

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
)	
Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System)	PS Docket No. 15-94
)	

ORDER

Adopted: October 7, 2019

Released: October 7, 2019

By the Deputy 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 Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers¹ to participate in an end-to-end WEA test that the Virgin Islands Territorial Emergency Management Agency (VITEMA) proposes to conduct on October 17, 2019, at 9:00 a.m. Eastern Standard Time (EST), throughout the U.S. Virgin Islands.² For the reasons discussed below, we grant the VITEMA 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.³ The Commission’s rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁴ 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.⁵ On

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 Daryl D. Jaschen, Director Designee, Virgin Islands Territorial Emergency Management Agency, to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Oct. 1, 2019) (on file in PS Docket No. 15-91) (VITEMA Letter). VITEMA does not propose a back-up test date.

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).

⁵ 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.*

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.⁶ The rules allowing such State/Local WEA Tests became effective on May 1, 2019,⁷ but the Department of Homeland Security's Federal Emergency Management Agency (FEMA), which administers the Integrated Public Alert and Warning System (IPAWS) infrastructure through which all alerts are authenticated, validated, and delivered to Participating CMS Providers, has informed the Bureau that IPAWS will not be ready to support additional features, including State/Local WEA Tests, pending further necessary technical changes to IPAWS.⁸ Accordingly, alert originators wishing to conduct end-to-end WEA tests prior to IPAWS's readiness to support State/Local WEA Tests must continue to request a waiver to use existing WEA message classifications to permit the alerts to be transmitted to the public.

3. The VITEMA Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on Thursday, October 17, 2019, at 9:00 a.m. EST.⁹ This proposed test is scheduled to coincide with the annual "Great Shake-out" earthquake exercise, which tests earthquake preparedness, operations, and emergency communications in the area.¹⁰ Additionally, the VITEMA Letter notes that the Virgin Islands were devastated by hurricanes in 2017.¹¹ According to the VITEMA Letter, the proposed WEA end-to-end test will ensure the WEA and EAS will work during such emergencies, provide an opportunity for both residents and emergency managers to become more proficient in responding to emergencies, and provide VITEMA with "useful data to support public warning improvements."¹² The VITEMA Letter further states that it is "vulnerable to flooding, hurricanes, earthquakes, tsunamis and acts of terrorism."¹³

4. The proposed WEA test will be conducted throughout the U.S. Virgin Islands.¹⁴ The proposed WEA test message to be delivered to mobile devices would be: "This is a test of the U.S. Virgin Islands Tsunami Warning System. No action is required."¹⁵

5. The VITEMA Letter outlines an extensive media campaign for the area.¹⁶ VITEMA notes that it will work with local radio and television, newspapers, and VITEMA's social media accounts

⁶ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-11157, paras. 65-68 (2016).

⁷ *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).

⁸ See *Public Safety & Homeland Security Bureau Announces Delay in Availability of Certain Improvements to Wireless Emergency Alerts*, Public Notice, DA 19-534 (PSHSB June 7, 2019); *Advisory Regarding May 1 Deadline for Improvements to Wireless Emergency Alerts and Guidance for State/Local Alert Originators*, Public Notice, DA 19-358, at 2 (PSHSB Apr. 30, 2019).

⁹ VITEMA Letter at 1.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 1. The test message is 88 characters.

¹⁶ *Id.* at 2.

and website public information officers throughout the territory to distribute information about the test.¹⁷ Additionally, VITEMA will coordinate with emergency authorities within and adjacent to the testing area, including first responders such as law enforcement, fire/EMS agencies, and 911 emergency communications centers, plus cellular mobile service providers and EAS Participants so that they are informed of the test and can confirm to the public that it is only a test.¹⁸ In an email, a VITEMA official committed to notify schools and hospitals about the test and will incorporate into its outreach the fact that people may receive multiple alerts.¹⁹

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."²⁰ 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."²¹ We conclude that there is good cause to grant the VITEMA waiver request for the WEA end-to-end test.

7. In light of the opportunity to promote earthquake safety and preparedness in connection with the annual Great Shake-out exercise, we find good cause to permit VITEMA to test the feasibility of using WEA to warn the public of such natural and civil emergencies. As VITEMA states, conducting this end-to-end WEA test will enable the territory to test its IPAWS distribution capabilities and the EAS Participants' ability to disseminate emergency messages to the public. We are further persuaded that this test will be helpful and timely as VITEMA navigates hurricane season, particularly in light of the severe damage caused to the U.S. Virgin Islands by hurricanes in 2017.²² Accordingly, rather than wait until IPAWS is ready to support State/Local Tests, we believe the proposed test would provide alert initiators and emergency managers information of immediate value, and so conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to allow VITEMA to conduct a WEA end-to-end test as described in the VITEMA Letter.²³

8. We observe, however, that the proposed VITEMA WEA test would not be in the public interest if it 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.²⁴ Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the VITEMA 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 test may only be conducted on October 17, 2019, at 9:00 a.m. EDT, as referenced in the VITEMA Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ E-mail from Garry Green, Public Information Officer, VITEMA, to Maureen Bizhko, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, (Oct. 7, 2019, 4:53 a.m. EST).

²⁰ 47 CFR § 1.3.

²¹ 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)).

²² VITEMA Letter at 2.

²³ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁴ 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.

- (1) this test is necessary to ensure that emergency management officials in VITEMA have a clear understanding of how alerts would perform in their territory, and the public becomes familiar with the format of WEA messaging;
- (2) VITEMA will coordinate with the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs within the U.S. Virgin Islands to ensure that they are aware of the test and can confirm to the public that the WEA message is a test;
- (3) pre-test publicity efforts will include a comprehensive multimedia campaign to ensure public understanding of the function and utility of WEA, the date and time of the test, and clear notification that the WEA alert will be just a test;
- (4) use of “test” wording as described by the VITEMA Letter will be used in the test message; and
- (5) the WEA test is not intended as a substitute for other scheduled WEA tests.

10. We also require that the test and any post-test analysis and reports that VITEMA 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.²⁵ We encourage VITEMA 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 test to do so by filing them with the FCC’s Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

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 throughout the U.S. Virgin Islands, on October 17, 2019, at 9:00 a.m. EDT, which test must be conducted subject to the conditions described herein. 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

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

²⁵ See 47 U.S.C. § 222.