



November 13, 2017

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Ex Parte Presentation, *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, PS Docket No. 15-91.**

Dear Ms. Dortch,

On November 8, 2017, CTIA and its member companies met with the Office of the Chairman, the Public Safety and Homeland Security Bureau, and the Office of the General Counsel to discuss the above-referenced proceeding. A complete list of meeting attendees is attached.

In this meeting, CTIA reiterated the wireless industry's commitment to the voluntary Wireless Emergency Alert (WEA) system and highlighted the many benefits that consumers and public safety have received from WEA alerts. Today, over 99% of consumers are served by a wireless provider who voluntarily participates in WEA, and millions of wireless handsets are available with WEA functionality.<sup>1</sup> WEAs were used extensively throughout the most recent Hurricane season, including 327 WEA messages sent in Texas, 222 WEA messages sent in Florida, 21 WEA messages sent in Puerto Rico and 7 WEA messages sent in the U.S. Virgin Islands.<sup>2</sup> CTIA appreciates the extensive collaboration among federal, state and local agencies, including the Commission, the Federal Emergency Management Agency and local alert originators, and wireless

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<sup>1</sup> *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, Order on Reconsideration, FCC 17-143, n.28 (rel. Nov. 1, 2017) (WEA Order on Reconsideration) ("We note that, combined, the four nationwide wireless service providers (Verizon, AT&T, T-Mobile and Sprint) and the fifth largest wireless service provider (U.S. Cellular) account for over 416 million subscribers, or over 99 percent of the nationwide total.")

<sup>2</sup> Letter from FCC Chairman Ajit Pai to U.S. Senators Kamala Harris and Dianne Feinstein, Nov. 3, 2017.



providers to inform the public about the imminent and, in some cases, on-going threats posed by these unprecedented events.

During the meeting, CTIA also discussed the most recent Order on Reconsideration issued by the Commission and the new interpretation adopted in this decision concerning the definition of “WEA capable” devices. Specifically, in denying CTIA’s petition, the Commission acknowledged the commitments by the five largest participating CMS providers to support embedded references “on smartphones capable of processing them” by the Nov. 1, 2017 deadline.<sup>3</sup> However, the Commission went further to state that “[m]obile devices that support neither embedded references nor the software updates that would provide such capability will not be considered WEA capable,”<sup>4</sup> an interpretation not provided when the Commission adopted or initially proposed the rule.

From a practical perspective, the net effect of the Commission’s new interpretation will cause many mobile devices capable of receiving WEA messages to alternate between being considered “WEA capable” depending on the deadline of the Commission’s required WEA enhancements, a device’s ability to be updated through software, and whether consumers choose to exercise the software update. CTIA emphasized that the Commission’s new interpretation risks extensive consumer and public safety community confusion, and unnecessarily complicates CMS providers’ efforts to inform consumers about WEA capable devices in a nearly continuous fashion. Further, CMS providers currently have limited visibility into whether mobile devices are or could be “WEA capable” under this interpretation.

From a legal perspective, CTIA asserts that the Commission’s new interpretation of “WEA capable” mobile devices is inconsistent with the WARN Act, which characterizes a “non-compliant” or “non-capable” device as one that cannot receive

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<sup>3</sup> WEA Order on Reconsideration ¶ 9.

<sup>4</sup> *Id.*



a WEA *at all*.<sup>5</sup> Also, the Commission has always used the term “WEA capable” or “WEA compliant” in relation to its rules for device capabilities at 47 C.F.R. § 10.500 et seq.; the Commission did not expand these rules in its 2016 Order to include embedded references, or seek comment on expanding the scope of the term “WEA capable” devices beyond those rules.<sup>6</sup> Further, changing the thresholds for when a device is “WEA capable” under the rules is arbitrary and capricious and the new interpretation may also result in a revised information collection requiring Office of Management and Budget approval under the Paperwork Reduction Act.<sup>7</sup>

CTIA is nonetheless committed to working with its member companies to inform the Commission about participating CMS providers’ abilities to educate consumers about the various WEA-related features and enhancements as they are incorporated into mobile devices. In the meantime, CTIA encouraged the Commission to issue an erratum that removes the new interpretation or otherwise clarifies that devices that meet the requirements of Section 10.500 et seq. will continue to be deemed “WEA capable.”

Finally, CTIA acknowledged that the Commission, including the Chairman and Commissioners, Members of Congress, and local public safety officials have expressed interest in further enhancements to the geo-targeting capabilities of the WEA system. CTIA expressed its desire to engage with the Commission and stakeholders about ways to enhance geo-targeting that accounts for the various technical capabilities of the

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<sup>5</sup> See 47 U.S.C. § 1201(b)(1) (participating CMS providers must adequately disclose, “at the point of sale of any devices with which its commercial mobile service is included, *that it will not transmit such alerts* via the service it provides for the device.”) (emphasis added).

<sup>6</sup> 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, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, ¶ 3 (2016) (describing change to 47 C.F.R. § 10.510 as “requir[ing] WEA-capable mobile devices present Alert Messages as soon as they are received.”); The Commercial Mobile Alert System, First Report and Order, 23 FCC Rcd 6144, ¶¶ 2, 65 n.197, 67, 80 (2008) (devices deemed “CMAS capable” or “CMAS compliant” must have the common audio attention signal, vibration cadence and preemption capabilities at 47 CFR §§ 10.510-10.530).

<sup>7</sup> See 47 C.F.R. § 10.240 (CMS providers expected to provide information on “wireless emergency alert capable devices ....”); 5 C.F.R. § 1320.3(c)(2) (information collection includes “[r]equirements by an agency for a person to obtain or compile information for the purpose of disclosure to members of the public or the public at large, *through posting, notification, labeling or similar disclosure requirements* ....” (emphasis added)). See e.g., Paperwork Reduction Act (44 U.S.C. Part 35).



WEA system, wireless devices, and alert originator capabilities. CTIA believes that such engagement and dialogue can yield an achievable solution that will encourage more local alert originators to participate in the WEA system.<sup>8</sup>

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Matthew Gerst

Assistant Vice President – Regulatory Affairs  
CTIA

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<sup>8</sup> According to FEMA, less than 35 percent of 3,500 counties across the United States are authorized to send WEAs. See, *The only California county that sent a warning to residents' cellphones has no reported fatalities*, Washington Post, Oct. 13, 2017 available at [https://www.washingtonpost.com/investigations/the-only-california-county-that-sent-a-warning-to-residents-cellphones-has-no-reported-fatalities/2017/10/13/b28b5af4-b01f-11e7-a908-a3470754bbb9\\_story.html?utm\\_term=.786a4d22cc6b](https://www.washingtonpost.com/investigations/the-only-california-county-that-sent-a-warning-to-residents-cellphones-has-no-reported-fatalities/2017/10/13/b28b5af4-b01f-11e7-a908-a3470754bbb9_story.html?utm_term=.786a4d22cc6b).



### **Meeting Participants**

#### **Chairman Pai's Office**

Zenji Nakazawa

#### **Public Safety and Homeland Security Bureau**

Lisa Fowlkes

Nicole McGinnis

#### **Office of the General Counsel**

Anjali Singh

#### **CTIA**

Scott Bergmann

Matthew Gerst

Tom Dombrowsky, Senior Engineering Advisor, DLA Piper (for CTIA)

#### **CTIA Member Companies**

Joseph Marx, AT&T

Robert Morse, Verizon

Steve Sharkey, T-Mobile

Shellie Blakeney, T-Mobile

Eric Hagerson, T-Mobile

Grant Spellmeyer, U.S. Cellular

Ray Rothermel, Sprint