

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

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: August 10, 2022

Released: August 10, 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 (Bureau) grants waiver requests filed by the Sacramento County Office of Emergency Services (Sacramento County OES), the Yolo County, Office of Emergency Services (Yolo County OES), and Placer County Office of Emergency Services (Placer County OES). Each of these counties requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in end-to-end WEA tests as part of a scheduled Operational Area-Wide Everbridge Mass Notification test scheduled for August 25, 2022 at 10:20 a.m. Pacific Standard Time (PST). An alternate test date is scheduled for October 20, 2022 at 10:20 a.m. PST.

2. Based on the unique circumstances presented in the Sacramento County OES, Yolo County OES, and Placer County OES waiver requests, as discussed below, we find that waiver of the Commission's rules would serve the public interest. Accordingly, we grant the Sacramento County OES, Yolo County OES, and Placer County OES waiver requests to conduct end-to-end WEA tests using one of the WEA alert categories outlined in 47 C.F.R. § 10.400, which would be transmitted to all members of

1 See Letter from Mary Jo Flynn-Neveins, Chief, Office of Emergency Services, Sacramento County Office of Emergency Services, to Marlene Dortch, Secretary, Federal Communications Commission (filed July 12, 2022) (on file in PS Docket No. 15-91) (Sacramento County Letter).

2 See Letter from Dana M. Carey, Emergency Services Manager, Yolo County Office of Emergency Services, to Marlene Dortch, Secretary, Federal Communications Commission (filed July 7, 2022) (on file in PS Docket No. 15-91) (Yolo County Letter).

3 See Letter from David Atkinson, PE, Assistant Director, Placer County Office of Emergency Services, to Marlene Dortch, Secretary, Federal Communications Commission (filed August 1, 2022) (on file in PS Docket No. 15-91) (Placer County Letter).

4 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..

5 This alternate test date is scheduled for the 2022 California Great ShakeOut Earthquake Drill being held as part of the 2022 International ShakeOut Day, which is an international earthquake drill held annually on the third Thursday of October. See Great Shakeout Earthquake Drills - Select Your ShakeOut Region, https://www.shakeout.org (last visited Aug. 8, 2022).

the public with WEA-capable devices and who are opted in, by default, to receive WEA messages, for this upcoming test.

II. BACKGROUND

3. 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.⁶ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁷ 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.⁸ 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.⁹ 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.¹⁰ 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 Commission to permit WEA test alerts using the State/Local WEA Test category to be transmitted to the public.¹¹

4. Sacramento County OES, Yolo County OES, and Placer County OES request waivers of the Commission's rules to allow Participating CMS Providers to participate in end-to-end WEA tests that are part of a coordinated live test of each county's Everbridge Mass Notification System platform, which is scheduled for August 25, 2022 at 10:20 am PST.¹²

5. All three counties state that while a coordinated Everbridge Mass Notification System test of each county's Operational Area has been performed annually since 2018, this will be the first time

⁶ *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).

⁷ 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).

⁸ 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*).

⁹ *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).

¹⁰ *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).

¹¹ *Id.*

¹² Yolo County Letter at p. 1; Placer County Letter at p. 1; and Sacramento County Letter at p. 1. In partnership with Atos Public Safety LLC, the Everbridge Platform provides multi-modality alerting infrastructure and serves as the platform for initiating the state's IPAWS communications, including WEA. *See Everbridge Selected to Power California's Public Alert & Warning System, Business Wire* (Oct. 2, 2019), <https://www.businesswire.com/news/home/20191002005253/en/> (last visited Aug. 8, 2022).

a live test of the counties' WEA systems will be part of the annual mass notifications test.¹³ Sacramento County OES, Yolo County OES, and Placer County OES each state in their waiver requests that they have coordinated with the Cal OES Alert and Warning Center, as the state of California will be providing support to each of the counties during the test.¹⁴

6. The intent of the coordinated mass notifications test (including live end-to-end WEA testing) is to assess the readiness and effectiveness of each county's public warning systems, plans and infrastructure, and to raise public awareness about each county's mass notifications systems. The WEA live test will result in each of the three counties sending separate WEA alerts to their Operational Areas. Yolo County indicates that the counties will be measuring the level of overshoot for subscribers located at county borders and measure the extent to which members of the public receive duplicate alerts when the counties activate simultaneous WEA alerts.¹⁵ Yolo County also indicates that the counties will develop an after-action report incorporating all three counties' testing data and is expected to include the level of geotargeting overshoot between the counties.

7. *Sacramento County OES Waiver.* Sacramento County OES states that “[f]or seven months out of the year, wildfires inundate Sacramento County; many of which are in extremely rural, but populated areas. Flooding due to levee breach also threatens Sacramento County, especially in the rural delta (SW region). Much of the delta could be under several feet of water in as short as four hours, severely affecting the limited evacuation routes in that area. Rural parts of the county suffer from limited or non-existent internet access, so timely and reliable notifications are paramount.”¹⁶ Sacramento County states in its waiver request that the “intent of this test is to assess the readiness and effectiveness of our public warning systems, plans and infrastructure, and to raise public awareness about the Operational Area's mass notifications systems.”¹⁷ According to Sacramento County OES, the county and the state of California are continually revising their alert and warning plans, policies, procedures, trainings and equipment and this test will allow both the county and the state to “assess the readiness and effectiveness of their public warning systems, plans and infrastructure, and raise public awareness about the Operational Area's mass notifications systems.”¹⁸

8. Sacramento County OES has developed a comprehensive media campaign targeted at its constituents and surrounding counties that will be launched leading up to the test to ensure public understanding and the value of this scheduled test. In addition, the Sacramento County Public Information Officer will reach out to affected local jurisdictions, local broadcasters and newspapers as part of the media campaign and public outreach. The Sacramento County OES will notify the relevant participating CMS providers within Sacramento County of our testing intent, date, and time.¹⁹

9. Sacramento County OES states that all emergency response agencies that operate within or adjacent to Sacramento County, including first response organization such as Law Enforcement, Fire/EMS agencies, and 911 public safety answering points will be informed of the test to ensure they are aware of the test being conducted so they can confirm to the public that the WEA message is a test.²⁰

¹³ Yolo County Letter at p. 1; Placer County Letter at p. 1; and Sacramento County Letter at p. 1.

¹⁴ *Id.*

¹⁵ Dana M. Carey, Yolo Office of Emergency Services, Email to Tara B. Shostek, Attorney Advisor, Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division (Aug. 8, 2022).

¹⁶ Sacramento County Letter at p. 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Sacramento County Letter at p. 2.

10. Sacramento County OES's test message will read: "TEST message Sacramento County. Go to www.saco.es.saccounty.gov for more info. No other action needed."²¹

11. *Yolo County OES Waiver*. Yolo County OES states that "since 2014 Yolo County has been ravaged by wildfires and floods. The past eight years have seen six Type 1 Fires and two major flooding events. Additionally, the County contains mountain ranges on its western border that make communications challenging and have limited internet capability to residents for years."²² According to Yolo County OES, the county and the state of California are continually revising their alert and warning plans, policies, procedures, trainings and equipment and this test will allow both the county and the state to "assess the readiness and effectiveness of their public warning systems, plans and infrastructure, and raise public awareness about the Operational Area's mass notifications systems."²³

12. Yolo County OES states that it has developed a comprehensive media campaign that is targeted at its constituents and surrounding counties, which will be launched leading up to the test to ensure the public is aware of the test and understands the value of WEA testing. Yolo County OES indicates that the Yolo County Public Information Officer and allied agencies will reach out to affected local jurisdictions, local broadcasters and newspapers as part of the media campaign and public outreach; Yolo County OES will notify the participating CMS providers serving Yolo County of the testing intent, date and time; and key stakeholders through Yolo County and emergency response agencies operating within and adjacent to Yolo County, including law enforcement, Fire/EMS agencies, and 911 public safety answering points will be informed of the test to ensure they are aware of the test and that they confirm to the public that the WEA messages is a test.²⁴

13. Yolo County OES's test message will read: "TEST message Yolo County. Go to www.yolocounty.org/oes for more info. No other action needed."²⁵

14. *Placer County OES Waiver*. Placer County OES states that it "remains at significant risk for wildfires and floods. During the past 12 months, Placer County has experienced a Federally-Declared major disaster due to the River Fire, initiated evacuations due to post-fire debris flows caused by heavy precipitation, and experienced extended power outages. Eastern Placer County is located in the foothills and mountains of the Sierra Nevada range where traditional internet capabilities for residents are limited."²⁶ According to Placer County OES, "the state and county continue to revise their alert and warning plans, policies, procedures, training, and equipment. This test intends to assess the readiness and effectiveness of our public warning systems, plans, and infrastructure; and to raise public awareness about the Operational Area's mass notifications systems."²⁷

15. Placer County OES states that "a comprehensive media campaign targeted at our constituents and surrounding counties has been developed and will be launched leading up to the test to ensure public understanding and the value of this scheduled test. The Placer County Public Information Office and allied agencies will also reach out to affected local jurisdictions, local broadcasters, and newspapers as part of the media campaign and public outreach."²⁸ In addition, "Placer OES will ensure the developed exercise plan is shared with key stakeholders throughout the county. All emergency

²¹ *Id.*

²² Yolo County Letter at p. 1.

²³ *Id.*

²⁴ *Id.* at p 2.

²⁵ Yolo County Letter at p. 1.

²⁶ Placer County Letter at p. 1.

²⁷ *Id.*

²⁸ Placer County Letter at p. 2

response agencies that operate within or adjacent to Placer County, including first response organizations such as Law Enforcement, Fire/EMS agencies, and 911 public safety answering points (PSAPs), will be informed to ensure they are aware of the test and confirm to the public that the WEA message is a test.”²⁹

16. Placer County OES’s test message will read: “TEST message Placer County. Go to ReadyPlacer.org for more information. No other action is needed.”³⁰

III. DISCUSSION

17. 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.”³¹ 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.”³²

18. Based on the circumstances in this case, we find good cause exists to grant waivers in the instant cases. Sacramento County OES, Yolo County OES, and Placer County OES have submitted compelling details supporting their waiver requests. As discussed above, all three counties have experienced wildfires and run the risk of severe flooding. They also include rural areas that make communications challenging with areas that have limited residential internet capabilities.

19. The Commission agrees with Sacramento County OES, Yolo County OES, and Placer County OES that a simultaneous end-to-end WEA test will assist each of the counties and the State of California with assessing the readiness and effectiveness of their public warning systems, plans, and infrastructure, and will raise public awareness about the area’s mass notifications systems. Accordingly, based on the totality of the circumstances, we grant Sacramento County OES’s, Yolo County OES’s, and Placer County OES’s requests to conduct their live end-to-end WEA tests during the planned live test of the counties’ Everbridge Mass Notification System platform scheduled for August 25, 2022 at 10:20 am PST, with an alternate test date of October 20, 2022 at 10:20 am PST.

20. We condition this waiver on each county taking all appropriate steps to promote public awareness of, and participation in, this test, including coordination with relevant state and local emergency authorities and first responder organizations such as Public Safety Answering Points, police, and fire agencies. The proposed 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.³³ We therefore condition this waiver on Sacramento County OES, Yolo County OES, and Placer County OES completing the aforementioned public outreach steps.

21. We further condition this waiver to require that each county’s test may only be conducted at the time and on the date referenced in the Sacramento County Letter, Yolo County Letter, and Placer County Letter, respectively, 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;

²⁹ *Id.*

³⁰ *Id.*

³¹ 47 CFR § 1.3.

³² 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)).

³³ 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.

(2) use of “test” wording as described by the Sacramento County Letter, Yolo County Letter, and Placer County Letter is used in the test message; and

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

22. 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 Sacramento County OES, Yolo County OES, and Placer County OES to report their test results in electronic format to the Bureau.

IV. ORDERING CLAUSE

23. 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 Sacramento County, California, Yolo County, California, and Placer County, California on August 25, 2022 at 10:20 am PST, with an alternate test date of October 20, 2022 at 10:20 am PST, as requested by the Sacramento County Office of Emergency Services, Yolo County, Office of Emergency Services, and the Placer County Office of Emergency Services, which test must be conducted subject to the conditions described herein.

24. 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
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³⁴ See 47 U.S.C. § 222.