

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

In the Matter of
Improving Wireless Emergency Alerts and
Community-Initiated Alerting
PS Docket No. 15-91

ORDER

Adopted: March 16, 2018

Released: March 16, 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 a WEA test conducted by the Metropolitan Washington Council of Governments Emergency Managers' Committee (MWCOG). The test will be coordinated by the MWCOG and will involve twenty (20) jurisdictions within the National Capital Region (NCR), simulating the manner in which the MWCOG would conduct a coordinated WEA in the case of an actual emergency. As proposed by the MWCOG, the test would occur between 10:00 AM and 10:30 AM EDT on Thursday, April 5, 2018, with a backup date of Monday, April 9, 2018, and would consist of separate WEA tests from twelve of the twenty jurisdictions. For the reasons discussed below, we grant the waiver subject to certain conditions.

1 See 47 CFR §§ 10.400, 10.520(d), 10.530(b), 11.45.

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

3 See Letter from Ronald Gill, Chairman, COG Emergency Managers Committee, Director, Prince George's County of Emergency Management, to Michael J. Wilhelm, Chief, Public Safety & Homeland Security Bureau, FCC, PS Docket No. 15-91, (filed Mar. 7, 2018), https://www.fcc.gov/ecfs/filing/103071065821139. (MWCOG March 7 Letter), as amended by Letter from Ronald Gill, Chairman, COG Emergency Managers Committee, Director, Prince George's County of Emergency Management, to Michael J. Wilhelm, Chief, Public Safety & Homeland Security Bureau, FCC, PS Docket No. 15-91, (filed Mar. 14, 2018), https://www.fcc.gov/ecfs/filing/10314130220625 (MWCOG March 14 Letter).

4 The MWCOG March 7 Letter identifies the participating jurisdictions as Fairfax County, Prince William County, City of Alexandria, Arlington County, Loudoun County, City of Falls Church, City of Manassas, City of Manassas Park, City of Fairfax, City of College Park, City of Gaithersburg, City of Rockville, Prince George County, City of Takoma Park, Montgomery County, City of Greenbelt, City of Bowie, Charles County, Frederick County, and the District of Columbia.

5 MWCOG March 7 Letter at 1.

6 MWCOG March 14 Letter at 2. The test alerts will be sent by: Arlington County, City of Alexandria, City of Fairfax, City of Manassas, District of Columbia, Charles County, Fairfax County (including City of Falls Church), Frederick County, Loudoun County, Montgomery County (including Cities of Rockville, Gaithersburg, and Takoma

## II. BACKGROUND

2. The WEA system allows authorized government authorities 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.<sup>7</sup> The Commission's rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.<sup>8</sup> 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.<sup>9</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>10</sup> The rules allowing such tests will not be effective until May 1, 2019.<sup>11</sup>

3. In the MWCOG March 7 Letter, the MWCOG requested a waiver to use the WEA to send a test message to WEA-capable wireless devices in the NCR.<sup>12</sup> According to the MWCOG, the WEA test message will state: "This is a test of the [jurisdiction name] Wireless Emergency Alerts. No action is required."<sup>13</sup> The MWCOG March 7 Letter indicates that this test is not intended to be a substitute for other scheduled tests of WEA.<sup>14</sup> Rather, the purpose of the proposed test is to ensure that the WEA system will work during certain emergencies within the entire NCR region.<sup>15</sup> The MWCOG March 7 Letter further notes that, "[a]s recent events in Hawaii and California demonstrate, it is essential that the public be familiar with WEA, and that emergency managers be proficient in the use of WEA before the initiation of an actual alert is necessary in the NCR."<sup>16</sup> To help ensure readiness prior to an actual emergency, the MWCOG seeks a waiver to permit it to conduct the proposed test on April 5, 2018, rather than wait until May 2019 for the FCC's end-to-end testing rules to become effective.<sup>17</sup>

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Park); Prince George County (including the Cities of College Park, Greenbelt, and Bowie), and Prince William County (including the City of Manassas Park).

<sup>7</sup> See *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 carriers volunteering to participate in WEA).

<sup>8</sup> 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).

<sup>9</sup> 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.*

<sup>10</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).

<sup>11</sup> *Id.* at 11161, 11165, paras 79, 85 (deadline for state and local testing is 30 months of the rule's publication in the Federal Register); FCC, *Wireless Emergency Alerts; Amendments to Rules Regarding the Emergency Alert System*, 81 FR 75710 (Nov. 1, 2016) (Federal Register Publication).

<sup>12</sup> MWCOG March 7 Letter at 1.

<sup>13</sup> *Id.*

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

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

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

<sup>17</sup> *Id.*

4. The MWCOG March 7 Letter describes its pre-test outreach and coordination plans, including MWCOG's plan for a coordinated NCR Public Information Officers' (PIO) multi-media public announcement advertisement and marketing plan to ensure public understanding of the function and utility of WEA, and that the April 5 WEA message is in fact only a test.<sup>18</sup> According to MWCOG, this plan will be shared with the PIOs in all affected jurisdictions for distribution to all NCR media outlets, including daily newspapers, radio and television outlets, and on social media.<sup>19</sup> The MWCOG March 7 Letter represents that the PIOs within the NCR have "coordinated information about the test with the Participating CMS providers that operate within the NCR, as well as with all emergency authorities that operate within the NCR, including first responder organizations such as police and fire agencies and 911 public safety answering points (PSAPs), to ensure that they are aware of the test and can confirm to the public that the WEA message is a test."<sup>20</sup> The MWCOG also anticipates that due to the multi-jurisdictional nature of the proposed test, members of the public may receive a test message from more than one jurisdiction, and accordingly has addressed this issue in its outreach materials.<sup>21</sup>

### III. DISCUSSION

5. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefore is shown."<sup>22</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>23</sup> We conclude that there is good cause to grant the MWCOG request for a waiver to allow it to conduct an end-to-end test of the WEA, subject to the conditions required in this *Order*.

6. As the March 7 Letter notes, the NCR includes not only the Nation's capital but also the multiple overlapping jurisdictions that surround it.<sup>24</sup> An NCR-wide test of WEA is a unique event that would require careful coordination among the various jurisdictions and the public. We are persuaded that the proposed test would help ensure that WEA can be effectively deployed during an emergency, and that it would provide alert initiators and emergency managers valuable information regarding the capability and accuracy by which Participating CMS Providers geographically target WEA. We are also persuaded that grant of the request would serve the public interest by enabling MWCOG to conduct an end-to-end test now, rather than May 2019. The MWCOG identifies several recent instances where alert initiator inexperience led to errors and public confusion.<sup>25</sup> Following the emergency alerting shortfalls identified by recent events in Hawaii and the California wildfires, we believe that the proposed test would ensure alert originator proficiency and public familiarity with WEA prior to the need to issue an actual alert. We therefore find that granting MWCOG's request for a one-time waiver to test the WEA system within the NCR is in the public interest.<sup>26</sup>

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<sup>18</sup> *Id.* at 2.

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

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

<sup>21</sup> MWCOG March 14 Letter at 2.

<sup>22</sup> 47 CFR § 1.3.

<sup>23</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>24</sup> MWCOG March 7 Letter at 1.

<sup>25</sup> *Id.* (referencing the Hawaii false missile alert and the California wildfires).

<sup>26</sup> This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal, the Emergency Alert System (EAS) codes, and/or the EAS Attention Signal.

7. We observe, however, that the WEA test would not be in the public interest if it was presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or otherwise confuse the public.<sup>27</sup> We, therefore, condition this waiver upon the conducting of appropriate pre-test outreach to notify emergency personnel and the public that the WEA message is in fact a test, including the time and date at which the test is scheduled. In this regard, we condition the waiver on the full implementation of the MWCOG's outreach plan described in the MWCOG March 7 Letter, including outreach to the public, press, and relevant government agencies that members of the public may receive a WEA test message from more than one of the NCR jurisdictions.

8. We further condition this waiver to require that the MWCOG WEA Test may only be conducted between 10:00 AM and 10:30 AM on Thursday, April 5, 2018, with a backup date of Monday, April 9, 2018, as referenced in the MWCOG March 14 Letter, and may only be conducted for the purposes described in the MWCOG March 7 and March 14 Letters. Specifically, the waiver is based on representations that:

- (1) This test is necessary to ensure that the WEA system will work during an emergency region-wide within the NCR;
- (2) The COG NCR PIO Group has coordinated information about the test with the Participating CMS providers that operate within the NCR, as well as with all emergency authorities that operate within the NCR, "including first responder organizations such as police and fire agencies and 911 public safety answering points, to ensure that they are aware of the test and can confirm to the public that the WEA message is a test;"<sup>28</sup>
- (3) Pre-test publicity efforts, including a multi-media public announcement advertisement and marketing plan for the proposed upcoming NCR WEA test, will be shared with the PIOs in all affected jurisdictions for distribution to NCR media outlets, including daily newspapers and radio and television outlets, and posting on social media;
- (4) The use of "test" wording as described by the MWCOG will be used throughout the warning; and
- (5) This test will not substitute for other scheduled tests of WEA within the NCR.

9. We also require that the test and any post-test analysis and reports that MWCOG may conduct or cause to be produced are done in a manner consistent with customers' expectation of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA system and infrastructure.<sup>29</sup> We encourage MWCOG to report test results in electronic format to the Bureau. Finally, we encourage members of the public that wish to report their results to do so by filing them with the FCC's Public Safety Support Center (PSSC) at <https://www.fcc.gov/general/public-safety-support-center>.

#### IV. ORDERING CLAUSE

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 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, 47 CFR §§10.400,

<sup>27</sup> For example, transmitting a WEA test message without first informing emergency responders (e.g., 9-1-1 call centers) and the public about the test could predictably result in confusion or panic.

<sup>28</sup> MWCOG March 7 Letter at 2.

<sup>29</sup> See 47 U.S.C. § 222.

10.520(d), 10.530(b), and 11.45, **ARE WAIVED**, to allow a one-time test in the National Capital Region of the WEA system, conducted subject to the conditions described herein, within the limited time period between 10:00 AM and 10:30 AM on April 5, 2018, with a backup date of April 9, 2018. 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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