

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: April 24, 2024

Released: April 24, 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 Alert SouthBay, a regional alert and warning program encompassing fifteen cities in the South Bay region of Los Angeles County, California.1 Alert SouthBay 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 May 7, 2024, at 11:30 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 Alert SouthBay's waiver request to conduct an end-to-end WEA test using a WEA alert category that is received by the public by default, i.e., either an Imminent Threat Alert or a Public Safety Message, as outlined in Section 10.400 of the Commission's WEA rules.4 The WEA will be broadcast throughout the Alert SouthBay area, subject to certain conditions.

II. BACKGROUND

3. WEA allows authorized government entities to send geographically-targeted emergency

1 See Letter from Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, to Federal Communications Commission at 1 (Apr. 9, 2024) (on file in Docket Nos. 15-91 and 15-94) (Alert SouthBay April Waiver Request). The fifteen cities in the program are the Cities of Inglewood, El Segundo, Manhattan Beach, Hermosa Beach, Redondo Beach, Torrance, Hawthorne, Gardena, Lomita, Lawndale, Carson, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills, and Rolling Hills Estates. Alert SouthBay April Waiver Request at 1; see also Letter from Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, to Federal Communications Commission at 1 (Jan. 8, 2024) (on file in Docket Nos. 15-91 and 15-94) (Alert SouthBay January Waiver Request).

2 Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. See 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 Alert SouthBay April Waiver Request at 1.

4 See 47 CFR § 10.400 (b), (d).

alerts to commercial wireless subscribers who have WEA-capable mobile devices,⁵ and whose commercial 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 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.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

⁵ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Second Report and Order and Second Order on Reconsideration, 33 FCC Rcd 1320, 1324, para. 6 (2018) (*WEA 2018 Second R&O*) ("We require Participating CMS Providers to deliver Alert Messages to an area that matches the target area specified by alert originators"); see also 47 CFR § 10.450(a).

⁶ See 47 CFR § 10.210 (requiring CMS providers to notify the Commission whether they are electing to transmit WEA Alert Messages).

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). On October 19, 2023, the Commission adopted an order that requires "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." *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Third Report and Order, FCC 23-88, 2023 WL 8543463, at *13, para. 35 (2023) (*2023 WEA Accessibility Report and Order*) (adopting rules to allow WEA Performance and Public Awareness Testing). This rule, however, has not yet become effective. See *2023 WEA Accessibility Report and Order*, at *15, *25, paras. 40, 74.

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 See *2023 WEA Accessibility Report and Order*, at *13-*15, paras. 35-40.

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. Alert SouthBay requests waiver of the Commission’s rules to allow Participating CMS Providers to participate in a proposed end-to-end WEA test, which will be received by the public by default. The geographic area in which the test will take place is located along the southern California coastline and surrounded by five oil refineries.¹⁵ According to Alert SouthBay, significant land movement in this area has necessitated the evacuation of 20 homes, with another 300 homes are in areas that could warrant evacuation at any time.¹⁶

6. Earlier this year, on January 9, 2024, Alert SouthBay conducted a regional WEA test in this same area.¹⁷ In doing so, however, they discovered a number of shortcomings. The purpose of this second regional test is to understand the causes of these shortcomings.¹⁸ These shortcomings included “difficulties in disseminating alerts to all cellular devices, challenges with hyperlink functionality, and cellular carriers’ failure to push the alert to devices.”¹⁹ According to Alert SouthBay, “The failure of the cellular carriers to transmit the alert to devices highlights the crucial need for a [second] live WEA test.”²⁰

7. The Alert SouthBay April Waiver Request describes the community outreach it is doing. They have prepared a press release about the test for distribution forthcoming city council meetings; disseminated details on their social media page, as well as with each city’s social media pages; and, they will circulate information to various stakeholders, including participating cities, local law enforcement, and fire departments, the Los Angeles County Office of Emergency Management, as well as other regional and county entities.²¹ Alert SouthBay also represents that local papers will provide featured coverage of the test.²² They also will alert their community subscribers, including NIXLE customers, to provide additional details about the upcoming test.²³

8. Alert SouthBay will send a 360- and 90-character length WEA test message, in both English and Spanish.²⁴ All four versions of the alert will indicate that the alert is from Alert SouthBay, that the message is only a test, that no further action is needed, and will include a hyperlink.²⁵

¹³ *Id.* at *13, para. 35.

¹⁴ *Id.* at *15, para. 40.

¹⁵ Alert SouthBay April Waiver Request at 1.

¹⁶ *Id.* at 1-2.

¹⁷ See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Order, DA 24-21, 2024 WL 124226 (PSHSB Jan. 9, 2024) (*Alert SouthBay January Waiver Grant Order*).

¹⁸ Alert SouthBay April Waiver Request at 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.*

²⁴ Phone conversation between Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, and David Kirschner, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission (Apr. 23, 2024) (Sutherlin/Kirschner Call).

²⁵ Sutherlin/Kirschner Call.

III. DISCUSSION

9. 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 We conclude that there is good cause to grant Alert SouthBay's waiver request to conduct a second end-to-end WEA test received by the public by default, as described in its request.

10. We are persuaded it is in the public interest to allow Alert SouthBay to conduct a second test of WEA's performance in the communities it serves. It is in the public interest for Alert SouthBay to determine if the shortcomings it witnessed during its first WEA test on January 9, 2024, were anomalous, due to errors/issues that have been resolved, or are reflective of WEA performance in its area. It is in the public interest for Alert SouthBay to understand how WEA performs over the variety of geographic and demographic conditions in its area, especially considering the land movement that occur in parts of the areas it serves. We are persuaded that testing WEA in the Alert SouthBay area will help Alert SouthBay to achieve its goals of accurately evaluating WEA performance issues and determining appropriate solutions.²⁸ Doing so is consistent with the Commission's recent determination that Participating CMS Providers support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default.²⁹

11. 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 Alert SouthBay has implemented, as described in the Alert SouthBay April Waiver Request, including both public engagement and coordination with other emergency managers and local agencies.

12. We condition this waiver to require that the test may only be conducted at the time and date specified in the Alert SouthBay April Waiver Request and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

- (1) this regional test is necessary to ensure that WEA continues to be an effective way to warn the public about regional emergencies;
- (2) Alert SouthBay will coordinate information about the test with relevant Participating CMS Providers, as well as first responder organizations such as police and fire agencies and 911 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
- (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 SouthBay 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.³⁰ We encourage Alert SouthBay 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

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)).

²⁸ Alert SouthBay April Waiver Request at 1.

²⁹ See *2023 WEA Accessibility Report and Order* at *13, para. 35.

³⁰ See 47 U.S.C. § 222.

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 the test of WEA, as described above, in the geographic areas identified in the Alert SouthBay April Waiver Request; 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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