

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Wireless Emergency Alerts and Community-Initiated Alerting)	PS Docket No. 15-91
)	
Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System)	PS Docket No. 15-94
)	

ORDER

Adopted: May 21, 2021

Released: May 21, 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) grants the waiver request of the Mendocino County Sheriff's Office in Mendocino County, California (Mendocino). Specifically, Mendocino seeks a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers¹ to participate in an end-to-end WEA test that it proposes to conduct² on May 26, 2021 at 12:00 p.m. Pacific Daylight Time (PDT).³ In light of the recent proclamation of a drought emergency in Mendocino and Sonoma counties,⁴ and the timing of this exercise on the verge of wildfire season, we find Mendocino residents and alert originators face a unique and urgent need to understand how alerts are transmitted and received. Accordingly, we grant Mendocino's request 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, for its upcoming test.

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

¹ Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR §§ 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission's rules. *See generally* 47 CFR § 10.1, *et seq.*

² *See* Telephone call between Brentt Blaser, Emergency Services Coordinator, Mendocino County Sheriff's Office, Office of Emergency Services, and Maureen Bizhko, Attorney Advisor, Public Safety and Homeland Security Bureau, FCC (May 18, 2021) (during which Mr. Blaser stated Mendocino planned to use the Public Safety Message category for the proposed WEA test). Absent a waiver, a Public Safety Message may only be issued in connection with an Imminent Threat, Presidential Alert, or Child Abduction Emergency Alert. *See* 47 CFR § 10.400(d). *See also* 47 CFR §§10.400 (a), (b), and (c).

³ *See* Letter from Brentt L. Blaser, Emergency Services Coordinator, Mendocino County Sheriff's Office, Office of Emergency Services, to Ms. Marlene Dortch, Secretary, Federal Communications Commission (filed May 11, 2021) (on file in PS Docket No. 15-91 and 15-94) (*Mendocino Letter*).

⁴ Gov. Gavin Newsom, State of Emergency Proclamation (Apr. 21, 2021) <https://www.gov.ca.gov/wp-content/uploads/2021/04/4.21.21-Drought-Proclamation.pdf> (*Emergency Proclamation*).

mobile service providers are Participating CMS Providers.⁵ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁶ 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.⁷ State/Local WEA test alert messages differ from actual WEAs in order to reduce public confusion and minimize any chance that they might be misconstrued as WEAs about actual emergencies. Consumers will not receive State/Local WEA test alerts by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.⁸ Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.⁹ While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,¹⁰ 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.¹¹ 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 WEA test alerts to be transmitted to the public.¹²

3. Mendocino 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 12:00 p.m. PDT (with a back-up test date on June 2, 2021 at the same time) using the Public Safety Message alert message category.¹³ Mendocino states that the proposed WEA end-to-end test would be targeted to Mendocino County¹⁴ and

⁵ *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).

⁶ 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).

⁷ 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*).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ *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).

¹² *Id.*

¹³ *Mendocino Letter* at 1.

¹⁴ *See* Telephone call between Brentt Blaser, Emergency Services Coordinator, Mendocino County Sheriff's Office, Office of Emergency Services, and Maureen Bizhko, Attorney, Public Safety and Homeland Security Bureau, FCC (continued....)

notes it would be the first live test of its WEA system.¹⁵ The proposed alert message would read: “TEST message Mendocino County. Go to MendoReady.org for more info. No other action needed.”¹⁶ Mendocino reports that the area has been “ravaged by wildfires,” namely the 2020 Oak and August Complex fires.¹⁷ In its waiver request, Mendocino states it requests this test because it wishes to test the reach of the WEA alert in the rural, mountainous areas of the county.¹⁸ Mendocino also seeks to make this a public awareness and proficiency exercise, testing the state and county’s “plans, policies, procedures, trainings, and equipment.”¹⁹ Notably, Mendocino County is, and has been for at least a month, facing severe drought conditions on the verge of the summer wildfire season.²⁰

4. Mendocino states that it has conducted outreach to the public about the WEA test.²¹ Specifically, Mendocino states it has developed a comprehensive media campaign directed at its constituents and surrounding counties to ensure public understanding and highlight the value of the scheduled test.²² Its outreach initiative includes public outreach via the affected local jurisdictions, local broadcasters, newspapers, utility companies, and cable providers, including notifying the relevant participating CMS providers within Mendocino County.²³

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.”²⁴ 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.”²⁵ As stated in the Bureau’s prior decisions, given the availability of State/Local

(May 18, 2021) (during which Mr. Blaser stated that the Operational Area cited in the Mendocino Letter referred to Mendocino County).

¹⁵ *Mendocino Letter* at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., *Emergency Declaration*; Cohen, Lara, *The Mendocino Voice*, “Cal Fire Mendocino Chief George Gonzalez: ‘We Might Have to Start Trucking In Water Just For Our Daily Activities at the Station Level...’” (May 17, 2021) <https://mendovoice.com/2021/05/qa-with-cal-fire-mendocino-chief-george-gonzalez-we-might-have-to-start-trucking-in-water-just-for-our-daily-activities-at-the-station-level/>; National Oceanic Atmospheric Administration, National Weather Service, NWSChat, Drought Information Statement (Apr. 29, 2021) <https://nwschat.weather.gov/p.php?pid=202104291435-KMTR-AXUS76-DGTMTR> (noting that “below average precipitation has resulted in abnormally dry vegetation as we head into the fire season”); Cohen, Lara, *The Mendocino Voice*, Senator McGuire Hosting Drought Emergency Town Hall, Thurs. May 20 (May 18, 2021) <https://mendovoice.com/2021/05/senator-mcguire-will-host-wildfire-preparation-town-halls-may-17-27-press-release/>.

²¹ *Mendocino Letter* at 1.

²² *Id.*

²³ *Id.*

²⁴ 47 CFR § 1.3.

²⁵ 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)).

WEA Tests, the Bureau does not routinely grant waiver requests from alert originators seeking to conduct end-to-end WEA tests.²⁶

6. Based on the circumstances set forth in the Mendocino Letter and the recently declared drought emergency declared for the Russian River Watershed area in Mendocino county, we find good cause exists to grant a waiver in the instant case. Mendocino states that, in light of prior wildfire incidents and being one of the largest rural counties in California, it proposes this test for three reasons: (1) to raise awareness of the area's mass notification systems; (2) to test alert propagation in mountainous areas; and (3) to gauge effectiveness of the state and county's warning plans, policies and procedures.²⁷ We agree that public awareness, alert propagation, and proficiency training exercises are helpful tools that allow the public, city officials, and alert originators to determine geographic reach, public feedback, and effectiveness of internal policies. Further, the ongoing drought conditions, combined with beginning of the wildfire season, changes the nature of this exercise from one of typical proficiency into practice for a clear and urgent threat.²⁸ Accordingly, based on the totality of the circumstances, we find good cause to grant Mendocino's request.

7. We observe that Mendocino may conduct its planned exercise on May 26, 2021 using the Public Safety Message category. We encourage Mendocino to use its comprehensive public outreach campaign to encourage its community, and those in affected adjacent local jurisdictions, to participate in, and provide feedback on, this important test.²⁹

8. We observe that the proposed Mendocino 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.³⁰ We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Mendocino Letter, including outreach to the public, press, and relevant government agencies.

9. We further condition this waiver to require that the test may only be conducted on the times and dates referenced in the Mendocino 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) Mendocino 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 the county 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 Mendocino 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

²⁶ *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Order, DA 21-302, 2021 WL 960395 (PSSB rel. Mar. 12, 2021) (*Vail, CO 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 (PSSB 2020) (*City of Aliso Viejo, CA Waiver Order*).

²⁷ *Mendocino Letter* at 1.

²⁸ See *supra* n. 20.

²⁹ *Mendocino Letter* at 1-2.

³⁰ 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.

understanding of the function and utility of WEA, the date and time of the test, and an awareness that the WEA alert is just a test;

(4) use of “test” wording as described by the Mendocino Letter will be used in the test message; and

(5) the WEA test is not intended as a substitute for other scheduled WEA tests.

10. We also require that the test and any post-test analysis and reports that Mendocino 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.³¹ We encourage Mendocino 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

11. 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 in Mendocino County, as requested by the Mendocino County’s Sheriff’s Office, on May 26, 2021, or on the backup date of June 2, 2021, 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.

FEDERAL COMMUNICATIONS COMMISSION

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³¹ See 47 U.S.C. § 222.