

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: November 9, 2023

Released: November 9, 2023

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 the waiver request submitted by the County of Monterey Department of Emergency Management (MCDEM).1 The MCDEM requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers2 to participate in four end-to-end WEA tests received by the public by default, scheduled over three days on November 28, 30, and December 7, 2023, at 10:00 a.m. Pacific Standard Time (PST).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 MCDEM's waiver request to conduct four end-to-end WEA tests using the Public Safety Message alert category outlined in 47 C.F.R. § 10.400,4 which would be transmitted to all members of the public with WEA-capable devices by default, subject to certain conditions.

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.5 The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service

1 See Letter from Justin Lin, Emergency Services Planner, County of Monterey Department of Emergency Management (MCDEM), to Debra Jordan, Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission (Nov. 2, 2023) (on file in Docket Nos. 15-91) (MCDEM 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 MCDEM Letter at 1.

4 See 47 CFR § 10.400(d).

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).

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 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.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 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 category to be transmitted to the public.¹⁰

4. On October 19, 2023, the Commission adopted rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default.¹¹ Under these adopted rules, in advance of conducting such a "WEA Performance and Public Awareness Test," an alerting authority must do the following: 1) conduct outreach and notify the public in advance of the planned WEA test and that no emergency is, in fact, occurring; 2) include in its test message that the alert is "only a test"; 3) coordinate the test among Participating CMS Providers that serve the geographic area targeted by the test, state, local, and Tribal emergency authorities, relevant State Emergency Communications Committees (SECCs), and first responder organizations; and 4) provide notification to the public in widely accessible formats that the test is only a test and is not a warning about an actual emergency.¹² These rules will become effective within 30 days of the *2023 WEA Accessibility Report and Order's* publication in the *Federal Register*.¹³

5. The MCDEM requests waiver of the Commission's rules to allow Participating CMS Providers to participate in the following four end-to-end WEA tests received by the public by default:

- San Ardo on November 28, 2023, 10:00 a.m. PST
- Carmel Valley on November 28, 2023, 10:00 a.m. PST

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.*

¹¹ *See Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket Nos. 15-91 and 15-94, FCC 23-88, at paras. 35-40 (2023) (*2023 WEA R&O*) (adopting rules to allow WEA Performance and Public Awareness Testing).

¹² *Id.* at 21-22, para. 35.

¹³ *Id.* at 25, para. 40.

- Pajaro on November 30, 2023, 10:00 a.m. PST
- City of Monterey on December 7, 2023 10:00 a.m. PST

The above four test sites are geographically unique areas within Monterey County, California, and include varying urban and rural communities, hazard profiles, and demographics.¹⁴ For example, both San Ardo and Carmel Valley are considered rural areas, with populations of 392 and 3,631, respectively. Pajaro and the City of Monterey are considered urban areas, with populations of 4,410 and 29,571, respectively.¹⁵ According to the MCDEM Letter, in Pajaro, approximately 41.7% of residents speak English “very well,” whereas in the City of Monterey, approximately 91.3% of residents speak English “very well.”¹⁶ The MCDEM Letter also suggests that Spanish is spoken by more than 50% of the population in each of the four test sites.

6. The MCDEM Letter indicates that the purpose of these tests is to evaluate the Genasys Emergency Management (GEMS) alert and warning platform,¹⁷ which would replace Monterey County’s existing alert and warning platform.¹⁸ According to the MCDEM Letter, testing WEA at four sites over three days will enable Monterey County to identify the extent of “bleed over” from WEA alerts into neighboring jurisdictions and confirm the GEMS platform’s WEA capabilities across a range of geographies and demographics.¹⁹ The closest distance between two test sites is approximately twelve miles between Carmel Valley and the City of Monterey.²⁰ Further, the MCDEM Letter states use of live WEA tests received by the public by default would allow further reach, greater public input, and better ability to inform the public for the transition to the new alerting and warning platform.²¹ The planned WEA tests are part of a comprehensive plan to test Monterey County’s mass alerting systems, including Reverse 9-1-1 (geolocated contacts) voice, teletypewriter (TTY), short message service (SMS), social media, really simple syndication (RSS) and website pathways, email, and application notifications.²²

7. The MCDEM Letter further describes the involvement of several resources to conduct the test: The County of Monterey Department of Emergency will populate test messages on its website; jurisdictional and cooperating partners will post information about the test on social media before and during the tests; Monterey County’s Public Information Officer (PIO) will support the dissemination of information through traditional media channels, including media briefings, news and press releases, and radio; and Monterey County will collaborate with trusted messengers within communities.²³ The MCDEM states that it is working on a multi-media public service announcement for the test.²⁴

8. The test message will read in English: “THIS IS A TEST of the Alert Monterey County emergency notification system. Please confirm receipt of the test Alert here: alertmry.org/survey. For

¹⁴ MCDEM Letter at 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Genasys, *National Emergency Warning System*, <https://genasys.com/national-emergency-warning-systems/> (last visited Nov. 6, 2023).

¹⁸ MCDEM Letter at 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.* at 1.

²² *Id.*

²³ *Id.* at 3.

²⁴ *Id.*

more information visit: www.readymontereycounty.org”²⁵ The test message will read in Spanish: “ESTA ES UNA PRUEBA del sistema de notificación de emergencias Alert Monterey County. Por favor, confirme que recibió la alerta de prueba respondiendo aquí: alertmry.org/survey. Para más información visite: www.readymontereycounty.org.”²⁶

9. The MCDEM’s request is supported and developed in conjunction with several departments within Monterey County, including the County of Monterey Emergency Communications Department, County of Monterey Chief Public Information Officer, County of Monterey Health Department, County of Monterey Free Libraries, Monterey County Sheriff’s Office, Monterey County Office of Education, Monterey County Regional Fire, North County Fire, City of Monterey City Manager’s Office, Monterey Fire Department, Monterey Police Department, CAL FIRE BEU, California Highway Patrol Central Division, and California Office of Emergency Services.²⁷

III. DISCUSSION

10. 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.”²⁸ 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.”²⁹ We conclude that there is good cause to grant the MCDEM’s waiver request for the four end-to-end WEA tests received by the public by default.

11. We are persuaded it is in the public interest to allow the MCDEM to test WEA’s performance over the County’s variety of geographic and demographic conditions. The four sites cover topographies of hills, mountains, plains, valleys, and coastal lines. MCDEM states that the four test sites were chosen based on recent emergencies that occurred during winter storms: San Ardo was at risk from flooding Salinas River, Carmel Valley experienced flooding from the Carmel River, Pajaro experienced a levee failure and flooding, and the City of Monterey was impacted by the 2022 Tonga Tsunami.³⁰ Monterey County also contains different telecommunications infrastructure over its urban and rural areas, which have a variety of population densities.³¹ We are persuaded that testing these systems will enable the MCDEM to develop a more complete emergency alerting plan, raise awareness about WEA, learn the extent of WEA’s reach, and gain confidence in WEA’s capabilities to warn the public. As the Commission recently observed in adopting rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default, “effective public awareness testing helps the public to understand how to respond to WEAs in the event of an actual emergency.”³²

12. Furthermore, we are persuaded that it is in the public interest to allow the MCDEM to evaluate the feasibility of moving to the Genasys GEMS Alert and Warning platform. We agree with the MCDEM that these tests will help identify the extent of overshoot between areas within a county when

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ 47 CFR § 1.3.

²⁹ 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)).

³⁰ MCDEM Letter at 1.

³¹ MCDEM Letter at 2-3.

³² See 2023 WEA R&O at para. 35, 38.

sending WEA messages.³³ The Commission's rules require Participating CMS Providers to deliver WEA messages to 100% of the target area with no more than 0.1 of a mile overshoot.³⁴ The Bureau recently conducted a performance exercise of the WEA system in which it found significant overshoot in terms of the number of mobile devices outside of the target test area that received the test message.³⁵ The data from the WEA performance exercise show that 10% of respondents (i.e., approximately 477 of 4,786 devices outside the target area) were more than 11.76 miles from the allowable presentation area.³⁶ The closest distance between the MCDEM's test sites is approximately 12 miles, and distances between the other test sites are more than 22 miles.³⁷ Based on the Bureau's previous testing data, we expect the distance between the four test sites will likely minimize the amount of overshoot of the WEA messages, thus mitigating the Bureau's concerns of alerting fatigue. We further believe that learning the extent of overshoot is paramount to developing a comprehensive alert and warning plan. Accordingly, we conclude that this waiver of the Commission's rules is warranted.³⁸

13. We observe, however, that these tests 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 MCDEM Letter, including, but not limited to, the publication of the messages in educational materials on official state websites and multi-media public service announcements.

14. We further condition this waiver to require that the test may only be conducted at the times and on the dates referenced in the MCDEM 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) MCDEM will coordinate information about the test with relevant Participating CMS Providers, 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 WEA messages are a test; and

³³ See MCDEM Letter at 1.

³⁴ 47 CFR § 10.450.

³⁵ See *September 2022 WEA Performance Exercise*, PS Docket Nos. 15-91 and 15-94, 6 (Apr. 24, 2023).

³⁶ See *September 2022 WEA Performance Exercise*, PS Docket Nos. 15-91 and 15-94, 6-7 (Apr. 24, 2023).

³⁷ MCDEM Letter at 2-3.

³⁸ We note that the *2023 WEA Accessibility Report and Order* adopted rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default. In advance of conducting such a "WEA Performance and Public Awareness Test," an alerting authority must do the following: 1) conduct outreach and notify the public in advance of the planned WEA test and that no emergency is, in fact, occurring; 2) include in its test message that the alert is "only a test"; 3) coordinate the test among Participating CMS Providers that serve the geographic area targeted by the test, state, local, and Tribal emergency authorities, relevant State Emergency Communications Committees (SECCs), and first responder organizations; and 4) provide notification to the public in widely accessible formats that the test is only a test and is not a warning about an actual emergency. These rules are not yet effective, and will become effective within 30 days of the *2023 WEA Accessibility Report and Order*'s publication within the *Federal Register*. See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket Nos. 15-91 and 15-94, FCC 23-88, at paras. 35-40 (2023) (adopting rules to allow WEA Performance and Public Awareness Testing).

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

15. 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.³⁹ We encourage the MCDEM 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 the Bureau 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

16. 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 four tests of WEA, as described above, in Monterey County, California; 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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³⁹ See 47 U.S.C. § 222.