

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: February 20, 2024

Released: February 20, 2024

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 Huron County (OH) Emergency Management Agency (Huron County).1 Huron County requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers2 to participate in an end-to-end WEA test received by the public by default, scheduled for March 19, 2024, at 12:15 p.m. Eastern Daylight Savings Time (EDT).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 Huron County's waiver request to conduct an end-to-end WEA test using a WEA alert category that is received by the public by default.4 The WEA will be transmitted to all members of the public in Huron County, OH.5

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

1 See Letter Kye Stevens, EMA Administrative Assistant, Huron County Emergency Management Agency, to Federal Communications Commission (Feb. 2, 2024) (on file in Docket Nos. 15-91 and 15-94) (Huron County Letter or 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 Huron County Letter at 1. In order to receive and present the WEA, a device must be WEA-capable, it must be turned on during the time the alert is being sent, it must be connected to a cellular network of a Participating Commercial Mobile Service (CMS) Provider, and the device must not be opted out of receiving the alert classification (Imminent Threat or Public Safety Message) being used to send the test alert. It is likely that mobile devices meeting these preconditions and located nearby in adjacent counties also may receive Huron County's test WEA.

4 See 47 CFR § 10.400 (b) and (d).

5 Huron County Letter at 1. Huron County, OH is located in the northern part of the Buckeye State, west of Cleveland and north of Columbus.

mobile service providers are Participating CMS Providers.⁶ The Commission's current rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁷ The Commission's current 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 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.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 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.¹¹

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.¹² 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.¹³ These rules will become effective within 30 days of the Federal Register's publication of notice that OMB has completed its review of the *2023 WEA Accessibility Report and Order*'s information collection requirements.¹⁴

5. Huron County requests waiver of the Commission's rules to allow Participating CMS Providers to participate in its proposed end-to-end WEA test, which will be received by the public by default. Huron County wants to conduct the WEA test as part of a live IPAWS exercise, which will include sending a test alert message over the Emergency Alert System (EAS), and Non-Weather Emergency Messages (NWEM).¹⁵ The exercise will cover all of Huron County.¹⁶ Huron County notes

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 See 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.

⁸ See 47 CFR § 10.350(c); *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 See *2023 WEA Accessibility Report and Order*, at paras. 35-40.

¹³ *Id.* at 21-22, para. 35.

¹⁴ *Id.* at 25, para. 40; see FEMA IPAWS, IPAWS ADVISORY: FCC Waiver Still Required for Public WEA Tests (Jan. 25, 2024), <https://content.govdelivery.com/accounts/USDHSFEMA/bulletins/38652fa>

¹⁵ Huron County Letter at 1.

¹⁶ *Id.*

that this will provide them with an opportunity to test the Wireless Emergency Notification System (WENS) they purchased from Inspiron Logistics¹⁷ a few years ago.¹⁸ It also will enable them to train newer emergency management officials on how to issue emergency alerts.¹⁹

6. Huron County notes that they have experienced both natural and manmade incidents where WEA could have been used to protect the public. Over the past couple of years, they have experienced several train derailments and over a dozen hazardous-material related incidents. They also have been subject to severe weather. In June 2023, five tornadoes touched down in their county, leaving behind significant damage and severe flooding. This prompted local public safety officials to post warnings on social media. Huron County's Letter indicates that IPAWS, meaning WEA and EAS, could have been useful in those situations.²⁰

7. Huron County also wants to ensure that they can alert the large number of tourists they are expecting for the "Great North American Eclipse," which will take place on April 8, 2024.²¹ The center line of the eclipse, which is the best place to view it, is expected to pass through the middle of Huron County.²² The county, which only has a population of approximately 60,000 people,²³ is anticipating 140,000 to 170,000 tourists to visit to witness this event.²⁴ They believe that testing their emergency alerting capability before the eclipse will give them the confidence that they can deliver emergency alerts if an incident took place when they had so many visitors.²⁵

8. Finally, Huron County is planning to gather public feedback on the test. They intend to post a link to a survey on their social media platform. They also will have other governmental agencies post the survey to their social media.²⁶

9. The Letter also describes the comprehensive media campaign Huron County will undertake to ensure that its constituents, and the people in the surrounding counties, know that the alert is only a test.²⁷ They will issue a press release to all public safety agencies, 9-1-1 call centers, local

¹⁷ See Inspiron Logistics, *IPAWS Integration*, <http://new.wens.us/index.php/capabilities/ipaws/> (last visited Feb. 7, 2024) ("WENS IPAWS Integration allows administrators to easily activate EAS, WEA, NWM and Cog-to-Cog alerts.")

¹⁸ Huron County Letter at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See National Eclipse, *2024 Eclipse Overview*, <https://nationaleclipse.com/overview.html> (last visited Feb. 7, 2024) ("On April 8, 2024, a total solar eclipse, known as the 'Great North American Eclipse,' will carve a narrow path of totality from southwest to northeast across 13 U.S. states. To experience the total phase of the eclipse, you must be located within this narrow path of totality, with the duration of totality lasting the longest at the centerline." *Id.*)

²² Huron County Letter at 1; National Eclipse, *2024 Eclipse Overview*, <https://nationaleclipse.com/overview.html> (last visited Feb. 7, 2024) ("On April 8, 2024, a total solar eclipse, known as the 'Great North American Eclipse,' will carve a narrow path of totality from southwest to northeast across 13 U.S. states. To experience the total phase of the eclipse, you must be located within this narrow path of totality, with the duration of totality lasting the longest at the centerline." *Id.*)

²³ The United States Census Bureau estimated that the population of Huron County, OH, was 58,218 on July 1, 2022. See United States Census Bureau, QuickFacts: Huron County, Ohio, <https://www.census.gov/quickfacts/huroncountyohio> (last visited Feb. 7, 2024)

²⁴ Huron County Letter at 1.

²⁵ *Id.*

²⁶ *Id.* at 2.

²⁷ *Id.* at 1-2.

government leaders, local media, newspaper organizations, as well as radio and television stations.²⁸ Huron County hopes to use social media to educate the public on the importance and benefits of WEA, EAS, and the underlying IPAWS system.²⁹

10. Huron County will send a WEA test message in English that will read as follows: “TEST. This is the Huron County EMA conducting a TEST. No action is required.”³⁰

III. DISCUSSION

11. 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 We conclude that there is good cause to grant the Huron County’s waiver request for the end-to-end WEA tests received by the public by default, as described in its request.

12. We are persuaded it is in the public interest to allow Huron County to conduct a test of its WEA capabilities that reaches the public by default. Such testing will not only provide needed training, it will help Huron County to gain confidence in using its WEA capabilities. It also should reassure Huron County that its alerting system will work even when they have many tourists, such as during the upcoming eclipse. Testing also will raise the public’s awareness of WEA. 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.”³³

13. We recognize, however, the test would not be in the public interest if it is presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public. In reaching our decision, we have taken into consideration the extensive outreach plan that Huron County will implement, as described in its letter, including both public engagement and coordination with other emergency managers and local agencies.

14. We condition this waiver to require that the test may only be conducted at the time and date specified in Huron County’s 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 ensure the readiness and effectiveness of Huron County’s emergency warning system, plans and infrastructure, and the ability of Huron County to disseminate emergency messages to the public;
- (2) Huron County will coordinate information about the test with relevant Participating CMS Providers, including first responder organizations such as police and fire agencies and 9-1-1 call centers, to ensure that they are aware of the test and can confirm to the public that the WEA messages are a test; and

²⁸ *Id.* at 2.

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 See *2023 WEA Accessibility Report and Order* at para. 35, 38.

- (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 Huron County 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.³⁴ We encourage Huron County 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 the test of WEA, as described above, in the geographic areas identified in the Huron County Letter; 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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³⁴ See 47 U.S.C. § 222.