

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
APPROVING IN PART, DISSENTING IN PART**

Re: Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, PS Docket No. 15-94; Wireless Emergency Alerts, PS Docket No. 15-91.

The Emergency Alert System (EAS) serves many important purposes. First and foremost, it is the method for the President to communicate with Americans during a time of crisis, which, luckily, has never needed to be used. EAS also serves as a means for local government agencies to inform communities of hazards, especially potential catastrophic weather events, as well as AMBER alerts. Basically, if you hear those specific, catchy tones, you should know it is serious.

Generally, I can support the item's authorization of conducting live code tests to ensure that the system works. At the same time, however, the code should be used sparingly so that people take it seriously when there is an actual emergency. I am pleased that today's item incorporates my suggestion to limit the number of live code tests. An alert originator may conduct no more than two per year, and the item states that it is the Commission's intention that a particular area should not receive any more than two live code tests per year. Such limitations should ensure that people do not disregard these alerts. If people come to expect that when those alert signals go off they may not be real, there is a very high likelihood that they will ignore potentially life-saving information.

For this reason and others, I oppose using simulated EAS tones for public service announcements (PSAs). It is one thing to test the system, albeit infrequently, but it is quite another to allow these sacrosanct tones to be used for PSAs. Americans should not fear that they are in imminent danger just to realize it's an announcement intended to inform them that the loud, screeching sound is what they will hear if truly in harm's way. Talk about creating an environment where people are likely to grow to ignore real warnings. We've been told that this will only codify waivers we have been giving for years to the Department of Homeland Security (DHS) to conduct such PSAs. But, somehow after years and years, we need to give blanket authority to do PSAs without any limitations? I dissented to the adoption of similar rules for Wireless Emergency Alerts in 2016 and still disagree with its inclusion today. Therefore, I dissent to this one portion of the item.

Additionally, if you want Americans to trust and pay attention to these signals, they must be confident that they convey accurate information. Erroneous alerts about incoming missiles, tsunamis, and other misinformation are frightening, inexcusable, and must stop. However, when it comes to the content of an EAS or wireless emergency alert (WEA) message, Federal Emergency Management Agency (FEMA) is the expert agency, as designated by Congress. The role of the Commission is to ensure that the alerts get passed through communications networks to consumers.

I am generally concerned that we are overstepping our bounds into territory provided to DHS and FEMA. Today's order now adopts new mandates that require communications providers that have actual knowledge that a false EAS alert was issued to contact the FCC Operations Center. But, the near-catastrophic mistake in Hawaii was the fault of a delusional individual, who still thought he did the right thing days later and was eventually terminated from employment. That incident does not justify new burdens on the private sector that did nothing wrong. At least my suggestion that the standard be based on actual knowledge was accepted. But, private sector entities that pass through these messages should not bear the burden or responsibility of having to determine whether a message they did not originate is, in fact, accurate and report to the Commission if it is not.

Similarly, the notice portion of the item contains a proposal requiring states and localities to add information about their procedures to prevent and mitigate false alerts in their State EAS Plans and seeks comment on what procedures should be detailed in these descriptions. In the IPAWS Modernization Act of 2015, Congress specifically gave FEMA the authority to “modernize” the integrated public alert and warning system “to disseminate timely and effective warnings regarding natural disasters, acts of terrorism, and other man-made disasters or threats to public safety.”¹ And, the law clearly states that FEMA shall, among others, “establish or adopt, as appropriate, common alerting and warning protocols, standards, terminology, and operating procedures for the public alert and warning system.”² Pursuant to this Act, FEMA should be determining what types of procedures should be in place when a false alert is issued and what information should be reported to the government, not the FCC.

I find it necessary to reiterate that WEA is a voluntary program, albeit a truly involuntary voluntary program, since I do not see a way for a mobile provider to say that it no longer wants to participate without getting dragged through the mud. And yet, the Commission seems to be engaging in never-ending proceedings that seek to add burdens before others are even effective. And, we have a sizable list of items that are still outstanding, including multimedia alerts, crowd-sourcing feedback on the effectiveness of the alert and emergency response, WEA notices to tablets, earthquake alerts, non-Spanish multi-language alerts, and even more reporting requirements.

Consider that the Commission just adopted geo-targeting for WEA alerts in January. Today, prior to the conclusion of the standards process and its implementation, which is scheduled to be completed by November 30, 2019, we consider, yet again, measures to increase the reliability of WEA delivery and the possible adoption of technical standards for WEA performance and delivery. It is not irrational to first see what benefits geo-targeting technologies bring. And, once again, we ask about whether crowd-sourced information should be collected to find trends in who is and is not receiving them, with no consideration of whether such feedback being provided is accurate or causes network congestion.

I thank the Chairman for incorporating some of my edits as discussed above and others, such as acknowledging that cable operators passing through a live code test using the old broadcast daisy chain only have the technical ability to add “this is a test” to the audio message and not to the text crawl. Cable operators should not be required to do something that a legacy system cannot do, so by adding that this requirement applies only if “technically feasible” is justified, as the remaining entities migrate to IPAWs.

¹ Integrated Public Alert and Warning System Modernization Act of 2015 § 2(a), 6 U.S.C. § 3210(a).

² *Id.*, 6 U.S.C. at §3210(b)(1).