

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: March 12, 2021

Released: March 12, 2021

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 Vail Public Safety Communications Center in Vail, Colorado (Vail). Specifically, Vail 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, using a non-test alerting category, on May 26, 2021 at 12:30 p.m. Mountain Daylight Time (MDT). For the reasons discussed below, we deny Vail's waiver request and 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 the test is conducted using the State/Local WEA Test category. State/Local WEA Test messages differ

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 Marc Wentworth, Director, Vail Public Safety Communications Center, and Greg Daly, Chief, Avon Police Department, to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Feb. 24, 2021) (on file in PS Docket No. 15-91) (Vail 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).

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 and in periodic tests of WEA's C-Interface.

(continued...)

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.⁶ 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.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 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.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 from the FCC to permit such alerts to be transmitted to the public.¹⁰

3. Vail requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on May 26, 2021 at 12:30 p.m. MDT using a non-test category.¹¹ Vails states that the proposed WEA end-to-end test would be targeted to the Town of Avon and the Town's Wildridge subdivision during a scheduled evacuation exercise and test of a civil defense/disaster siren.¹² The proposed alert message would read: "EC EMO: TEST emergency message. Go to ecemergency.org to provide feedback. No other action needed."¹³ In its waiver request, Vail states it requests this test because it wishes to reach visitors to Eagle County who most likely would not have subscribed to Vail's local emergency alert subscription system; in light of that, Vail states that WEA is perhaps the only tool it has to reach visitors to the county.¹⁴ Vail reports that the county hosts high numbers of outside visitors to the Town on a daily basis.¹⁵ Vail also states that "Colorado is facing drought conditions this summer, and the fire outlook is calling for a higher-than-average chance for large

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*).

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 Test messages 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 *Vail Letter at 1.* *See* Telephone call between Marc Wentworth, Director, Vail Public Safety Communications Center, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (Mar. 4, 2021) (during which Vail stated it planned to use the Imminent Threat test category during the proposed WEA test).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

wildfires in our area.”¹⁶ Vail notes that the purpose of the test is “to ensure that emergency management officials in Avon and Eagle County have a clear understanding of how alerts would perform in [this] mountainous area with limited cellular tower availability.”¹⁷ Additionally, in the event of emergencies requiring evacuations, Vail points out that it wants its citizens and visitors to be familiar with the format of the WEA messaging and to become familiar with its Town’s and County’s evacuation planning.¹⁸

4. Vail states that it has conducted outreach to the public about the WEA test.¹⁹ Its outreach initiative includes public outreach via the Town of Avon website (www.avon.org) and social media accounts, news ads in the local newspaper, and informational door hanger flyers. It reportedly has informed neighboring PSAPs and the Colorado Department of Transportation, which will display information about the test on their overhead variable message signs over the major road that runs through Eagle County.²⁰

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.”²¹ 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.”²² 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.²³

6. Based on the circumstances set forth in the Vail Letter, we do not find good cause exists to grant a waiver in this instant case. Vail wishes to conduct its test to ensure that emergency management officials in Avon and Eagle County have a clear understanding of how alerts would perform in mountainous area with limited cellular tower availability.²⁴ 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 tests using the State/Local WEA Test category. Vail fails to explain why it cannot conduct a live end-to-end WEA test using 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

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 CFR § 1.3.

²² 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)).

²³ *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).

²⁴ *Vail Letter* at 2.

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.²⁵ State/Local WEA Tests are “live” tests that act like any other WEA alert,²⁶ with the exception that the public must affirmatively opt in to receive them.²⁷ Because Vail provides no reason why it cannot achieve its stated 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 better serve the public interest, we deny the request.

7. We observe that with the proposed test scheduled for late May, Vail has sufficient lead time to inform the public how to opt in to receive a State/Local WEA Test alert. Vail could use its extensively planned public outreach campaign to encourage its community, and the communities from which it draws visitors, to opt in to receive the State/Local WEA Test message.²⁸ Such participation also will afford residents and visitors alike with the opportunity to become familiar with the county’s emergency alert systems, planned evacuation procedures, and its WEA alerts in particular, in non-emergency circumstances. We believe that Vail has sufficient lead time to inform the public about how to opt in to receive a State/Local WEA Test alert, and that Vail can sufficiently gauge the efficacy of WEA 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 Vail 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.

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 Vail Public Safety Communications Center’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

²⁵ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

²⁶ 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).

²⁷ 47 CFR § 10.350(c)(4).

²⁸ *Vail Letter* at 2. See Telephone call between Marc Wentworth, Director, Vail Public Safety Communications Center, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (Mar. 8, 2021) (during which Vail stated it has not promoted the details of the WEA test in order to defer to the Commission’s decision on the nature of the test).