

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 3, 2023

Released: August 3, 2023

By the 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 a limited waiver of the Commission's Wireless Emergency Alert (WEA) rules, to permit Participating Commercial Mobile Service (CMS) Providers to participate in a nationwide end-to-end WEA test to be conducted by the Federal Emergency Management Agency (FEMA). This will be the third end-to-end nationwide test of WEA, and will be delivered using the National Alert class of Alert Message. As proposed by FEMA, the test would originate at 2:18 p.m. Eastern Daylight Time (EDT) on Wednesday, October 4, 2023, with a back-up date of Wednesday, October 11, 2023 at the same time, and would involve sending a WEA message to mobile devices throughout the entire United States and United States territories. The WEA test would be conducted in coordination with a nationwide test of the Emergency Alert System (EAS) that would follow two minutes after the WEA test.

2. Based on the special circumstances presented in FEMA's waiver requests, and for the reasons discussed below, we find that waiver of the Commission's rules would serve the public interest.

1 See 47 CFR §§ 10.400, 10.520(d), 10.530(b).

2 Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f). Cf. 47 CFR § 10.350 (Commission's rules requiring Participating CMS Providers to participate in monthly tests initiated by FEMA and in periodic tests of WEA's C-Interface).

3 See Letter from Ward Hagood, Engineering Manager, Testing and Evaluation, IPAWS Program Office, National Continuity Programs, Department of Homeland Security – FEMA, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (Aug. 1, 2023) (on file in PS Docket No. 15-91 et al.) (FEMA Letter).

4 FEMA Letter at 1. See 47 CFR § 10.400(a) ("A National Alert is an alert issued by the President of the United States or the President's authorized designee, or by the Administrator of FEMA. National Alerts may be either nationwide or regional in distribution.")

5 FEMA Letter at 1.

6 Id. at 1-2.

Accordingly, we grant FEMA's waiver request to conduct an end-to-end WEA test using a National Alert.⁷

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.⁸ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁹ 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.¹⁰ Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.¹¹ 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.¹² 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.¹³

4. FEMA requests a limited waiver to use the WEA to send a test message to WEA-capable wireless devices nationwide using the National Alert category rather than the State/Local WEA Test category to determine "if carrier WEA configuration, systems, and networks can and will process a National [Alert class of message] delivering the message via all WEA enabled cell sites with minimal latency."¹⁴ FEMA writes that "[p]ublic safety officials need to be sure that in times of an emergency or disaster, they have methods and systems that will deliver urgent alerts and warnings to the public when needed."¹⁵ FEMA notes that the "IPAWS Modernization Act of 2015 (Public Law 114-143) requires FEMA to conduct nationwide tests of the public alert and warning system."¹⁶ Further, FEMA writes,

⁷ See 47 CFR § 10.400(a). National Alerts must always be presented. See 47 CFR § 10.500(f). Subscribers cannot opt-out of National Alerts.

⁸ *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).

⁹ 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). The Commission recently proposed to "authorize Participating CMS Providers to support up to two end-to-end WEA tests...per alerting authority each year." See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Further Notice of Proposed Rulemaking, FCC 22-30, 2023 WL 3152054, at *13 (Apr. 21, 2023) (*WEA Presentation and Performance NPRM*). This proposal is still under consideration.

¹⁰ 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*).

¹¹ *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).

¹² *Id.*

¹³ *Id.*

¹⁴ FEMA Letter at 1.

¹⁵ *Id.*

¹⁶ *Id.*

“[p]eriodic testing of public alert and warning systems is a way to assess the operational readiness of the infrastructure for distribution of a national message and determine what technological improvements need to be made. The test will also help to assess the effectiveness of WEA message delivery overall.”¹⁷

5. FEMA’s request proposes to use an 87-character WEA test message that would state: “THIS IS A TEST of the National Wireless Emergency Alert System. No action is needed.”¹⁸ FEMA’s request indicates that two minutes after issuing the WEA end-to-end test, it would conduct its seventh nationwide EAS test at 2:20 p.m. EDT on Wednesday October 4, 2023, with a back-up date of Wednesday, October 11, 2023.¹⁹

6. FEMA’s request describes a pre-test outreach and coordination plan, which includes developing multimedia public announcements and assigning roles to stakeholders within their area of operation and expertise.²⁰ FEMA represents that its IPAWS Program Management Office has categorized its test partners into five major functional groups,²¹ and established a timeline to provide each with information on the test and its purpose.²²

7. According to FEMA’s request, it “is planning to conduct a public survey in conjunction with the nationwide test. The survey will help FEMA capture information about the geographic reach of the WEA alert message along with additional key parameters outlined in the IPAWS Modernization Act of 2015 (P.L. 114-143).”²³ FEMA believes the data collected from the survey will help them, the Commission, and public safety officials to “enhance and expand WEA and thus further improve emergency alerting capabilities.”²⁴ FEMA also notes that it “will review any survey of test observation which may be published by states or other organizations.”²⁵

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.”²⁶ 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.”²⁷ Based on its request, we conclude there is good cause to grant FEMA’s request for a limited waiver so that it can conduct the WEA end-to-end test described in its petition.

9. We find that a nationwide test of the WEA’s capability to deliver a message utilizing a National Alert class of Alert Message presents special circumstances that justifies a waiver of the Commission’s rules. We agree with FEMA that it is important to “determine if carrier WEA configuration, systems, and networks can and will process a National [Alert] WEA delivering the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1-2.

²⁰ *Id.*

²¹ FEMA Letter at 2 (stating that the five major functional groups are: “(1) the American people; (2) Federal governance; (3) Federal, State, territorial, tribal, and local alerting authorities, or ‘alerting authorities’ including 911 public safety answering positions; (4) private sector industry; and (5) nonprofit and advocacy organizations”).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 CFR § 1.3.

²⁷ 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)).

message via all WEA enabled cell sites with minimal latency.”²⁸ Ensuring the delivery of a National Alert WEA message serves a primary national public safety policy goal.²⁹ Accordingly, we find that it would serve the public interest to grant FEMA’s request for a one-time waiver to conduct a nationwide end-to-end test of the WEA system’s capability of delivering a National Alert message.

10. There are other compelling reasons for granting FEMA’s waiver request. FEMA’s proposed test will help ensure that WEA can be deployed effectively during any emergency. FEMA’s proposed test also will help educate the public on what WEA alerts are, how they will appear on their mobile device, and how to respond to it. Finally, FEMA’s request to conduct a test of the two systems together mimics what could happen during an actual emergency, where the two systems are likely to be used together.

11. We observe, however, that the 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.³⁰ We therefore condition the grant of this waiver upon FEMA complying with the following conditions:

- The test may only be conducted for the purposes and as otherwise described in the FEMA Letter.
- FEMA must fully implement the outreach and coordination plan described in the FEMA Letter.
- The WEA test must originate at 2:18 p.m. EDT on Wednesday, October 4, 2023, with a back-up date of Wednesday, October 11, 2023 at the same time.

12. We also require that the tests and any post-test analysis and reports that FEMA chooses 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.³¹ We encourage FEMA to file appropriate data, test results, and test reports in PS Docket 15-91.

13. 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), and 10.530(b) of the Commission’s rules, 47 CFR §§ 10.400, 10.520(d), and 10.530(b), of the Commission’s rules, ARE WAIVED, to allow a one-time nationwide end-to-end test of the WEA system, conducted subject to the conditions described herein.

²⁸ FEMA Letter at 1.

²⁹ See IPAWS Modernization Act of 2015, 6 U.S.C. § 321o(a)(1) (The Department of Homeland Security Administrator shall “help ensure that under all conditions the President . . . can alert and warn the civilian population in areas endangered by natural disasters, acts of terrorism, and other man-made disasters or threats to public safety”). See also Executive Order No. 13407, Public Alert and Warning System, Sec. 2(a)(iv), 71 Fed. Reg. 36975 (June 28, 2006) (“It is the policy of the United States . . . to ensure that under all conditions the President can communicate with the American people”).

³⁰ For example, transmitting a WEA test message without first informing emergency responders (e.g., 911 call centers) and the public about the test could predictably result in confusion or panic.

³¹ See 47 U.S.C. § 222.

15. 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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