

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

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| In the Matter of |) | |
| |) | |
| Wireless Emergency Alerts |) | 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: December 21, 2022**Released: December 21, 2022**

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

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (PSHSB) grants the waiver request submitted by the Montana Department of Justice (Montana DOJ), supported by the Montana Broadcasters Association.¹ The Montana DOJ requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers² to participate in a combined live Emergency Alert System (EAS) and end-to-end WEA test, scheduled for January 13, 2023, at 10:00 a.m. Mountain Standard Time (MST).³

2. Based on the circumstances discussed below, we find that waiver of the Commission's rules would serve the public interest. Accordingly, we grant the Montana Department of Justice's waiver request to conduct a combined EAS and end-to-end WEA test using the Child Abduction Emergency event code and AMBER Alert category outlined in 47 CFR § 11.31 and 47 C.F.R. § 10.400,⁴ respectively, subject to certain conditions.

II. BACKGROUND

3. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies.⁵ State and local authorities use the EAS to

¹ See Letter from Jennifer Viets, Montana AMBER Alert Coordinator, Montana Department of Justice, and Dewey Bruce, President/CEO, Montana Broadcasters Association, to Debra Jordan, Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission (Dec. 12, 2022) (on file in PS Docket No. 15-91) (Montana DOJ 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). The WEA rules are set forth in Part 10 of the Commission's rules. See generally 47 CFR § 10.1, *et seq.*

³ Montana DOJ Letter at 2.

⁴ See 47 CFR §§ 10.400(c), 11.31.

⁵ 47 CFR § 11.1, *et seq.* See also *Review of the Emergency Alert System*, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015).

distribute voluntary weather-related and other emergency alerts to the public.⁶ EAS testing at the state and local level increases the proficiency of local emergency personnel, provides insight into the system's functionality and effectiveness at the federal level, and enhances the public's ability to respond to EAS alerts when they occur.⁷ The Commission's EAS rules contain procedures by which EAS Participants must test the system,⁸ and prohibit the unauthorized use of the EAS Attention Signal and codes.⁹ The Commission's rules allow EAS Participants to participate in two Live Code Tests per calendar year, provided that the entity conducting the test takes four specified actions to make as clear as possible that the alert being sent is only a test.¹⁰

4. 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.¹¹ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.¹² 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.¹³ State/Local WEA Tests differ from actual WEAs in the following ways: Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.¹⁴ 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.¹⁵ As of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Test category do not need to request a waiver from the Commission to permit WEA test alerts using the State/Local WEA Test

⁶ 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8. While EAS Participants are required to broadcast Presidential Alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis. *Id.*

⁷ See Communications Security, Reliability and Interoperability Council IV, Working Group Three, Emergency Alert System, State EAS Plans Subcommittee, Final Report at 14 (March 2014), https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3_EAS_Plans_Final_Report_032514.pdf (CSRIC EAS State Plan Report).

⁸ 47 CFR § 11.61.

⁹ 47 CFR §§ 11.45, 11.46.

¹⁰ 47 CFR § 11.61(a)(5) (requiring entities conducting Live Code Tests to notify the public before the test in widely accessible formats that live event codes will be used, but that no emergency is, in fact occurring; states in the test message that the event is only a test; and coordinates the test among EAS Participants, state and local emergency authorities, the relevant state emergency communications committees (SECC), and first responder organizations).

¹¹ *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).

¹² 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).

¹³ 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*).

¹⁴ *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).

¹⁵ *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).

category to be transmitted to the public.¹⁶

5. The Montana DOJ requests waiver of the Commission's rules to allow EAS Participants and Participating CMS Providers to participate in a combined EAS and WEA test on January 13, 2023, at 10:00 a.m. MST.¹⁷ The Montana DOJ's request is supported by the state SECC EAS/IPAWS Committee, a FEMA Integration Team Representative, and the State of Montana DES Communication Coordinator.¹⁸

6. The Montana DOJ Letter indicates that the purpose of this test is to increase outreach, awareness, and recognition of National AMBER Alert Day (January 13) and the 20th anniversary of Montana's AMBER Alert program.¹⁹ According to the Montana DOJ Letter, since 2003, every child who has been the subject of a Montana AMBER Alert has been located, and the last AMBER Alert was issued in November 2021.²⁰ This test will help train newer staff on how to deliver an AMBER Alert and will confirm whether Montana's alerting technology still works effectively.²¹ The Montana DOJ Letter also notes other purposes of this test: verifying the effectiveness of Montana's entire AMBER Alert process; verifying successful alerts processing after major software upgrades were completed by the Montana National Weather Service in Great Falls, Montana; verifying the distribution of alerts in rural Eastern Montana after reports of carrier issues; verifying the distribution of alerts after the expansion of carrier coverage; and confirming the effectiveness of IPAWS solutions after enhancements were made to CodeRED.²²

7. The Montana DOJ Letter further describes the involvement of several resources to conduct the test: the Montana DOJ will develop educational materials for the Montana AMBER Alert program; the Montana DOJ and the Montana Department of Administration will populate the test on its respective websites; the National Weather Service Great Falls will push the test alert to the National Oceanic and Atmospheric Administration (NOAA) Weather radio; the Montana Department of Transportation will publish brief test alert messages on road signs and record the test alert on its 511 phone line; the Montana Lottery will use its satellite system to display the AMBER Alert text message on its kiosks and terminals; and the Montana Broadcasters Association will launch the test alert on TV and radio broadcasts.²³ The test message will read: "THIS IS A TEST OF THE MONTANA AMBER ALERT SYSTEM – THIS IS ONLY A TEST."²⁴

III. DISCUSSION

8. 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."²⁵ 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

¹⁶ *Id.*

¹⁷ Montana DOJ Letter at 1-2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ 47 CFR § 1.3.

the public interest.”²⁶ We conclude that there is good cause to grant the Montana DOJ’s waiver request for the combined EAS and WEA end-to-end test.

9. We are persuaded that it is in the public interest to allow the Montana DOJ to evaluate WEA’s performance and test the effectiveness of Montana’s alerting systems by issuing an AMBER Alert. To date, every child listed in a Montana AMBER Alert has been located.²⁷ This test will help the Montana AMBER Alert program to remain as effective as possible by allowing the Montana DOJ to assess whether recent changes to their alerting systems are working properly and to confirm wireless provider statements that they have addressed wireless coverage issues in the rural eastern part of the state.²⁸ We also agree with the Montana DOJ that this test would promote effective alert processing in the future by giving the Montana DOJ’s newer alert origination staff an opportunity to train in a real-world scenario and to evaluate WEA’s performance firsthand.²⁹ Accordingly, we conclude that this waiver of the Commission’s rules is warranted.

10. No waiver is required to permit the Montana DOJ to conduct their planned EAS test.³⁰ Our rules permit EAS Participants to participate in two of an entity’s Live Code EAS Tests per calendar year, provided that the entity conducting the test meets certain conditions intended to ensure that the public is aware that the Live Code Test is, in fact, only a test.³¹ Montana DOJ’s scheduled EAS test on January 13, 2023 will be the Montana DOJ’s first Live Code EAS Test of the year. The Montana DOJ states that it will use widely accessible formats to notify the public before the test that live event codes will be used, but that no emergency is, in fact occurring.³² The Montana DOJ states in the test message that the event is only a test and has coordinated the test among EAS Participants, state and local emergency authorities, the relevant State Emergency Communications Committees (SECCs), and first responder organizations.³³

11. We observe, however, that the combined EAS and 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. We therefore condition this waiver upon the full implementation of the outreach plan described in the Montana DOJ Letter, including, but not limited to, the publication of the messages in educational materials on official state websites and multi-media public service announcements.

12. We further condition this waiver to require that the test may only be conducted at the time and on the date referenced in the Montana DOJ 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

²⁶ 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)).

²⁷ *Id.*

²⁸ With this Order, the Commission grants a waiver of its rules to allow an authorized alert originator to issue a live test of an AMBER Alert for the first time. WEA AMBER Alerts are credited with 123 successful child recoveries. See National Center for Missing and Exploited Children, AMBER Alerts: Get Help Now, <https://www.missingkids.org/gethelpnow/amber> (last visited Dec. 19, 2022).

²⁹ See Montana DOJ Letter at 1.

³⁰ See 47 CFR § 11.61(a)(5) (“EAS Participants may participate in no more than two (2) “Live Code” EAS Tests per calendar year that are conducted to exercise the EAS and raise public awareness for it . . .”).

³¹ *Id.*

³² Montana DOJ Letter at 1-2.

³³ *Id.*

disseminate emergency messages to the public;

(2) Montana DOJ will coordinate information about the test with relevant Participating CMS Providers and EAS Participants, including first responder organizations such as police and fire agencies and 911 PSAPs, to ensure that they are aware of the test and can confirm to the public that the EAS and WEA messages are a test; and

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

13. We also require that the tests and any post-test analysis and reports the counties choose to 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.³⁴ We encourage the Montana DOJ to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who experience anomalous WEA test performance to report their experience to PSHSB by submitting a brief description of the issue to the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

14. 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 the State of Montana; which test must be conducted subject to the conditions described herein, on January 13, 2023. 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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³⁴ See 47 U.S.C. § 222.