

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: June 11, 2020

Released: June 11, 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) addresses the waiver request of the County of Sonoma, California, Department of Emergency Management (Sonoma).1 Specifically, Sonoma seeks a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers2 to participate in an end-to-end WEA test that it proposes to conduct on September 3, 2020.3 For the reasons discussed below, we deny Sonoma's 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.4 The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.5 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.6

1 See Letter from Christopher Godley, Director, Department of Emergency Management, Sonoma County, to Ms. Marlene S. Dortch, Office of the Secretary, Federal Communications Commission (filed May 8, 2020) (on file in PS Docket No. 15-91) (Sonoma Letter).

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

3 Sonoma Letter at 1.

4 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).

5 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); see also 47 CFR § 10.530 (restricting use of the WEA vibration cadence to purposes permitted by the WEA rules).

6 47 CFR § 10.350(c). 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-

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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.⁷ Further, State/Local WEA Tests must include conspicuous language sufficient to make clear to the public that the message is only a test.⁸ Participating CMS Providers were required to support State/Local WEA Tests on December 19, 2019.⁹ 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 tests to be transmitted to the public.¹⁰

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Interface. 47 CFR § 10.350(a)-(b). On September 29, 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*).

⁷ *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).

⁸ *Id.* (requiring State/Local WEA Tests to include conspicuous language sufficient to make clear to the public that the message is only a test).

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, 34 FCC Rcd 12332 (PSHSB 2019).

¹⁰ *Id.*

3. Sonoma requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on September 3, 2020 that would not use the State/Local WEA Test category.¹¹ The proposed test would be targeted to select areas of Sonoma County,¹² and the proposed alert message would read: "TEST message from Sonoma County Emergency Management. Go to socopsa.org for more info."¹³ Sonoma reportedly has experienced an "inordinate" number of natural disasters over the last three years, including the 2017 Nuns-Tubs fire.¹⁴ Sonoma reports that it experienced challenges alerting and warning people during that particular disaster.¹⁵ According to Sonoma, the purpose of the proposed test is to build confidence in the alert and warning system and educate residents.¹⁶ The test message would also be disseminated via the National Oceanic and Atmospheric Administration (NOAA) Weather Radio so that the alert may be received in less populated areas that are not well served by WEA.¹⁷ Accordingly, an additional purpose is to "validate the alerting capabilities with Non-Weather Emergency Messages on the NOAA Weather Radio."¹⁸ Sonoma reports it is "building upon the success" of its 2018 and 2019 end-to-end WEA tests.¹⁹

III. DISCUSSION

4. The Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."²⁰ 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."²¹ Based on the circumstances set forth in the Sonoma Letter, we do not find good cause to grant a waiver in this case.

5. Sonoma essentially seeks to conduct an end-to-end WEA test to engage in proficiency training and educate the public.²² We agree that public preparedness and proficiency training exercises

¹¹ See Sonoma Letter at 1. While not expressly stated in the Sonoma Letter, Sonoma representatives confirmed their intention to use a live WEA code other than the State/Local test category. See Telephone call between Christopher Godley, Director, Sonoma County Department of Emergency Management, Sam Wallace, Alert and Warning Program Manager, Sonoma County Department of Emergency Management, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (May 22, 2020) (*May 22nd Telephone Conversation*).

¹² See Sonoma Letter at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Sonoma has not decided which category of WEA alert it would use to send its proposed test message. See *May 22nd Telephone Conversation*.

¹⁷ See Sonoma Letter at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 47 CFR § 1.3.

²¹ 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)).

²² Sonoma Letter at 1.

are a helpful tool for the public, city officials, and alert originators. That is why the Commission's rules provide for end-to-end WEA tests using State/Local WEA Test messages. Sonoma 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 the public to opt out of receiving WEA messages entirely.²³ State/Local WEA Tests are live code tests that act like any other WEA alert,²⁴ with the exception that the public must affirmatively opt in to receive them.²⁵

6. We observe that with the proposed test scheduled for September, Sonoma has sufficient lead time to inform the public how to opt in to receive a State/Local test alert. Because Sonoma has not presented facts that suggest that a State/Local WEA Test would be insufficient to achieve its objectives, or why conducting a test using a live code other than the State/Local WEA Test category would serve the public interest, we deny Sonoma's request.

²³ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

²⁴ 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).

²⁵ 47 CFR § 10.350(c)(4).

IV. ORDERING CLAUSE

7. 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, Sonoma'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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