

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

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

ORDER

Adopted: August 28, 2019

Released: August 28, 2019

By the Deputy 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 Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers¹ to participate in an end-to-end WEA test that the Santa Clara County Fire Department (Santa Clara) proposes to conduct on August 30, 2019, at 10:00 a.m. Pacific Time (PT) within a targeted area of Santa Clara County, California.² For the reasons discussed below, we grant the Santa Clara request, subject to certain conditions.

II. BACKGROUND

2. The WEA system allows authorized government entities 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.³ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain

¹ Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f).

² See Letter from Suwanna Kerdkaew, Deputy Chief, Administration and Planning, Santa Clara County Fire Department, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Aug. 23, 2019) (on file in PS Docket No. 15-91), *as amended by* Letter from Suwanna Kerdkaew, Deputy Chief, Administration and Planning, Santa Clara County Fire Department, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Aug. 27, 2019) (on file in PS Docket No. 15-91) (Santa Clara Amended Letter). Santa Clara has not scheduled a backup date for their requested end-to-end WEA test and will cancel the test if local or regional emergencies arise. Santa Clara Amended Letter at 1.

³ *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).

public service announcements.⁴ 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.⁵ 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.⁶ The rules allowing such State/Local WEA Tests became effective on May 1, 2019,⁷ but the Department of Homeland Security's Federal Emergency Management Agency (FEMA), which administers the Integrated Public Alert and Warning System (IPAWS) infrastructure through which all alerts are authenticated, validated, and delivered to Participating CMS Providers, has informed the Bureau that IPAWS will not be ready to support additional features, including State/Local WEA Tests, pending further necessary technical changes to IPAWS.⁸ Accordingly, alert originators wishing to conduct end-to-end WEA tests prior to IPAWS's readiness to support State/Local WEA Tests must continue to request a waiver to use existing WEA message classifications to permit the alerts to be transmitted to the public.

3. The Santa Clara Amended Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on Friday, August 30, 2019, at 10:00 a.m. PT.⁹ The proposed WEA test would accompany an "opt-in" test of subscribers to the Santa Clara County AlertSCC emergency notification system.¹⁰ Santa Clara states in its letter that a significant portion of Santa Clara County is considered a Wildland Urban Interface area, which is susceptible to an elevated threat of wildfires, and "there is a great likelihood that this system will be used in the future to communicate evacuation orders in the event of a wildfire."¹¹ As the overseeing entity for the Santa Clara County Office of Emergency Management (OEM) and the Santa Clara County Communications dispatch center, Santa Clara is responsible for the public alert and warning during incidents that occur within its service area.¹² Therefore, according to the Santa Clara Amended Letter, "[t]he purpose of this test is to ensure that the WEA system will work during such emergencies, and that the public is aware of the methods by which they will receive alerts."¹³ Furthermore, the Santa Clara Amended Letter states that

⁴ 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).

⁵ 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.*

⁶ *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, 11154-11157, paras. 65-68 (2016).

⁷ *Id.* at 11161, 11165, paras. 79, 85 (stating that the deadline for state and local testing is 30 months after the rule's publication in the Federal Register); *Federal Communications Commission, Wireless Emergency Alerts, Amendments to Rules Regarding the Emergency Alert System*, 81 Fed. Reg. 75710 (Nov. 1, 2016) (establishing the date of Federal Register publication).

⁸ *See Public Safety & Homeland Security Bureau Announces Delay in Availability of Certain Improvements to Wireless Emergency Alerts*, Public Notice, DA 19-534 (PSHSB June 7, 2019); *Advisory Regarding May 1 Deadline for Improvements to Wireless Emergency Alerts and Guidance for State/Local Alert Originators*, Public Notice, DA 19-358, at 2 (PSHSB Apr. 30, 2019).

⁹ Santa Clara Amended Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Santa Clara outreach efforts have focused on wildfire preparedness and safety, as it is currently the height of fire season, and the WEA test will therefore serve as a “call to action” for wildfire preparedness for county residents.¹⁴

4. The proposed WEA test will be conducted only within a targeted area of the Santa Clara service area in Santa Clara County, California.¹⁵ The proposed WEA test message to be delivered to mobile devices would be: “This is a TEST. Have a fire safe weekend. Find wildfire prep info at sccfd.org/rsg.”¹⁶ Prior to the live test, Santa Clara staff will conduct a similar WEA test within the IPAWS Lab to ensure that staff members can accurately send the test message from the dispatch center.¹⁷

5. The Santa Clara Amended Letter outlines a multimedia public outreach plan to inform residents and other county stakeholders about the test.¹⁸ According to the Santa Clara Amended Letter, in advance of the test, Santa Clara has developed outreach materials, such as test-specific graphics, messages, and videos, and conducted “considerable public outreach through the Santa Clara County Fire Department website (www.sccfd.org/rsg), via social media and neighborhood platforms, and directly with media.”¹⁹ The Santa Clara Amended Letter notes that messaging informs the public that while the WEA message will be distributed to a focused area, it is possible that some in the areas adjacent to the designated test area may also receive the message and that some may receive duplicate messages.²⁰ Additionally, the Santa Clara Amended Letter states that Santa Clara is working with personnel at its dispatch center and the Santa Clara County OEM “to ensure the message is scripted, mapped and sent as planned.”²¹ According to the Santa Clara Amended Letter, Santa Clara has notified and coordinated outreach with local stakeholders, including local government entities, local and neighboring Public Safety Answering Points (PSAPs), neighboring first responder departments, hospitals, school districts, and local employers.²² The Santa Clara Amended Letter also states that nationwide Participating CMS Providers that serve the testing area have been contacted with details of the test.²³ Lastly, the Santa Clara Amended Letter notes that any data generated from the exercise will assist Santa Clara with program improvement and to gauge for the effectiveness of public emergency preparedness campaigns.²⁴

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.”²⁵ 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

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* The proposed message is 83 characters.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 1-2.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1-2.

²¹ *Id.* at 1.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Id.*

²⁵ 47 CFR § 1.3.

the public interest.”²⁶ We conclude that there is good cause to grant the Santa Clara waiver request for the WEA end-to-end test.

7. In light of the elevated threat of wildfires in a significant portion of the Santa Clara service area within Santa Clara County, we are persuaded by the statements in the Santa Clara Amended Letter that the proposed test will help to educate the public about WEA and wildfire preparedness, as well as improve the proficiency of local emergency management officials in sending WEA messages to the public.²⁷ We also find persuasive the fact that the WEA test will accompany other wildfire preparedness and safety outreach efforts and will serve as a “call to action” for residents to prepare for wildfires during the height of the wildfire season.²⁸ Accordingly, rather than wait until IPAWS is ready to support State/Local WEA Tests, we believe the proposed test would provide alert initiators and emergency managers information and preparedness training of immediate value, and so conclude that it is in the public interest to grant a limited waiver of the Commission’s WEA rules to test in the targeted area within Santa Clara County.²⁹

8. We observe, however, that the proposed Santa Clara 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 Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the Santa Clara Amended Letter, including outreach to the public, press, and relevant government agencies, and 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 on August 30, 2019, at 10:00 a.m. PT, as referenced in the Santa Clara Amended 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 that emergency management officials in the Santa Clara have a clear understanding of how alerts would perform in their service area, and the public becomes familiar with the format of WEA messaging;
- (2) Santa Clara will coordinate with the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs within Santa Clara County and surrounding jurisdictions to ensure that they are aware of the test and can confirm to the public that the WEA message is a test;
- (3) pre-test publicity efforts will include a comprehensive multimedia campaign to ensure public understanding of the function and utility of WEA, the date and time of the test, and clear notification that the WEA alert will be just a test;

²⁶ 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)).

²⁷ Santa Clara Amended Letter at 1.

²⁸ *Id.*

²⁹ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

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

(4) use of “test” wording as described by the Santa Clara Amended Letter will be used in the test message; and

(5) the WEA test is not intended as a substitute for other scheduled WEA tests.

10. We note that the Santa Clara request required expedited review due to the lateness of the submission. We remind Santa Clara and other entities seeking a waiver to conduct an end-to-end test of WEA of the importance of filing waiver requests well in advance of the proposed test date to ensure sufficient time for consideration of the request, stakeholder coordination, and public outreach.

11. We also require that the test and any post-test analysis and reports that Santa Clara may 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 Santa Clara to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to share feedback on their experience with the test to do so by filing them with the FCC’s Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

12. 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 a one-time test of the WEA in a targeted area within Santa Clara County, California, on August 30, 2019, at 10:00 a.m. PT, 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

David Furth
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³¹ See 47 U.S.C. § 222.