communicate with stakeholders, passengers, local and residential communities during an emergency.<sup>14</sup>

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<sup>4</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 (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 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>5</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>6</sup> *Id.* (requiring State/Local WEA Tests to include conspicuous language sufficient to make clear to the public that the message is only a test).

<sup>7</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>8</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>9</sup> *Id.*

<sup>10</sup> LAWA Letter at 1-2.

<sup>11</sup> *Id.* at 1.

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

4. The proposed WEA end-to-end test would be distributed within a targeted polygon surrounding LAX.<sup>15</sup> The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the LAX Wireless Emergency Alert system. No action is required.”<sup>16</sup> The LAWA Letter states that the LAWA Public Relations Division intends to conduct “comprehensive” outreach to the public about the WEA test.<sup>17</sup> According to the LAWA Letter, the outreach initiative includes advance notification and collaboration with stakeholders, surrounding communities, and businesses.<sup>18</sup> The LAWA also states that it intends to use surveys to capture feedback from the public and employees following the test.<sup>19</sup> LAWA indicates will also have a trained customer care team positioned throughout the airport to help answer questions about the alert and get consumer feedback.<sup>20</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>21</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>22</sup> In the limited circumstances discussed below, we find good cause to allow LAWA to conduct an end-to-end test of WEA using a Public Safety Message.<sup>23</sup>

6. We are persuaded that LAWA’s request presents a unique set of circumstances. In light of the two public safety incidents that occurred at LAX, LAWA has demonstrated a real need to know if an alert would reach international and transient members of the public. We are persuaded that, given the short amount of time since the State/Local Test category became available for use, such 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. Accordingly, we agree that if LAWA were to use the State/Local WEA Test category, LAWA may not receive the data and feedback that would enable it to assess the reliability of its warning system. We emphasize, however, that in adopting the State/Local WEA test category, the Commission intended 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<sup>24</sup> Given the

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<sup>13</sup> Phone call between Justin Pierce, Director of Emergency Management, LAWA, and Nicole McGinnis, Deputy Chief, Public Safety and Homeland Security Bureau, FCC (December 20, 2019) (advising the Bureau that LAWA has a large transient and international footprint, and LAWA wants to learn how an alert would be delivered to international travelers who would not know to “opt in” to get state/local tests).

<sup>14</sup> *Id.*

<sup>15</sup> LAWA Letter at 1-2.

<sup>16</sup> *Id.* at 3.

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

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

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

<sup>20</sup> Phone call between Justin Pierce, Director of Emergency Management, LAWA, and Nicole McGinnis, Deputy Chief, Public Safety and Homeland Security Bureau, FCC (December 20, 2019).

<sup>21</sup> 47 CFR § 1.3.

<sup>22</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>23</sup> This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<sup>24</sup> *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

availability of State/Local Tests, we do not expect to routinely grant waiver requests from alert originators seeking to conduct end-to-end WEA tests.

7. We observe that the proposed LAWA 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.<sup>25</sup> We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the LAWA Letter, including outreach to the public, press, and relevant government agencies, and making clear that members of the public may receive multiple test messages.

8. We further condition this waiver to require that the test may only be conducted on January 15, 2020 at 10:00 a.m. PST, or on the back up date of January 29, 2020, also at 10:00 a.m. PST, as referenced in the LAWA 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 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) LAWA has notified, and 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 Los Angeles 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; and will also notify Los Angeles Government staff, major local media outlets, neighboring jurisdictions, and Public Information Officers;
- (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 the back up test, and an awareness that the WEA alert is just a test;
- (4) use of “test” wording as described by the LAWA Letter will be used in the test message; and
- (5) the WEA test is not intended as a substitute for other scheduled WEA tests.

9. We also require that the test and any post-test analysis and reports that LAWA 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.<sup>26</sup> We encourage LAWA 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

10. 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 WEA within a targeted area in the Los Angeles International Airport, on January 15, 2020 at 10:00 a.m. PST, or on the backup date of January 29, 2020, also at 10:00 a.m. PST 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.

<sup>25</sup> 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.

<sup>26</sup> See 47 U.S.C. § 222.

FEDERAL COMMUNICATIONS COMMISSION

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