

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

In the Matter of	)	
	)	
Waiver of Section 11.45 of the Commission's	)	PS Docket No. 07-287
Rules to Allow Broadcast of Public Service	)	
Announcements Produced by the Federal	)	
Emergency Management Agency to Educate the	)	
Public on the Wireless Emergency Alert System	)	

**ORDER**

**Adopted: May 31, 2013**

**Released: May 31, 2013**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this Order, the Public Safety and Homeland Security Bureau (Bureau) grants, to the extent necessary, a limited waiver of Section 11.45 of the Commission's rules<sup>1</sup> to allow the broadcast or transmission of a simulated Wireless Emergency Alert (WEA) Attention Signal<sup>2</sup> in public service announcements (PSAs) developed by the Federal Emergency Management Agency (FEMA) as part of a campaign designed to educate the public about the WEA system.<sup>3</sup> This limited waiver is granted for a period of one year from the release date of this Order. Moreover, this waiver is conditioned, as discussed below, on the PSAs presenting the WEA Attention Signal in a non-misleading manner—that is, in a manner that does not mislead the listening or viewing public into erroneously concluding that an actual emergency message is being transmitted. This action is taken in response to a letter from FEMA requesting the Bureau's "support in allaying the concerns of EAS participants about playing a PSA that includes the WEA audio attention signal...."<sup>4</sup> We interpret this request as seeking a waiver of applicable Federal Communications Commission ("Commission" or "FCC") rules. Accordingly, we grant this limited waiver pursuant to Section 1.3 of the Commission's rules,<sup>5</sup> and the authority delegated to the Bureau under Sections 0.191 and 0.392 of the Commission's rules.<sup>6</sup>

**II. BACKGROUND**

2. In 2008, the Federal Communications Commission (FCC), pursuant to the Warning, Alert and Response Network (WARN) Act,<sup>7</sup> adopted Part 10 of its rules<sup>8</sup> to establish WEA, a system that

<sup>1</sup> 47 C.F.R. § 11.45.

<sup>2</sup> Compare 47 C.F.R. § 10.520(b) with 47 C.F.R. § 11.31(a)(2).

<sup>3</sup> See Letter, Damon Penn, Assistant Administrator National Continuity Programs, Federal Emergency Management Agency (FEMA), to David Turetsky, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (FCC) (May 16, 2013) (FEMA Letter).

<sup>4</sup> *Id.*, at 2.

<sup>5</sup> 47 C.F.R. § 1.3. Under this rule, the Bureau also has authority to act on its own motion.

<sup>6</sup> 47 C.F.R. §§ 0.191, 0.392.

<sup>7</sup> Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, (2006).

allows authorized Federal, tribal, state, local and territorial government agencies to send geographically targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial wireless service provider has elected to offer the service.<sup>9</sup> The system is a joint public-private partnership between the FCC, FEMA and the wireless industry. Since the system was deployed in April 2012, authorized government agencies, mainly the National Weather Service, have sent over 3,000 WEA alerts to consumers.<sup>10</sup> Local jurisdictions also have made use of the system. Boston, for example, issued WEA alerts instructing subscribers to evacuate and/or shelter in place during the Boston bombings.<sup>11</sup> The WEA also was used to send flash flood warnings, shelter-in-place and other alert messages to subscribers in Virginia, Maryland, New York, and other states affected by Superstorm Sandy.<sup>12</sup> WEA also represents a promising platform for distributing America's Missing: Broadcasting Emergency Response (AMBER) Alerts. An AMBER alert sent to Minnesota cell phones via the WEA in February 2013, for example, led to the successful recovery of an abducted child.<sup>13</sup>

3. As the number of alerts indicates, in the short time that WEA has been in operation, it has proven to be a valuable tool for government agencies to send out accurate and timely emergency alerts to the public, and many government agencies and consumers express support for the system. At the same time, however, FEMA has received feedback from public safety officials, wireless carriers and the public that “many people are startled or annoyed when hearing the WEA attention signal for the first time”<sup>14</sup> and that “[m]any have inquired about opting-out of additional [WEA] alerts.”<sup>15</sup> FEMA, in response, has initiated a public education campaign for WEA that will include PSAs that will contain information on how WEA works and how WEA-capable mobile devices behave when they receive a WEA alert.<sup>16</sup> As part of these PSAs, to familiarize the public with the sounds that they may hear from their mobile devices that signify a WEA alert, the PSAs will play the WEA tones. This will acquaint the public with the sound and purpose of the WEA tones.<sup>17</sup> FEMA states that “[i]ncluding the WEA attentions signal and vibration

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<sup>8</sup> See 47 C.F.R. §§ 10.1, *et seq.*

<sup>9</sup> There are three types of WEA alerts: Presidential alerts issued by the President of the United States (or the President's authorized designee), Imminent Threat (such as a tornado), and Child Abduction Emergency (AMBER) alerts. See 47 C.F.R. § 10.400. Members of the public may opt out of receiving all but Presidential Alerts. See 47 C.F.R. § 10.280.

<sup>10</sup> See, e.g., Daniel Honker, *The Need to Standardize WEA Settings on Mobile Devices, Alerts, Warnings & Response to Emergencies / AWARE*, Mar. 7, 2013, available at <http://www.awareforum.org/2013/03/the-need-to-standardize-wea-settings-on-mobile-devices/#more-4092>.

<sup>11</sup> See, e.g., Rick Wimberly, *Wireless Emergency Alerts Used in Boston Bombings*, Emergency Management, Apr. 22, 2013, available at <http://www.emergencymgmt.com/emergency-blogs/alerts/Wireless-Emergency-Alerts-Used-042213.html?showAddComment=1>.

<sup>12</sup> See, e.g., Sarah Rich, *National SMS System Successful During Superstorm Sandy*, Government Technology, Nov. 8, 2012, available at <http://www.govtech.com/public-safety/National-SMS-System-Successful-During-Superstorm-Sandy.html>.

<sup>13</sup> Minnesota Department of Public Safety, Office of Communications, News Release, *Successful AMBER Alert Resolution First in Nation Using Wireless Emergency Alerts*, Feb. 21, 2013, available at <https://dps.mn.gov/divisions/ooc/news-releases/Pages/Successful-AMBER-Alert-Resolution-First-in-Nation-Using-Wireless-Emergency-Alerts.aspx>.

<sup>14</sup> FEMA Letter at 1.

<sup>15</sup> See *Id.*

<sup>16</sup> See FEMA Letter and attachments thereto.

<sup>17</sup> *Id.* FEMA reports that these PSAs would be placed in strategic local markets and would also be linked to [www.ready.gov/alerts](http://www.ready.gov/alerts) and distributed to its Integrated Public Alerts and Warning System (IPAWS) partners. *Id.* To support the WEA public education campaign, FEMA also plans to launch an on-line course, “IPAWS and the American People,” in the summer of 2013. The course would be designed to educate the public about the variety of IPAWS alert and warning tools and technologies available to them and their public safety officials. *Id.*, at 2.

cadence in PSAs is essential to ensure the American people are familiar with WEAs as another alert and warning method.”<sup>18</sup>

4. Specific technical parameters required for creating the particular sound of the WEA tones, including requirements that WEA-capable mobile devices use a unique attention signal and vibration cadence to alert the subscriber of an incoming WEA message, are codified under Sections 10.520 and 10.530 of the Commission’s rules.<sup>19</sup> The WEA Attention Signal is a loud attention-grabbing two-tone audio signal that uses the same frequencies as the distinctive and familiar attention signal used by the Emergency Alert System (EAS).<sup>20</sup> The Commission adopted the WEA attention signal requirements to ensure that subscribers, particularly those with hearing and vision disabilities, would notice when their mobile device receives a WEA alert.<sup>21</sup>

### III. DISCUSSION

5. Section 11.45 of the Commission’s EAS rules provides in pertinent part that “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.”<sup>22</sup> Part 10 of the Commission’s rules, which governs the WEA, does not expressly include a comparably broad bar against the use of the WEA Attention Signal.<sup>23</sup> Nevertheless, given the fact that the WEA and EAS Attention Signals use identical frequencies, it is possible that the broadcast or transmission of the WEA Attention Signal in the FEMA PSAs may violate Section 11.45 of the Commission’s rules, particularly insofar as the respective signals may be indistinguishable to the listener. For example, a casual listener may mistake hearing a broadcast of the WEA Attention Signal in the FEMA PSA as an actual EAS alert, or advertisers might think that they could avoid the prohibition against using the EAS Attention Signal by claiming that they are using the WEA Attention Signal instead. One could argue that the potential for public confusion and dissipation of the attention grabbing value of the alert is thus the same, whether it is the WEA or the EAS Attention Signal being broadcast or transmitted. Thus, to the extent the broadcast of the WEA Attention Signal during the PSAs could be construed as being subject to the Section 11.45 general prohibition on the transmission of the EAS Attention Signal other than during specified emergencies or lawfully authorized tests, or to the extent Section 10.520 can be read as including a similar prohibition regarding WEA Attention Signals, we hereby waive those rules, subject to the conditions and limitations discussed herein.

6. Section 1.3 of the Commission’s rules provides that “[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”<sup>24</sup> The Commission may find good cause to waive a rule “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>25</sup> We find that good cause exists to grant a

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<sup>18</sup> *Id.*, at 1.

<sup>19</sup> See 47 C.F.R. §§ 10.520, 10.530.

<sup>20</sup> See 47 C.F.R. §§ 10.520(b) and 11.31(a)(2). Both the WEA and EAS attention signals consist of the fundamental frequencies of 853 Hz and 960 Hz transmitted simultaneously.

<sup>21</sup> See Commercial Mobile Alert System, PS Docket No. 07-287, *First Report and Order*, 23 FCC Rcd 6144, 6168-69, paras. 64-7 (2008).

<sup>22</sup> 47 C.F.R. § 11.45.

<sup>23</sup> 47 C.F.R. § 10.520(d), on its face, states “[the WEA] audio attention signal must be restricted to use for Alert Messages under Part 10.” To the extent this section imposes a broad restriction against the non-alerting use of the WEA audio attention signal, we grant a limited waiver of this section as conditioned and specified herein.

<sup>24</sup> 47 C.F.R. § 1.3.

<sup>25</sup> See *Northeast Cellular v. FCC*, 897 F.2d 1164, 1166 (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)).

limited waiver of Sections 11.45 and 10.520 of the Commission's rules, to the extent they may apply to the broadcast or transmission of the WEA Attention Signal in PSAs about the WEA produced by FEMA as part of its WEA education campaign, and as otherwise conditioned herein.<sup>26</sup>

7. Specifically, we acknowledge FEMA's concern that the unanticipated negative public reaction to the WEA Attention Signal is largely the result of public confusion surrounding how the WEA functions. We agree with FEMA that this public confusion could potentially lead some consumers to opt out of receiving most WEA messages and that such a result would undermine the goal of WEA to serve as a viable and effective means to alert the public of emergencies. FEMA's public education campaign is designed to enhance the public's understanding of how the WEA functions and increase the public's benefits from the WEA and thereby enhance public safety generally. The broadcast or transmission of a simulated WEA Attention Signal as used in the FEMA-sponsored PSAs is an integral part of that campaign.

8. We find that improving the public's understanding of WEA and its Attention Signal, particularly in light of the public's concerns as reported by FEMA, constitute special circumstances that warrant this waiver. We further find that such waiver will serve the public interest by enhancing the effectiveness of alerting the public to emergencies that threaten public health, safety and property, as well as child abduction emergencies.<sup>27</sup> However, we find that granting this waiver would not be in the public interest if the PSAs were presented in a manner that could predictably lead the public into concluding that an actual alert is being transmitted.<sup>28</sup> We thus condition and limit this waiver on the FEMA PSAs making it clear that the WEA Attention Signals are being used in the context of the PSA and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program.

9. Accordingly, to the extent necessary, we grant a limited waiver of Sections 11.45 and 10.520 of the Commission's rules, for a period of one year from the release date of this Order, to allow the broadcast or transmission of the WEA Attention Signal in PSAs produced as part of FEMA's WEA public education campaign. In doing so, we recommend that FEMA take steps to ensure that such PSAs clearly state that they are part of FEMA's public education campaign.

#### IV. ORDERING CLAUSES

10. 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 C.F.R. § 1.3, application of Sections 11.45 and 10.520 of the Commission's rules, 47 C.F.R. §§ 11.45, 10.520, with respect to the broadcast of the WEA Attention Signal contained within PSAs produced as part of FEMA's WEA public education campaign **IS WAIVED** to the extent and for the duration indicated herein.

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<sup>26</sup> See 47 C.F.R. § 0.191(e) and § 0.392(a).

<sup>27</sup> Moreover, we have been assured by FEMA that use of the WEA Attention Signal in its PSAs poses no threat that properly functioning EAS encoder/decoder equipment maintained by broadcasters and other EAS Participants will be activated.

<sup>28</sup> For example, leading off a PSA with a WEA Attention Signal, without warning, may be an effective attention-getting device, but it would violate the conditions of this waiver because of the predictable effect that it could have on the listening or viewing public.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky  
Chief, Public Safety and Homeland Security Bureau