

**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 21, 2014**

**Released: May 21, 2014**

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 request from the Federal Emergency Management Agency (FEMA)<sup>1</sup> to modify a limited waiver (*PSA Waiver*)<sup>2</sup> of Sections 11.45 and 10.520 of the Commission’s rules to allow the broadcast or transmission of a simulated Wireless Emergency Alert (WEA) Attention Signal<sup>3</sup> in public service announcements (PSAs) developed by FEMA as part of its campaign to educate the public about the WEA system.<sup>4</sup> As discussed below, we are extending the *PSA Waiver* for a period of 18 months from the release date of this Order (*i.e.*, November 21, 2015). This action is conditioned 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 waiver is limited to the broadcast or transmission of FEMA’s PSAs that include the WEA Attention Signal, and does not extend to other circumstances involving the broadcast or transmission of the WEA Attention Signal or the Emergency Alert System (EAS) codes and/or Attention Signal. We take this action 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>

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<sup>1</sup> See Letter from Damon Penn, Assistant Administrator, National Continuity Programs, Federal Emergency Management Agency, to David Simpson, Chief, Public Safety and Homeland Security Bureau, FCC (Mar. 18, 2014) (*Mar. 2014 FEMA Letter*).

<sup>2</sup> See Waiver of Section 11.45 of the Commission’s 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, PS Docket No. 07-287, *Order*, 28 FCC Rcd 8176, 8179, ¶ 9 (2013) (*PSA Waiver*).

<sup>3</sup> See 47 C.F.R. § 10.520(b).

<sup>4</sup> See *Mar. 2014 FEMA Letter*, at 1.

<sup>5</sup> 47 C.F.R. § 1.3.

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

## II. BACKGROUND

2. In 2008, the Commission, pursuant to the Warning, Alert and Response Network (WARN) Act,<sup>7</sup> established the WEA system,<sup>8</sup> which allows authorized 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> Among its rules, the Commission required that WEA-capable mobile devices use a unique attention signal and vibration cadence to alert the subscriber of an incoming WEA message.<sup>10</sup> The WEA Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the distinctive and familiar attention signal used by the EAS.<sup>11</sup> The Commission adopted the WEA attention signal and vibration cadence requirements to ensure that subscribers, particularly those with hearing and vision disabilities, would notice when their mobile device receives a WEA alert.<sup>12</sup>

3. The WEA is a joint public-private partnership between the Commission, FEMA and the wireless industry.<sup>13</sup> Since the system was deployed in April 2012, authorized government agencies have sent several thousand WEA alerts to consumers, including weather, evacuation, shelter-in-place and America's Missing: Broadcasting Emergency Response (AMBER) alerts.<sup>14</sup> Despite WEA's value as an emergency alerting tool, and expressions of support from many public safety officials, FEMA received feedback from other public safety officials, wireless carriers and the public that many consumers were startled or annoyed when hearing the WEA Attention Signal for the first time.<sup>15</sup> Many subscribers had

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<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) (WARN Act).

<sup>8</sup> See 47 C.F.R. §§ 10.1–10.540.

<sup>9</sup> See *The Commercial Mobile Alert System*, PS Docket No. 07-287, *Third Report and Order*, 23 FCC Rcd 12561, 12575, ¶ 32 (2008) (stating the election requirements for carriers volunteering to participate in WEA).

<sup>10</sup> See 47 C.F.R. §§ 10.520, 10.530.

<sup>11</sup> Compare 47 C.F.R. § 10.520(b) with 47 C.F.R. § 11.31(a)(2).

<sup>12</sup> See *Commercial Mobile Alert System*, PS Docket 07-287, *First Report and Order*, 23 FCC Rcd 6144, 6168-69, ¶¶ 64-67 (2008).

<sup>13</sup> See *PSA Waiver*, 28 FCC Rcd 8176, 8177, ¶ 2; see also *FCC Consumer Guide: Wireless Emergency Alerts (WEA)*, FCC.GOV, 1 (2013), <http://transition.fcc.gov/cgb/consumerfacts/wea.pdf>.

<sup>14</sup> See, e.g., Daniel Honker, *The Need to Standardize WEA Settings on Mobile Devices*, ALERTS, WARNINGS & RESPONSE TO EMERGENCIES (AWARE) (Mar. 7, 2013), <http://www.awareforum.org/2013/03/the-need-to-standardize-wea-settings-on-mobile-devices/#more-4092>; Rick Wimberly, *Wireless Emergency Alerts Used in Boston Bombings*, EMERGENCY MANAGEMENT (Apr. 22, 2013), <http://www.emergencymgmt.com/emergency-blogs/alerts/Wireless-Emergency-Alerts-Used-042213.html?showAddComment=1>; Sarah Rich, *National SMS System Successful During Superstorm Sandy*, GOVERNMENT TECHNOLOGY (Nov. 8, 2012), <http://www.govtech.com/public-safety/National-SMS-System-Successful-During-Superstorm-Sandy.html>; Minnesota Department of Public Safety, Office of Communications, News Release, *Successful AMBER Alert Resolution First in Nation Using Wireless Emergency Alerts* (Feb. 21, 2013), <https://dps.mn.gov/divisions/ooc/news-releases/Pages/Successful-AMBER-Alert-Resolution-First-in-Nation-Using-Wireless-Emergency-Alerts.aspx>.

<sup>15</sup> See *Mar. 2014 FEMA Letter* and attachments thereto (citing, e.g., Sandra Parrish, *Wireless Emergency Alerts Popping up on Phones*, NEWS 95.5 AM750 WSB (Apr. 8, 2013, 3:00 AM), <http://www.wsbradio.com/news/news/local-govt-politics/wireless-emergency-alerts-popping-phones/nXFfL/> (“what I heard was a noise, just a very annoying noise”); *How do we Turn Off Amber Alert Notifications*, ANDROID CENTRAL (Apr. 12, 2013, 2:27 AM), <http://forums.androidcentral.com/sprint-galaxy-s-iii/243913-how-do-we-turn-off-amber-alert-notifications.html> (“To the guy that just can’t possibly understand what an inconvenience it is because he openly admits he has NEVER gotten one of these. Well, you’re an \*\*\*\*\*. Obviously plenty of us are getting them and are annoyed; to the point we seek a way to turn them off.”); *Help! Disable Amber Alerts?*, WINDOWS PHONE CENTRAL (Mar. 27, 2013, 10:20 PM), <http://forums.androidcentral.com/sprint-galaxy-s->

inquired as to how to turn the alerts off. In response, in 2013 FEMA initiated a public education campaign that included PSAs containing information on how WEA works and how WEA-capable mobile devices behave when they receive a WEA alert.<sup>16</sup> The PSAs play the WEA Attention Signal to familiarize the public with the sounds that they may hear from their mobile devices when they receive a WEA alert.<sup>17</sup>

4. On May 16, 2013, FEMA requested that the Commission waive the applicable rules to allow the broadcast or transmission of these PSAs.<sup>18</sup> On May 31, 2013, the Bureau granted a limited waiver for one year. Unless extended, the waiver will expire on May 31, 2014. On March 18, 2014, arguing that it has determined that it should continue its PSA-based campaign, FEMA requested modification of the waiver beyond the one year period. FEMA stated that the PSA program has been a success, but that some negative media coverage and individual complaints about the WEA tones continue. We agree with FEMA and, therefore, grant the requested waiver modification.

### III. DISCUSSION

5. Section 11.45 of the Commission's 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>19</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>20</sup> Nonetheless, because the WEA and EAS Attention Signals use identical frequencies,<sup>21</sup> 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.<sup>22</sup>

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>23</sup> The Commission may find good cause to extend a waiver "if special circumstances warrant a deviation from

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iii/243913-how-do-we-turn-off-amber-alert-notifications.html ("If you haven't gotten [an Amber Alert] yet, it vibrates INTENSELY and makes a very loud sound (reminiscent of the internet dial tone) if the screen is off. How can I disable these? I mean, I don't wanna [sic] sound like a \*\*\*\*\* but... it kind of interrupts everything."); *Got My First Emergency Alert on VzW iPhone 5*, MACRUMORS (Oct. 13, 2012, 3:55 PM), <http://forums.androidcentral.com/sprint-galaxy-s-iii/243913-how-do-we-turn-off-amber-alert-notifications.html> ("I got one too! [sic] A few days ago it was a flash flood warning. I was like WTF?! [sic]").

<sup>16</sup> See *Mar. 2014 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.*

<sup>18</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, FCC (May 16, 2013) (*May 2013 FEMA Letter*).

<sup>19</sup> 47 C.F.R. § 11.45.

<sup>20</sup> 47 C.F.R. § 10.520(d) ("[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>21</sup> See *supra* n.11.

<sup>22</sup> 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. *PSA Waiver*, ¶ 5.

<sup>23</sup> 47 C.F.R. § 1.3.

the general rule and such deviation will serve the public interest.”<sup>24</sup> For the reasons indicated below, we find that good cause exists to extend the limited waiver of Sections 11.45 and 10.520 of the Commission’s rules. We extend a limited waiver of these rules to the extent they may apply to the broadcast or transmission of the WEA Attention Signal in WEA PSAs sponsored by FEMA as part of its WEA education campaign, and as otherwise conditioned herein.<sup>25</sup>

7. We agree with FEMA that while the PSAs have been successful in educating the public about WEA, negative public reaction to the WEA Attention Signal has continued due to residual public confusion about how the WEA functions.<sup>26</sup> We also concur that, despite the WEA success stories, this public confusion could potentially lead some consumers to opt out of receiving most WEA messages – a result that would undermine the goal of WEA to serve as a viable and effective means to alert the public of emergencies.<sup>27</sup> FEMA’s public education campaign has shown that it can enhance the public’s understanding of how the WEA functions and increase the public’s benefits from the WEA and thereby benefit public safety generally.<sup>28</sup> The broadcast or transmission of a simulated WEA Attention Signal as used in the FEMA-sponsored PSAs is an integral part of that campaign.<sup>29</sup>

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, continues to constitute a special circumstance that warrants this waiver extension. We further find that such an extension 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>30</sup> We also find, however, that extending the *PSA Waiver* would not be in the public interest if the PSAs were presented in a manner that could lead the public to conclude that an actual alert is being transmitted.<sup>31</sup> We thus condition and limit this extension 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, we extend the limited waiver of Sections 11.45 and 10.520 of the Commission’s rules first granted in the *PSA Waiver* on May 31, 2013 for a period of 18 months from the release date of this Order (*i.e.*, November 21, 2015), 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.

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<sup>24</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)).

<sup>25</sup> See 47 C.F.R. §§ 0.191(e), 0.392(a).

<sup>26</sup> See *Mar. 2014 FEMA Letter*, at 1.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> Moreover, our understanding from FEMA is 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>31</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 effect that it could have on the listening or viewing public.

**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 transmission or 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.

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 Simpson  
Rear Admiral, USN (ret.)  
Chief, Public Safety and Homeland Security Bureau