

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: December 4, 2018

Released: December 4, 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 Wireless Emergency Alert (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in two tests to be conducted by the Virginia Department of Emergency Management (VDEM). The end-to-end tests of WEA are scheduled for December 12, 2018, for Surry Nuclear Power Station (SPS) at 11:10 a.m., Eastern Standard Time (EST), and for February 20, 2019, for North Anna Nuclear Power Station (NAPS) at 11:10 a.m. EST. For the reasons discussed below, we grant the VDEM 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. The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements. 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

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 Jeffrey D. Stern, Ph.D., State Coordinator, Commonwealth of Virginia, Department of Emergency Management, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Nov. 29, 2018) (on file in PS Docket No. 15-91) (VDEM Letter).

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).

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).

public.<sup>5</sup> 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.<sup>6</sup> The rules allowing such tests will not be effective until May 1, 2019.<sup>7</sup>

3. The VDEM Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in WEA tests on December 12, 2018, at 11:10 a.m. EST, within the ten-mile Emergency Protective Zone (EPZ) surrounding SPS, and on February 20, 2019, at 11:10 a.m. EST, within the EPZ surrounding NAPS.<sup>8</sup> The VDEM Letter notes that the WEA tests, if approved, will be conducted in parallel to regularly scheduled siren and Emergency Alert System (EAS) tests for the Surry and North Anna nuclear power stations and would target the areas for each station that correspond to those affected by the sounding of notification sirens.<sup>9</sup> The tests will be activated from the Commonwealth's Emergency Operations Center, following training and consultation with the Federal Emergency Management Agency (FEMA) Integrated Public Alert and Warning System (IPAWS) personnel.<sup>10</sup> Due to VDEM's desire to conduct the proposed WEA tests concurrently with the regularly scheduled siren and EAS tests, VDEM does not propose back-up dates for the tests.<sup>11</sup> According to the VDEM Letter, "these tests will enhance public safety by ensuring that residents of the Commonwealth of Virginia and those surrounding the nuclear power stations in particular, have fast, actionable and credible information available to them in times of major emergencies."<sup>12</sup> Additionally, VDEM notes the critical need to expose the public to the types of messages they may receive during an actual crisis, as well as the lack of public understanding of siren notification among the rapidly expanding population in the area.<sup>13</sup> The VDEM Letter asserts that because of these factors, "there is an urgent need to complete these tests now as opposed to waiting until the end-to-end FCC testing rules are put into place in May 2019."<sup>14</sup>

4. The VDEM WEA tests on December 12, 2018, for the SPS EPZ, and on February 20, 2019, for the NAPS EPZ, will be the first live tests of the WEA system for the Commonwealth of Virginia and will target specific FIPS codes located within the ten-mile EPZ surrounding the respective

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<sup>5</sup> 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by FEMA and in periodic tests of WEA's C-Interface. *Id.*

<sup>6</sup> *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) (*WEA R&O*).

<sup>7</sup> *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).

<sup>8</sup> VDEM Letter at 2. Specifically, VDEM proposes to broadcast the WEA message to cell phones located in the following localities, which are located in each nuclear power station's respective EPZ. For SPS: Isle of Wight County, Virginia; James City County, Virginia; Newport News City, Virginia; Surry County, Virginia; Williamsburg City, Virginia; and York County, Virginia. For NAPS: Louisa County, Virginia; Spotsylvania County, Virginia; Orange County, Virginia; Caroline County, Virginia; and Hanover County, Virginia. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2-3.

<sup>14</sup> *Id.* at 3.

nuclear power stations.<sup>15</sup> According to VDEM, WEA tests conducted concurrent with regularly scheduled EAS and siren tests will help VDEM “ascertain the reception and understanding of WEA messaging versus sonic means of notification (sirens) in the event of a nuclear power plant emergency incident.”<sup>16</sup> The proposed WEA test message to be delivered to mobile devices would be: “THIS IS A TEST OF THE VIRGINIA EMERGENCY ALERT SYSTEM. NO ACTION IS REQUIRED.”<sup>17</sup> VDEM does not intend this test to substitute for the required weekly or monthly EAS test.<sup>18</sup>

5. The VDEM Letter indicates that it has socialized this effort throughout all affected areas to include local leadership, Participating CMS Providers and local public information officers.<sup>19</sup> According to VDEM, “[a]ll emergency authorities that operate within and adjacent to the affected localities, including first responder organizations such as law enforcement, fire/EMS agencies, and 911 public safety operating points (PSAPs), will be or have been informed to ensure they are aware of the test and confirm to the public the WEA message is a test.”<sup>20</sup> The VDEM Letter describes an extensive public outreach plan that will include multimedia public announcements, including press releases and social media postings “to ensure public understanding of the need and value for the scheduled WEA/EAS tests.”<sup>21</sup> Furthermore, VDEM will provide a script to PSAPs to address questions that might arise from the public as a result of the tests.<sup>22</sup> VDEM acknowledges that, due to the nature of the proposed tests, members of the public outside of the affected localities may receive the test messages and will address this possibility in its outreach materials and interaction with the public.<sup>23</sup>

### 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.”<sup>24</sup> 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.”<sup>25</sup> We conclude that there is good cause to grant the VDEM waiver request for the WEA end-to-end tests.

7. We agree with the VDEM that it will enhance the public safety to ensure that those surrounding nuclear power stations have “fast, actionable and credible information” available in the event of a major emergency.<sup>26</sup> Furthermore, we believe that concurrent tests of multiple public warning systems like WEA, EAS, and notification sirens can provide emergency managers and the public with a

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<sup>15</sup> *Id.* at 1-2. *See supra*, n.8 (listing the specific areas targeted in each nuclear power station’s respective EPZ).

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* The proposed text of the EAS message would be: “THIS IS A TEST OF THE VIRGINIA EMERGENCY ALERT SYSTEM. THIS IS ONLY A TEST. IF THERE HAD BEEN AN ACTUAL EMERGENCY FURTHER INSTRUCTIONS WOULD HAVE FOLLOWED. NO ACTION IS REQUIRED.” *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 47 CFR § 1.3.

<sup>25</sup> *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)).

<sup>26</sup> VDEM Letter at 2.

comprehensive understanding of warnings they may receive during an emergency in proximity to nuclear power stations. Given the necessity of fast and reliable alerting in response to possible major emergencies surrounding nuclear power stations, we find waiver relief is warranted to allow the requested testing now, rather than after May 1, 2019. We believe that the proposed tests would help educate and prepare the public, as well as assist emergency management officials to validate the alert origination and dissemination capabilities of all participants at a crucial time. Unlike the nationwide WEA test on October 3, 2018, which was initiated by FEMA and delivered nationally, the proposed test will ensure that state and local emergency managers are fully prepared and able to initiate and deliver an alert to their local community in the event of an emergency. Rather than wait until after May 2019, we believe the proposed tests would provide alert initiators and emergency managers information of immediate value. Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to the VDEM in this instance.<sup>27</sup>

8. We observe, however, that the proposed VDEM WEA tests would not be in the public interest if they 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.<sup>28</sup> We therefore condition this waiver upon the full implementation of the outreach plan described in the VDEM 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 tests may only be conducted on December 12, 2018, for SPS, and on February 20, 2019, for NAPS, as referenced in the VDEM Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) the tests are necessary to assess and validate the readiness and effectiveness of the emergency warning system, plans and infrastructure, and ability of participants to disseminate emergency messages to the public;
- (2) the VDEM has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs to ensure that they are aware of the tests and can confirm to the public that the WEA message is a test; and
- (3) pre-test publicity efforts will include a comprehensive media campaign, and communication with appropriate public information officers to ensure widespread distribution of information to local broadcasters, newspapers, and cable providers.

10. We also require that the tests and any post-test analysis and reports that the VDEM 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.<sup>29</sup> We encourage the VDEM 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 tests to do so by filing them with the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

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<sup>27</sup> These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<sup>28</sup> 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.

<sup>29</sup> See 47 U.S.C. § 222.

**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), 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 Isle of Wight County, Virginia; James City County, Virginia; Newport News City, Virginia; Surry County, Virginia; Williamsburg City, Virginia; and York County, Virginia on December 12, 2018, at 11:10 a.m. EST; and a one-time test of the WEA in Louisa County, Virginia; Spotsylvania County, Virginia; Orange County, Virginia; Caroline County, Virginia; and Hanover County, Virginia on February 20, 2019, at 11:10 a.m. EST. 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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