

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 19, 2019

Released: March 19, 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 Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers to participate in an end-to-end WEA test to be conducted by the South Carolina Emergency Management Division (SCEMD) scheduled for April 2, 2019 at 1:00 p.m. Eastern Daylight Time (EDT). This proposed end-to-end test of WEA would occur within the ten-mile Emergency Planning Zone (testing zone) surrounding the V.C. Summer Nuclear Station (nuclear station). For the reasons discussed below, we grant the SCEMD 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

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 Derrec Becker, Chief, Public Information and External Affairs, South Carolina Emergency Management Division, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Mar. 13, 2019) (on file in PS Docket No. 15-91) (SCEMD Letter).

3 No backup date is planned for this test due to SCEMD's desire to conduct the test concurrent with regularly scheduled siren tests. Id. at 1.

4 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).

certain public service announcements.⁵ 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.⁶ 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.⁷ The rules allowing such tests will not be effective until May 1, 2019.⁸

3. The SCEMD Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in a WEA test on Tuesday, April 2, 2019, at 1:00 p.m. EDT, in the testing zone surrounding the nuclear station.⁹ The SCEMD Letter notes that the WEA test will be conducted in parallel with the regularly scheduled Emergency Alert System (EAS) and live siren tests for the nuclear station "to ascertain the reception and understanding of WEA messaging versus sonic means of notification (sirens) in the event of a nuclear power plant emergency incident."¹⁰ The SCEMD Letter further states that a combined WEA and live siren test surrounding the nuclear station will enhance public safety and ensure that residents "have fast, actionable and credible information available to them in times of major emergencies."¹¹ According to the SCEMD Letter, due to the critical need to expose the public to the types of alert messages they may receive in an actual emergency, anecdotal information about the public's lack of understanding about siren notifications, and SCEMD's belief that the Integrated Public Alert and Warning System (IPAWS) presents a superior means of notifying the public, "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."¹²

4. The SCEMD proposed WEA test, the first live test of the WEA system within the State of South Carolina, will target the ten-mile testing zone surrounding the V.C. Summer Nuclear Station, including portions of Fairfield County, Lexington County, Newberry County, and Richland County.¹³ The test will be activated from South Carolina's Emergency Operations Center following training and consultation with the Federal Emergency Management Agency (FEMA) IPAWS personnel.¹⁴ The proposed WEA test message to be delivered to mobile devices would be: "THIS IS A TEST OF THE

⁵ 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).

⁶ 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.*

⁷ *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) (*WEA R&O*).

⁸ *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).

⁹ SCEMD Letter at 1.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 1.

¹⁴ *Id.*

SOUTH CAROLINA WIRELESS EMERGENCY ALERT SYSTEM. NO ACTION REQUIRED.”¹⁵ SCEMD does not intend this test to substitute for any required periodic EAS test.¹⁶

5. The SCEMD Letter indicates that SCEMD has socialized this effort throughout all affected areas to include local leadership, Participating CMS Providers, and locality public information officers and asserts that, to date, no stakeholder has noted any issues with the proposed WEA test.¹⁷ Additionally, the SCEMD Letter states that it has prepared an extensive media campaign and public outreach plan, including press releases and social media, to ensure public understanding of the need and value of the test.¹⁸ According to the SCEMD Letter, “all 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 that the WEA message is a test.”¹⁹ SCEMD, along with Dominion Energy, also plan to conduct outreach to local schools and hospitals in the testing zone, as these facilities are actively involved in radiological planning and preparedness with the nuclear station.²⁰ SCEMD acknowledges that, due to the nature of the proposed test, members of the public outside of the affected localities may receive the test message and will address this possibility in its outreach with the public.²¹

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.”²² 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.”²³ We conclude that there is good cause to grant the SCEMD waiver request for the WEA end-to-end test.

7. We agree with SCEMD that it will enhance public safety to ensure that people surrounding nuclear power stations such as the V.C. Summer Nuclear Station have “fast, actionable and credible information” available in the event of a major emergency.²⁴ Furthermore, we believe that concurrent tests of multiple warning systems like WEA, EAS, and live notification sirens can provide emergency managers and the public with a 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.

¹⁵ *Id.* The proposed message is 89 characters.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 47 CFR § 1.3.

²³ 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)).

²⁴ SCEMD Letter at 2.

Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to SCEMD in this instance.²⁵

8. We observe, however, that the proposed SCEMD 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 would otherwise confuse the public.²⁶ We therefore condition this waiver upon the full implementation of the outreach plan described in the SCEMD 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 April 2, 2019, as referenced in the SCEMD Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) the test is 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) SCEMD has notified, and will coordinate with, local leadership, relevant Participating CMS Providers, locality public information officers, and emergency authorities that operate within and adjacent to the affected localities, including first responder organizations such as police and fire agencies and 911 PSAPs, 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 media campaign and public outreach through press releases and social media, to ensure public understanding of the need and value for the scheduled test;
- (4) use of "test" wording as described by the SCEMD Letter will be used in the test message; and
- (5) this test will not be a substitute for other scheduled tests of WEA or EAS.

10. We also require that the test and any post-test analysis and reports that SCEMD 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.²⁷ We encourage SCEMD 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>.

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,

²⁵ These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

²⁶ 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.

²⁷ See 47 U.S.C. § 222.

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 portions of Fairfield County, South Carolina; Lexington County, South Carolina; Newberry County, South Carolina; and Richland County, South Carolina on April 2, 2019, at 1:00 p.m. EDT. 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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Federal Communications Commission