

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: May 29, 2019

Released: May 29, 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 to participate in an end-to-end WEA test that the Government of the District of Columbia Homeland Security and Emergency Management Agency (HSEMA) proposes to conduct on June 22, 2019, at 11:00 a.m. Eastern Daylight Time (EDT), with a backup test scheduled for June 23, 2019, at 11:00 a.m. EDT, within a targeted area in the District of Columbia. For the reasons discussed below, we grant the HSEMA 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 certain public service announcements. 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 Dr. Christopher Rodriguez, Director, Government of the District of Columbia Homeland Security and Emergency Management Agency, to Elizabeth Cuttner, Public Safety & Homeland Security Bureau, Federal Communications Commission (filed Apr. 30, 2019) (on file in PS Docket No. 15-91) (HSEMA Letter).

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.⁵ 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.⁶ The rules allowing such State/Local WEA Tests went into effect on May 1, 2019⁷ and will be supported by the Integrated Public Alert and Warning System (IPAWS) infrastructure through which all alerts are authenticated, validated, and delivered to Participating CMS Providers, after June 10, 2019.⁸

3. The HSEMA Letter requests a waiver of the Commission's rules to allow Participating CMS Providers to participate in an end-to-end WEA test on Saturday, June 22, 2019, at 11:00 a.m. EDT, with a backup date of Sunday, June 23, 2019, also at 11:00 a.m. EDT.⁹ The HSEMA Letter proposes to conduct the test in a geo-targeted area surrounding the National Mall in preparation for the annual National July 4th celebration.¹⁰ While previous July 4th celebrations have drawn approximately 500,000 participants and spectators, many of which are visitors to the Nation Capitol Region (NCR), this year's festivities are expected to include participation from the President of the United States.¹¹ According to the HSEMA Letter, "[i]f the President participates, the District of Columbia anticipates increased attendance and, potentially, counter protests or demonstrations."¹² Therefore, "[t]he purpose of this test is to ensure that, should an incident occur on July 4, the District of Columbia Government and HSEMA can notify attendees on the Mall of the incident through the WEA system."¹³ The HSEMA Letter also notes that as the Nation's Capital, which faces a wide variety of unique hazards, "it is essential that the public be familiar with WEA and that emergency managers be proficient in its use before an actual emergency occurs. As a result, the District believes that it is imperative to test the system now."¹⁴

4. HSEMA proposes to conduct its end-to-end test pursuant to a waiver using a "live" WEA event code, as opposed to a State/Local WEA Test. In a phone conversation with Bureau staff, HSEMA stated that based on public survey results in connection with previous end-to-end WEA tests conducted in the area surrounding the National Mall,¹⁵ HSEMA observed several issues with WEA performance, including issues with delivery, latency, and geo-location accuracy, that varied by Participating CMS

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.*

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) (*WEA R&O*).

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 *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) (*May 1 WEA Deadline PN*).

⁹ HSEMA Letter at 1.

¹⁰ *Id.*

¹¹ *Id.* The HSEMA Letter estimates that only 20% of spectators to the July 4th celebrations are residents of the NCR, with the remaining 80% representing national and international visitors who are not signed up for local alerts via the AlertDC or CapitalAlert systems. *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1-2.

¹⁵ See *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, PS Docket No. 15-91, Order, 32 FCC Rcd 343 (PSHSB 2017) (granting HSEMA's request to conduct an end-to-end WEA test in the area

(continued....)

Provider.¹⁶ According to HSEMA, it has received assurances from the Participating CMS Providers in the area that these issues have been addressed.¹⁷ HSEMA proposes to conduct a similar end-to-end WEA test, in connection with a public survey and under similar conditions as the prior test, in order to assess whether these issues have been addressed. HSEMA indicates that the test will help ensure that these WEA performance issues will not occur in the event there were to be an incident or emergency during a forthcoming widely attended event, particularly the upcoming National July 4th Celebration.¹⁸ Therefore, according to HSEMA, it is imperative that the proposed test utilize a “live” WEA event code, rather than the State/Local WEA Test code, to gather the data necessary to allow HSEMA to make an accurate assessment about whether there have been improvements to WEA performance in the area surrounding the National Mall prior to the National July 4th Celebration or whether further action is warranted.¹⁹

5. The proposed HSEMA WEA test would send a test message to the geo-targeted area surrounding the National Mall, where the majority of the July 4th festivities will take place.²⁰ The proposed WEA test message to be delivered to mobile devices would be: “This is a test of the District of Columbia Wireless Emergency Alert. No action is required”.²¹ Additionally, members of the Joint All Hazards Operations Center staff for HSEMA have conducted training in the IPAWS Lab, including monthly tests.²²

6. The HSEMA Letter indicates that the District of Columbia has developed an extensive multimedia plan to conduct public outreach prior to the test.²³ According to HSEMA, the plan will be shared with Public Information Officers (PIOs) in the surrounding jurisdictions for distribution to local media outlets, including newspapers, radio, and television, and for posting on social media.²⁴ The messaging of HSEMA’s multimedia plan will ensure that the local PIOs and media are aware of the test and can confirm to the public that the WEA message is a test, and will inform the public that they may receive multiple messages due to bleedover in the alerting area.²⁵ Lastly, HSEMA will further coordinate the test with police, fire, and local 911 centers; FEMA; CTIA; and local news networks.²⁶ The HSEMA PIO has begun coordination with local PIOs and wireless providers in the area in preparation for the test.²⁷

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surrounding the National Mall in preparation for the 2017 Presidential Inauguration). *See also Improving Wireless Emergency Alerts and Community-Initiated Alerting*, PS Docket No. 15-91, Order, 33 FCC Rcd 2351 (PSHSB 2018) (granting the Metropolitan Washington Council of Governments Emergency Managers’ Committee’s request to conduct a coordinated, multi-jurisdictional end-to-end WEA test throughout the metropolitan D.C. area).

¹⁶ Phone call from Frederick W. Goldsmith, Homeland Security & Emergency Management Agency, District of Columbia, to Elizabeth Cuttner, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (May 21, 2019) (May 21 Call with HSEMA).

¹⁷ *Id.*

¹⁸ HSEMA Letter at 1.

¹⁹ May 21 Call with HSEMA.

²⁰ HSEMA Letter at 1. According to the HSEMA Letter, the geo-targeted polygon will cover the National Mall from 3rd Street NW and SW to the east; Pennsylvania Avenue NW and E Street Avenue NW to the north; the Southwest Freeway and Independence Avenue SW to the south; and the Lincoln Memorial Circle to the west. *Id.* at 1, Attach.

²¹ *Id.* The text of the message is 90 characters.

²² *Id.* at 2.

²³ *Id.* at 1-2.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.* at 1.

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."²⁸ 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."²⁹ We conclude that there is good cause to grant the HSEMA waiver request for the WEA end-to-end test.

8. In light of the heightened attendance and security expected for the National July 4th Celebration this year, we are persuaded by the HSEMA Letter that the proposed WEA test will help prepare the District of Columbia Government and HSEMA, as well as tourists and residents alike, in the event of an incident or emergency during the festivities. We are also persuaded that there is value in allowing the end-to-end WEA test to use a "live" WEA event code, as opposed to the State/Local WEA Test code, because of the importance of ensuring the reliability of WEA as a means of providing critical information in the event of an emergency in order to help safeguard the safety and security of the public during widely attended events on the National Mall surrounding the July 4 holiday. Accordingly, we conclude that limited waiver of the Commission's WEA rules is warranted and in the public interest to test in the District of Columbia.³⁰

9. We observe, however, that the proposed HSEMA 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.³¹ We therefore condition this waiver upon the full implementation of the multimedia campaign and outreach plan described in the HSEMA 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 June 22, 2019 at 11:00 a.m. EDT, or on the backup date of June 23, 2019, also at 11:00 a.m. EDT, as referenced in the HSEMA Letter, and may only be conducted for the purposes described therein. Specifically, the waiver is based upon 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) HSEMA has notified, and will coordinate with, the relevant Participating CMS Providers and first responder organizations such as police and fire agencies and 911 Public Safety Answering Points within the District of Columbia 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; and will also notify District of Columbia Government staff, major local media outlets, neighboring jurisdictions, and Public Information Officers;
- (3) pre-test publicity efforts will include a comprehensive multimedia campaign

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²⁷ *Id.* at 2.

²⁸ 47 CFR § 1.3.

²⁹ 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)).

³⁰ This waiver does not extend to any other circumstances involving the broadcast or transmission of the WEA Attention Signal.

³¹ 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.

to ensure public understanding of the function and utility of WEA, the date and time of the test and the backup test, and an awareness that the WEA alert is just a test;

(4) use of “test” wording as described by the HSEMA Letter will be used in the test message; and

(5) the WEA test is not intended as a substitute for other scheduled WEA tests.

11. We also require that the test and any post-test analysis and reports that HSEMA 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.³² We encourage HSEMA 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

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), 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 in a geo-targeted area within the District of Columbia, on June 22, 2019, at 11:00 a.m. EDT, with a backup date of June 23, 2019, at 11:00 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

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³² See 47 U.S.C. § 222.