

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 21, 2019

Released: March 21, 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<sup>1</sup> to participate in an end-to-end test of WEA that the Milwaukee County, Wisconsin Office of Emergency Management (Milwaukee County OEM) proposes to conduct on April 11, 2019, at 1:45 p.m. Central Daylight Time (CDT), with a backup test scheduled for April 12, 2019, at 1:45 p.m. CDT.<sup>2</sup> For the reasons discussed below, we grant the Milwaukee County OEM 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 the use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain 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

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 Christine Westrich, OEM Director, Milwaukee County Office of Emergency Management, et al., to Gregory M. Cooke, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (filed Mar. 12, 2019) (on file in PS Docket No. 15-91) (Milwaukee County Letter). In a conversation with Bureau staff, Milwaukee County OEM proposes to utilize the same backup test date and time as the National Weather Service's statewide tornado drill.

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).

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 tests will not be effective until May 1, 2019.<sup>7</sup>

3. The Milwaukee County 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, April 11, 2019, at 1:45 p.m. CDT, with a backup date of Friday, April 12, 2019, also at 1:45 p.m. CDT.<sup>8</sup> The Milwaukee County Letter states that the test will be conducted by the Milwaukee County OEM, which is the primary alert and warning authority for the Integrated Public Alert and Warning System (IPAWS) in Milwaukee County, and will be held in conjunction with Wisconsin's Tornado & Severe Weather Awareness Week.<sup>9</sup> According to the Milwaukee County Letter, "[b]y leveraging the existing opportunity to introduce the WEA test concurrent with the statewide tornado drill on April 11, OEM can capitalize on longstanding public awareness campaigns to increase understanding of WEA."<sup>10</sup> The Milwaukee County Letter also states that Southeastern Wisconsin is susceptible to severe spring flooding and occasional tornados.<sup>11</sup> Therefore, according to the Milwaukee County Letter, "it is imperative to test the system now before the FCC's WEA end-to-end testing rules become effective" on May 1, 2019, as "[w]aiting until May to implement a program designed to deliver immediate warnings may endanger public safety and put lives at risk unnecessarily."<sup>12</sup>

4. The proposed Milwaukee County WEA test would allow Milwaukee County OEM to send an alert to the "All-County" polygon, covering the entirety of Milwaukee County, Wisconsin.<sup>13</sup> The proposed WEA test message to be delivered to mobile devices would be: "This is a TEST of the Milwaukee County Wireless Emergency Alert System. No action needed."<sup>14</sup> Milwaukee County OEM does not intend this test to substitute for other scheduled tests of the Emergency Alert System (EAS) performed in conjunction with local broadcasters.<sup>15</sup> Additionally, Milwaukee County OEM has

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<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) (*WEA R&O*).

<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> Milwaukee County Letter at 1. *See also supra*, note 2 (proposing to utilize the same backup date and time for the statewide tornado drill, conducted by the National Weather Service).

<sup>9</sup> *Id.* at 2.

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

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1, 3-4.

<sup>14</sup> *Id.* at 1. The text of the test message is 88 characters.

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

previously conducted a test of the WEA system in the FEMA IPAWS Lab and has another such test scheduled for March 20, 2019.<sup>16</sup>

5. The Milwaukee County Letter describes an extensive communications plan to notify the public about the April 11 WEA test.<sup>17</sup> The objectives of the communications plan are to “[e]ngage [Milwaukee] County’s population through multiple channels, including earned media, social media advertising and elected officials’ constituent communications,” “[d]efine WEA as a component of the Emergency Alert System and a modern complement to physical outdoor warning sirens,” and “[p]osition OEM as the local emergency alert authority among stakeholders and thoughtleaders.”<sup>18</sup> The Milwaukee County Letter notes that the communications plan will confirm to the public that the WEA messages are only a test, and that Milwaukee County will execute its comprehensive public information campaigns “no later than one week before [the] test, to educate the public on this new capability and assure them that the WEA alerts are only a test.”<sup>19</sup> The Milwaukee County Letter also indicates that it has notified the relevant Participating CMS Providers to ensure that they are aware of the test.<sup>20</sup> Additionally, Milwaukee County OEM is in the process of informing other stakeholders operating within and adjacent to Milwaukee County, including elected officials, law enforcement, fire/EMS agencies and Public Safety Answering Points (PSAPs), and will engage with other county emergency management agencies located within Wisconsin Emergency Management’s Southwest Region.<sup>21</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>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 Milwaukee County OEM waiver request for the WEA end-to-end test.

7. In light of the seasonal hazards, such as severe spring flooding and tornados, facing Milwaukee County, we are persuaded by the Milwaukee County Letter that the proposed WEA test will help to implement WEA as a valuable tool in delivering immediate warnings where emergencies may endanger public safety.<sup>24</sup> Furthermore, we agree with Milwaukee County OEM’s determination that there is a benefit to leveraging the Tornado & Severe Weather Awareness Week to introduce the WEA test to the public.<sup>25</sup> Given the value in coordination among state, local, and national agencies when engaging with the public in emergency preparedness exercises, we find waiver relief is warranted. We believe that the proposed test would help educate and prepare the public, as well as assist emergency management officials to understand the alert origination and dissemination capabilities of all participants during state and local emergency preparedness exercises. Rather than wait until after May 2019, we believe the proposed test would provide alert initiators and emergency managers information of immediate value.

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<sup>16</sup> *Id.* at 2-3.

<sup>17</sup> *Id.* at 2, 5-14.

<sup>18</sup> *Id.* at 5.

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

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

<sup>21</sup> *Id.* at 2, 6-12.

<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> Milwaukee County Letter at 1.

<sup>25</sup> *Id.* at 2.

Accordingly, we conclude that it is in the public interest to grant a limited waiver of the Commission's WEA rules to Milwaukee County OEM in this instance.<sup>26</sup>

8. We observe, however, that the proposed Milwaukee County OEM 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.<sup>27</sup> We therefore condition this waiver upon the full implementation of the outreach plan described in the Milwaukee County 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 11, 2019, at 1:45 p.m. CDT, as referenced in the Milwaukee County Letter, or on the backup date on April 12, 2019, also at 1:45 p.m. CDT, and may only be conducted for the purposes described therein. Specifically, the waiver is based on representations that:

- (1) this 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) Milwaukee County OEM has notified, and will coordinate with, the relevant Participating CMS Providers, elected officials, law enforcement, fire/EMS agencies, PSAPs, and other county emergency management agencies within Wisconsin Emergency Management's Southeast Region to ensure that they are aware of the tests and can confirm to the public that the WEA message is a test;
- (3) pre-test publicity efforts will include a comprehensive media campaign, which will engage Milwaukee County's population through multiple channels, including earned media, social media advertising, and elected officials' constituent communications;
- (4) use of "test" wording as described by the Milwaukee County 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 Milwaukee County 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>28</sup> We encourage Milwaukee County 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,

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<sup>26</sup> These waivers do not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

<sup>27</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>28</sup> See 47 U.S.C. § 222.

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: one test of the WEA in Milwaukee County, Wisconsin on April 11, 2019, at 1:45 p.m. CDT, with a backup date of April 12, 2019, at 1:45 p.m. CDT, 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

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