

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: March 6, 2019

Released: March 6, 2019

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 Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) rules to permit EAS Participants¹ and Participating Commercial Mobile Service (CMS) Providers² to participate in a test to be conducted by the Virgin Islands Territorial Emergency Management Agency (VITEMA).³ This test will be a combined live code EAS and end-to-end WEA test, conducted on March 14, 2019 at 10:00 a.m. Atlantic Standard Time (AST).⁴ For the reasons discussed below, we grant the VITEMA request, subject to certain conditions.

¹ The Commission’s rules define EAS Participants as broadcast stations; cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. 47 CFR § 11.11(a).

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

³ See Letter from Denise E.H. Lewis, Acting Director, Virgin Islands Territorial Emergency Management Agency, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed March 4, 2019) (on file in PS Docket Nos. 15-91 and 15-94) (VITEMA Letter), as amended by Letter from Denise E.H. Lewis, Acting Director, Virgin Islands Territorial Emergency Management Agency, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed March 5, 2019) (on file in PS Docket Nos. 15-91 and 15-94) (Amended VITEMA Letter) (clarifying the scheduled time for the proposed test to reflect the start of Daylight Savings Time).

⁴ VITEMA Letter at 1; Amended VITEMA Letter at 1. VITEMA does not propose a backup date for the combined EAS and WEA test; however, according to the VITEMA letter, “if severe weather or a tropical system threatens the area within a day or two prior to the test, VITEMA will consult with [the National Oceanic and Atmospheric Administration (NOAA)] and [the Federal Emergency Management Agency (FEMA)] to consider cancellation.” VITEMA Letter at 1.

II. BACKGROUND

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies.⁵ The primary purpose of the EAS is to provide the President of the United States with “the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency.”⁶ State and local authorities also use the EAS to distribute voluntary weather-related and other emergency alerts to the public.⁷ EAS testing at the state and local level increases the proficiency of local emergency personnel, provides insight into the system’s functionality and effectiveness at the federal level, and enhances the public’s ability to respond to EAS alerts when they occur.⁸ The Commission’s EAS rules contain procedures by which EAS Participants must test the system,⁹ and prohibit the unauthorized use of the EAS Attention Signal and codes.¹⁰

3. 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.¹¹ The Commission’s rules prohibit the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.¹² 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.¹³ 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.¹⁴ The rules allowing such tests will not be effective until May 1, 2019.¹⁵

4. The VITEMA Letter requests a waiver of the Commission’s rules to allow Participating CMS Providers and EAS Participants to participate in a combined EAS and WEA test on March 14 as part of the Caribe Wave 2019 – Tsunami Warning Exercise.¹⁶ The purpose of this test is to ensure that WEA and EAS will work during natural and man-made emergencies such as tsunamis, hurricanes and

⁵ 47 CFR § 11.1 *et seq.* See also *Review of the Emergency Alert System*, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015).

⁶ 47 CFR § 11.1. See *Review of the Emergency Alert System*, EB Docket No. 04-296, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18628, para. 8 (2005) (*First Report and Order*). The FCC, FEMA, and the National Weather Service (NWS) implement the EAS at the federal level. See *Presidential Communications with the General Public During Periods of National Emergency*, The White House (September 15, 1995).

⁷ 47 CFR § 11.55(a); *First Report and Order*, 20 FCC Rcd at 18628, para. 8. While EAS Participants are required to broadcast Presidential Alerts, they participate in broadcasting state and local EAS alerts on a voluntary basis. *Id.*

⁸ See *Communications Security, Reliability and Interoperability Council IV, Working Group Three, Emergency Alert System, State EAS Plans Subcommittee, Final Report at 14* (March 2014), https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG3_EAS_Plans_Final_Report_032514.pdf (CSRIC EAS State Plan Report).

⁹ 47 CFR § 11.61.

¹⁰ 47 CFR §§ 11.45, 11.46.

¹¹ *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).

¹² 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).

¹³ 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.*

acts of terrorism, as well as provide VITEMA with useful data to support local public warning improvements.¹⁷ According to the VITEMA Letter, the Virgin Islands were devastated by two hurricanes in 2017, which “destroyed or severely damaged the territory’s telecommunications and broadcast infrastructure.”¹⁸ Although the Virgin Islands has been actively rebuilding its communications infrastructure, in light of the upcoming hurricane season, which begins June 1, “it is important that VITEMA be able to test and validate its [Integrated Public Alert and Warning System (IPAWS)] origination and distribution capabilities and the participants’ ability to disseminate emergency messages to the public.”¹⁹ The VITEMA Letter also states that it is imperative that emergency managers be proficient in EAS and WEA use before an actual alert is necessary; therefore, “VITEMA strongly believes it is important to test the system now . . . rather than wait until May 2019 for the FCC’s [WEA] end-to-end testing rules to become effective.”²⁰

5. The combined EAS and WEA test would target the entirety of the U.S. Virgin Islands.²¹ The VITEMA Letter states that the EAS live code tested will be the Civil Emergency Message (CEM) code.²² The VITEMA Letter also states that the proposed EAS and WEA test message would be the 88-character message, “This is a test of the U.S. Virgin Islands Tsunami Warning System. No Action is required.”²³ The test is not intended to be a substitute for other scheduled EAS tests or monthly WEA tests required for Participating CMS Providers.²⁴

6. The VITEMA Letter describes an extensive multimedia public outreach and coordination plan that is affiliated in part with the Caribe Wave 2019 – Tsunami Warning Exercise.²⁵ In addition to public service announcements regarding the exercise, messaging will ensure that “the public understands the function and utility of WEA, and that the March 14th WEA and EAS messages are only a test.”²⁶ VITEMA will share the plan with public information officers throughout the territory; media outlets including local newspapers, radio and television; and VITEMA’s social media accounts and website.²⁷ Additionally, VITEMA has coordinated information about the test with FEMA; territorial emergency authorities including first responder organizations, such as police, fire and 911 Emergency Communication Centers; Participating CMS Providers; and EAS Participants to ensure they are aware of

(Continued from previous page) _____

¹⁴ *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*).

¹⁵ *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).

¹⁶ VITEMA Letter at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 1.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

the test and can confirm to the public that this is only a test.²⁸

III. DISCUSSION

7. 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."²⁹ 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."³⁰ We conclude that there is good cause to grant the VITEMA waiver request for the combined live code EAS and WEA end-to-end test.

8. We are persuaded by the VITEMA Letter that the proposed test of EAS and WEA will help to educate the public, improve VITEMA's ability to distribute EAS and WEA alerts in the event of a natural or man-made disaster, and help build confidence in the emergency warning systems in the U.S. Virgin Islands following the devastating hurricanes of 2017. We are also persuaded that the proposed end-to-end WEA test has value now, as opposed to after May 2019, because it would help to ensure that WEA and EAS can be effectively deployed in a coordinated manner during an emergency and provide alert initiators and emergency managers valuable information on how the two systems can be used together to communicate to the public prior to the start of hurricane season. Accordingly, we conclude that limited waivers of the Commission's EAS and WEA rules are warranted and in the public interest to test in the U.S. Virgin Islands.³¹

9. We observe, however, that the combined EAS and 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 otherwise confuse the public.³² We therefore condition this waiver upon the full implementation of the 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.

10. We further condition this waiver to require that the test may only be conducted on March 14, 2019, as referenced in the VITEMA Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) this test is necessary to ensure that emergency management officials in the U.S. Virgin Islands have a clear understanding of how alerts would perform in the event of a natural or man-made emergency;
- (2) VITEMA has notified, and will coordinate with FEMA, Participating CMS Providers and EAS Participants that operate within the territory, 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 EAS and WEA messages are a test;
- (3) pre-test publicity efforts will include a multimedia campaign targeting the U.S. Virgin Islands, and communication with the public information officers

²⁸ *Id.*

²⁹ 47 CFR § 1.3.

³⁰ 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)).

³¹ These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal, the EAS codes, and/or the EAS Attention Signal.

³² 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.

throughout the territory to help with distribution of information to media outlets, including newspapers, radio and television outlets, and to VITEMA's social media accounts and website;

(4) use of "test" wording as described by the VITEMA Letter will be used in the EAS and WEA test messages; and

(5) this test will not be a substitute for other scheduled tests of EAS or WEA.

11. 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 EAS and WEA systems and infrastructure.³³ We encourage VITEMA to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who wish to report their results 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

12. 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), 11.45, and 11.61 of the Commission's rules, 47 CFR §§10.400, 10.520(d), 10.530(b), 11.45, and 11.61 of the Commission's rules, **ARE WAIVED**, to allow a one-time test of the EAS and WEA in the U.S. Virgin Islands; which combined test must be conducted subject to the conditions described herein, on March 14, 2019, at 10:00 a.m. AST. 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

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission

³³ See 47 U.S.C. § 222.