

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Improving Wireless Emergency Alerts and
Community-Initiated Alerting
Amendments to Part 11 of the Commission's
Rules Regarding the Emergency Alert System
PS Docket No. 15-91
PS Docket No. 15-94

ORDER

Adopted: May 18, 2018

Released: May 18, 2018

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (Commission) grants a limited waiver of the Commission's Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) rules to permit EAS Participants and Participating Commercial Mobile Service (CMS) Providers to participate in a test to be conducted by the State of Minnesota, Department of Public Safety, Emergency Communication Networks (DPS-ECN). This test will be a combined live EAS and end-to-end WEA test, conducted between 6:30 and 7:00 PM (CDT) on Wednesday, June 18, 2018, with a backup date of Tuesday, June 19, 2018. For the reasons discussed below, we grant the DPS-ECN request, subject to certain conditions.

II. BACKGROUND

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies. The primary purpose of the EAS is to provide the President of the United States (President) with "the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency." State and local authorities also use the EAS to distribute voluntary

1 The Commission's rules define EAS Participants as broadcast stations, cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. 47 CFR § 11.11(a).

2 Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f).

3 See Letter from Dana Wahlberg, Director, State of Minnesota, Department of Public Safety, Emergency Communication Networks, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Apr. 16, 2018) (on file in PS 15-91) (April 16 DPS-ECN Letter).

4 See 47 CFR § 11 et seq. See also Review of the Emergency Alert System, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015) (Sixth Report and Order).

5 47 CFR § 11.1. See Review of the Emergency Alert System, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18628, para. 8 (2005) (First Report and Order). The FCC, the Federal Emergency Management Agency (FEMA), and the National Weather Service (NWS) implement

(continued...)

weather-related and other emergency alerts to the public.⁶ EAS testing at the state and local level increases the proficiency of local emergency personnel, provides insight into the system's functionality and effectiveness at the federal level, and enhances the public's ability to respond to EAS alerts when they occur.⁷ The Commission's EAS rules contain procedures by which EAS Participants must test the system,⁸ and prohibit the unauthorized use of the EAS Attention Signal and codes.⁹

3. The WEA system allows authorized government authorities to send geographically targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial wireless service providers are Participating CMS Providers.¹⁰ The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.¹¹ Additionally, the Commission's rules allow testing of WEA functionality only in limited circumstances that currently do not include end-to-end WEA tests to the public.¹² On November 1, 2016, the Commission adopted a *Report and Order* that amends 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.¹³ The rules allowing such tests will not be effective until May 1, 2019.¹⁴

4. The April 16 DPS-ECN Letter requests a waiver of the Commission's rules to allow Participating CMS Providers and EAS Participants to participate in a "live code" EAS test using the Civil Danger Warning (CDW) event code in Stevens County, with participation from the surrounding counties of Big Stone, Douglas, Grant, Kandiyohi, Stearns, Swift, Pope, and Traverse, and a related test of WEA directed only to the city of Morris, Minnesota.¹⁵ According to the DPS-ECN, recent events in Hawaii demonstrate that it is essential that the public be familiar with WEA and EAS and that emergency

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the EAS at the federal level. *See* Presidential Communications with the General Public During Periods of National Emergency, The White House (September 15, 1995).

⁶ While EAS Participants are required to broadcast Presidential Alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis. *See* 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8.

⁷ *See* Communications Security, Reliability and Interoperability Council IV, Working Group Three, Emergency Alert System, State EAS Plans Subcommittee, Final Report at 14 (March 2014), https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3_EAS_Plans_Final_Report_032514.pdf (CSRIC EAS State Plan Report).

⁸ *See* 47 CFR §11.61.

⁹ *See* 47 CFR §§ 11.45, 11.46.

¹⁰ *See 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).

¹¹ 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).

¹² 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 (FEMA) and in periodic tests of WEA's C-Interface. *Id.*

¹³ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 31 FCC Rcd 11112, 11154-11157, paras. 65-68 (2016).

¹⁴ *Id.* at 11161, 11165, paras 79, 85 (deadline for state and local testing is 30 months of the rule's publication in the Federal Register); FCC, *Wireless Emergency Alerts; Amendments to Rules Regarding the Emergency Alert System*, 81 FR 75710 (Nov. 1, 2016) (Federal Register Publication).

¹⁵ April 16 DPS-ECN Letter at 1-2.

managers be proficient in the use of the systems and with the decision-making processes that need to be made before initiation of an actual alert is necessary.¹⁶ The DPS-ECN believes that the test is necessary to build on its existing training, and would form a template and best practice for future testing and use of WEA and the EAS.¹⁷ The April 16 DPS-ECN Letter also indicates that the purpose of the proposed test is to ensure that the WEA and EAS systems will work during an emergency.¹⁸ The proposed WEA test message will be, “This is a test of Stevens County Wireless Emergency Alerts. No action is required.”¹⁹ The proposed EAS test message will be, “This is a test of the Stevens County Emergency Alert System. If there had been an actual emergency, further instructions would have followed, this is only a test. No action is required.”²⁰

5. The April 16 DPS-ECN Letter describes an extensive pre-test outreach and coordination plan, including a multi-media public announcement and marketing plan with Stevens County Emergency Management to ensure public understanding that the event is a test.²¹ This plan will be shared with public information officers in all affected jurisdictions, and will be distributed to traditional and social media outlets. Finally, the DPS-ECN commits to coordinating with local wireless providers and EAS Participants, as well as with emergency authorities that operate within Stevens County, including first responder organizations such as police and fire agencies and 911 public safety answering points (PSAPs), to ensure that they are aware of the test and can confirm to the public that the EAS and WEA messages are a test. The DPS-ECN also commits to providing the Commission with a detailed account of any problems that occur in the distribution of the WEA and EAS tests.²²

III. DISCUSSION

6. 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.”²³ 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.”²⁴ We conclude that there is good cause to grant the DPS-ECN waiver request for the combined EAS and WEA test.

7. We are persuaded by the DPS-ECN that the proposed test of the EAS and WEA will help ensure that its personnel is sufficiently well trained in how to use the EAS and WEA so that they can initiate an actual alert effectively when necessary. We agree, particularly in this instance, where we are being presented with a request to conduct simultaneous tests of both the EAS and WEA. We believe that a coordinated and combined test of the two systems is a likely reflection of what would occur in an actual emergency, i.e., that both WEA and the EAS would be used. We are persuaded that the proposed test for WEA has value now, as opposed to after May 2019, because it would help ensure that WEA and the EAS can be effectively deployed in a coordinated manner during an emergency, and would provide alert

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Letter from Dana Wahlberg, Director, State of Minnesota, Department of Public Safety, Emergency Communication Networks, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau Federal Communications Commission, (filed May 15, 2018) (on file in PS 15-91) (May 15 DPS-ECN Letter), at 2.

²⁰ April 16 DPS-ECN Letter at 2.

²¹ *Id.* at 2-3.

²² *Id.*

²³ 47 CFR § 1.3.

²⁴ 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)).

initiators and emergency managers valuable information on how the two systems can be used together to communicate to the public. Accordingly, we conclude that limited waivers of the Commission's EAS and WEA rules are warranted and in the public interest to test the EAS in Stevens County, with participation from the surrounding counties of Big Stone, Douglas, Grant, Kandiyohi, Stearns, Swift, Pope, and Traverse, and WEA in the city of Morris, Minnesota.²⁵

8. We observe, however, that the combined EAS and WEA test would not be in the public interest, if it was presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or otherwise confused the public.²⁶ We therefore condition this waiver upon appropriate pre-test outreach to notify emergency personnel and the public that the EAS and WEA messages are, in fact, a test, including the time and date at which the test is scheduled. Specifically, we condition the waiver on the full implementation of the outreach plan described in the April 16 DPS-ECN Letter, including outreach to the public, press, and relevant government agencies, making clear that members of the public may receive multiple test messages.

9. We further condition this waiver to require that the test may only be conducted between 6:30 PM and 7 PM on June 18, 2018, with a backup date of June 19, 2018, as referenced in the April 16 DPS-ECN Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) this test is necessary to ensure that the EAS and WEA will work during an emergency within the area identified in the April 16 DPS-ECN Letter;
- (2) DPS-ECN will coordinate information about the test with Participating CMS Providers and EAS Participants that operate within Stevens County and the surrounding counties of Big Stone, Douglas, Grant, Kandiyohi, Stearns, Swift, Pope, and Traverse, as well as the city of Morris, Minnesota, including first responder organizations such as police and fire agencies and 911 public safety answering points, to ensure that they are aware of the test and can confirm to the public that the EAS and WEA messages are a test;
- (3) pre-test publicity efforts, including a multi-media public announcement advertisement and marketing plan for the proposed upcoming Stevens County test, will be shared with the Public Information Officers in all affected jurisdictions for distribution to all surrounding county media outlets, including newspapers, radio and television and cable outlets, and posting on social media;
- (4) use of "test" wording as described by the April 16 DPS-ECN Letter will be used throughout the warning; and
- (5) this test will not substitute for other scheduled tests of EAS or WEA.

10. We also require that the test and any post-test analysis and reports that DPS-ECN may conduct or cause to be produced are done in a manner consistent with customers' expectation of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the EAS and WEA system and infrastructure.²⁷ We encourage DPS-ECN to report test results in electronic format to

²⁵ These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal, the EAS codes, and/or the EAS Attention Signal.

²⁶ For example, transmitting a WEA test message without first informing emergency responders (e.g., 9-1-1 call centers) and the public about the test could predictably result in confusion or panic.

²⁷ See 47 U.S.C. § 222.

the Bureau. Finally, we encourage members of the public that wish to report their results to do so by filing them with the FCC's Public Safety Support Center (PSSC) at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

11. 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), 11.31, 11.45, and 11.61 of the Commission's rules, 47 CFR §§10.400, 10.520(d), 10.530(b), 11.31, 11.45, and 11.61 of the Commission's rules, **ARE WAIVED**, to allow a one-time test of the EAS in Stevens County, with participation from the surrounding counties of Big Stone, Douglas, Grant, Kandiyohi, Stearns, Swift, Pope, and Traverse; and a WEA test directed to cell phones in the city of Morris, Minnesota, which combined test must be conducted subject to the conditions described herein, between 6:30 PM and 7:00 PM on June 18, 2018, with a backup date of June 19, 2018. 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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