

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: October 10, 2019

Released: October 10, 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) Providers<sup>1</sup> to participate in an end-to-end WEA test proposed by the Maricopa County Department of Emergency Management (MCDEM), in coordination with the State of Arizona and Arizona Public Service. MCDEM proposes to conduct up to two tests on November 13, 2019, at approximately 12:00 p.m. and approximately 12.30 p.m. Mountain Time (MT).<sup>2</sup> MCDEM intends to conduct these tests concurrently with the regularly scheduled siren tests for the local nuclear power plant. For the reasons discussed below, we grant the MCDEM waiver 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.<sup>3</sup> The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain

<sup>1</sup> Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f).

<sup>2</sup> See Letter from Robert Rowley, Director of the Maricopa County Department of Emergency Management, to Michael Wilhelm, Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission (filed Oct. 8, 2019) (on file in PS Docket No. 15-91) (MCDEM Amended Letter). Per a telephone conversation with Mr. Bruce Monson, MCDEM is in the process of determining whether it wishes to conduct only one test rather than two, in light of the potential for alert fatigue, and expects to make a determination closer to the date of the test. MCDEM did not wish to delay seeking a waiver or beginning its outreach while it continued to assess whether to conduct one or two tests. Phone conversation between Maureen Bizhko, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC, and Bruce Monson, Radiological Emergency Preparedness Planning Supervisor, MCDEM (Oct. 3, 2019).

<sup>3</sup> 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).

public service announcements.<sup>4</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>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 State/Local WEA Tests became effective on May 1, 2019,<sup>7</sup> 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.<sup>8</sup> 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 MCDEM Amended Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in up to two end-to-end WEA tests on Wednesday, November 13, 2019, at approximately 12:00 p.m. and approximately 12:30 p.m. MT.<sup>9</sup> MCDEM states that the purpose of this proposed test is to "ensur[e] residents of Maricopa County and the areas around the nuclear generating station have fast, actionable, and credible information available to them in times of major emergencies."<sup>10</sup> According to MCDEM, there is a scheduled annual test of sirens in the 10-mile radius of the local nuclear power plant, the Palo Verde Generating Station (PVGS), on November 13, 2019. The PVGS is about 60 miles west of metropolitan Phoenix. MCDEM plans to conduct its first and second WEA tests concurrently with the two siren tests that have been conducted annually "to expose the public to the diverse delivery methods of messages they may receive during a time of crisis."<sup>11</sup> There are two tests because the PVGS is testing the main and backup originating source of the siren. MCDEM believes the test is urgently needed because MCDEM believes there may be areas that do not receive adequate wireless coverage. It will use this test to assess the effectiveness of the WEA message and

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<sup>4</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>5</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>6</sup> *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).

<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> *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).

<sup>9</sup> MCDEM Amended Letter at 1.

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

<sup>11</sup> *Id.* at 2.

hopes to uncover any issues that arise from distribution of the WEA message.<sup>12</sup> Additionally, MCDEM states that the area's seasonal and transient population is at its highest at this time of year, and this population might not know what the siren means. WEA messages could help them react to an emergency by directing them to turn on a radio or TV for further information.<sup>13</sup>

4. The proposed WEA test message to be delivered to mobile devices would be: "THIS IS A TEST OF MARICOPA COUNTY WIRELESS EMERGENCY ALERT SYSTEM. NO ACTION IS REQUIRED."<sup>14</sup>

5. The MCDEM Amended Letter outlines an extensive multimedia public outreach plan to inform residents and other county stakeholders about the test.<sup>15</sup> MCDEM will incorporate WEA information into its annual siren test outreach, including engaging in considerable public outreach with local leadership, media representatives, emergency managers, and jurisdictional public information officers.<sup>16</sup> The MCDEM Amended Letter indicates that the outreach plan also includes issuance of press releases; contact with area emergency managers and first responders in the 10-mile zone and the surrounding areas; notices to residents, businesses, schools and cell phone providers in the 10-mile zone; and signs posted throughout the 10-mile zone.<sup>17</sup> They will include in their outreach the message that residents may receive a single WEA message multiple times.<sup>18</sup> Static variable message signboards along critical transportation corridors will notify the public of the annual siren test and WEA testing the day of the planned tests. The MCDEM will formulate answers to any questions the public may have when calling a public safety answering point (PSAP) regarding these tests. They will share these answers with the relevant PSAPs prior to the tests.<sup>19</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>20</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>21</sup> We conclude that there is good cause to grant the MCDEM waiver request for the WEA end-to-end test.

7. We believe that it is prudent, in the presence of a nuclear power plant in Maricopa County, to help educate the public about WEA and improve the proficiency of local emergency management officials in sending WEA messages to the public.<sup>22</sup> We also find persuasive MCDEM's claim that a WEA message may help instruct seasonal residents on how to act in the event of an

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<sup>12</sup> *Id.* at 2-3.

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

<sup>14</sup> *Id.* at 2. This message is 89 characters.

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

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

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

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> 47 CFR § 1.3.

<sup>21</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>22</sup> MCDEM Amended Letter at 1.

emergency.<sup>23</sup> 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 and preparedness training 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 test in Maricopa County.<sup>24</sup>

8. We observe, however, that the proposed Maricopa County 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.<sup>25</sup> Therefore, we condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the MCDEM Amended 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 November 13, 2019, at approximately 12:00 p.m. MT and at approximately 12:30 p.m. MT, as referenced in the MCDEM Amended Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

- (1) these tests are necessary to ensure that emergency management officials in Maricopa County have a clear understanding of how alerts would perform within a 10-mile radius of the PVGS, and the public becomes familiar with the format of WEA messaging;
- (2) MCDEM will coordinate with the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 PSAPs within Maricopa County and surrounding counties 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 times of the tests, and clear notification that the WEA alert will be just a test;
- (4) use of "test" wording as described by the MCDEM Amended Letter will be used in the test message; and
- (5) the WEA tests are not intended as a substitute for other scheduled WEA tests.

10. We also require that the tests and any post-test analysis and reports that Maricopa County or its partners 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>26</sup> We encourage MCDEM 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>.

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<sup>23</sup> *Id.* at 3.

<sup>24</sup> This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<sup>25</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>26</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 up to two tests of the WEA in Maricopa County, Arizona, on November 13, 2019, at approximately 12:00 p.m. MT and at approximately 12:30 p.m. MT, which tests 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

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