

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 16, 2020

Released: March 16, 2020

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) addresses the waiver request of the Virgin Islands Territorial Emergency Management Agency (VITEMA). Specifically, VITEMA seeks a waiver of the Commission's Wireless Emergency Alerts (WEA) and Emergency Alert System (EAS) rules to permit Participating Commercial Mobile Service (CMS) Providers and EAS Participants to participate in end-to-end WEA and EAS tests that it proposes to conduct on March 19, 2020 at 9:00 a.m. Atlantic Standard Time (AST). For the reasons discussed below, we deny VITEMA's request with respect to WEA and dismiss as moot and do not consider VITEMA's request on the merits with respect to EAS.

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 mobile service providers are Participating CMS Providers. The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements. The Commission's rules allow testing of WEA functionality only in limited

1 See Letter from Daryl Jaschen, Director, Virgin Islands Territorial Emergency Management Agency, to Michael Wilhelm, Chief, Policy and Licensing Division, Federal Communications Commission (filed Mar. 9, 2020) (on file in PS Docket No. 15-91) (VITEMA Letter).

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 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).

4 VITEMA Letter at 1.

5 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).

6 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 § (continued....)

circumstances, allowing end-to-end tests that reach the public only in the case of State/Local WEA Tests.⁷ State/Local WEA Test messages differ from actual alert messages to reduce confusion and minimize any chance that they might be misconstrued as actual alerts. Consumers will not receive State/Local WEA Tests by default; instead, they must affirmatively opt in to receive these test messages.⁸ Further, State/Local WEA Tests must include conspicuous language sufficient to make clear to the public that the message is only a test.⁹ Participating CMS Providers were required to support State/Local WEA Tests on December 19, 2019.¹⁰ Accordingly, as of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Tests category do not need to request a waiver to permit such tests to be transmitted to the public.¹¹

3. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies.¹² 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.”¹³ State and local authorities also use the EAS to distribute weather-related and other emergency alerts to the public.¹⁴ The Commission’s EAS rules contain procedures by which EAS Participants must test the system. The rules permit EAS Participants to participate in no more than two “live code” EAS Tests per calendar year without requesting a waiver, provided that the entity conducting the test does so pursuant to rules intended to minimize any risk of public confusion.¹⁵ The EAS rules prohibit the unauthorized use of the EAS Attention Signal and codes.¹⁶

4. VITEMA requests a waiver of the Commission’s rules to allow Participating CMS Providers to participate in a combined, end-to-end WEA and EAS test on March 19, 2020, at 9:00 a.m. AST.¹⁷ The proposed tests would be targeted to the U.S. Virgin Islands,¹⁸ and the proposed alert message would read: “This is a TEST and start of Carib Wave Tsunami Drill. Drop, Cover, Hold. THIS IS A TEST” in English and Spanish.¹⁹ VITEMA seeks a waiver to use an Imminent Threat Alert to conduct its

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11.31(a)(2); *see also* 47 CFR § 10.530 (restricting use of the WEA vibration cadence to purposes permitted by the WEA rules).

⁷ 47 CFR § 10.350(c). 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. 47 CFR § 10.350(a)-(b). On September 29, 2016, the Commission adopted a Report and Order that amended 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. *See 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, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

⁸ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

⁹ *Id.* (requiring State/Local WEA Tests to include conspicuous language sufficient to make clear to the public that the message is only a test).

¹⁰ *See Public Safety and Homeland Security Bureau Announces New Enhancements to Wireless Emergency Alerts Are Now Available*, PS Docket No. 15-91, Public Notice, 34 FCC Rcd 12332 (PSHSB 2019) (*Dec. 19th PN*).

¹¹ *Id.*

¹² 47 CFR § 11 *et seq.* *See also Review of the Emergency Alert System*, EB Docket No. 04-296, Sixth Report and Order, 30 FCC Rcd 6520 (2015).

¹³ 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, the Federal Emergency Management Agency (FEMA), and the National Weather Service (NWS) implement

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“live” end-to-end WEA test and intends to use a Local Area Emergency (LAE) code for its EAS test.²⁰ According to VITEMA, the three purposes of the test are 1) to ensure that WEA and EAS will work during emergencies and “to provide VITEMA with useful data to support public warning improvements”; 2) to “provide an opportunity for residents to become more familiar with EAS and WEA and to know how to respond and take proper action when they receive actual warning messages”; and 3) for emergency manager proficiency training prior to the 2020 hurricane season.²¹

5. VITEMA states that it is currently “distributing multi-media public service announcements [PSAs] for the Carib Wave Tsunami Warning Drill, which includes the proposed WEA and EAS tests,” to inform the public that WEA and EAS messages are only a test.²² According to VITEMA, it 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.²³ 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 the test and can confirm to the public that this is only a test.²⁴ This the first live code EAS test that VITEMA has requested to conduct in calendar year 2020 and the second end-to-end combined WEA and EAS test that VITEMA has requested to date.²⁵ VITEMA also conducted an end-to-end WEA test in December 2019.²⁶

III. DISCUSSION

6. The Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²⁷ 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

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the EAS at the federal level. *See* Presidential Communications with the General Public During Periods of National Emergency, The White House (September 15, 1995).

¹⁴ 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.*

¹⁵ 47 CFR § 11.61(a)(5).

¹⁶ 47 CFR §§ 11.45, 11.46.

¹⁷ VITEMA Letter at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Telephone call between Garry Green, Public Information Officer, Virgin Islands Territorial Emergency Management Agency, and James Wiley, Attorney, Public Safety and Homeland Security Bureau, FCC (March 12, 2020).

²¹ VITEMA Letter at 2.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Telephone call between Garry Green, Public Information Officer, Virgin Islands Territorial Emergency Management Agency, and James Wiley, Attorney, Public Safety and Homeland Security Bureau, FCC (March 12,

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interest.”²⁸ Based on the circumstances set forth in the VITEMA Letter, we do not find good cause to grant a waiver to allow VITEMA to use the Imminent Threat category for its proposed WEA test. Further, we dismiss VITEMA’s request with respect to the use of a live code for its proposed EAS test.

7. VITEMA plans to conduct a live code test in order to ensure that the WEA and EAS are working, to gain data to support improvements to public warnings, to familiarize the public with the EAS and WEA, and to engage in proficiency training.²⁹ We agree that public preparedness and proficiency training exercises are a helpful tool for the public, city officials, and alert originators. And that is why the Commission’s rules now provide for end-to-end WEA tests using State/Local WEA Test messages.

8. The Commission specifically adopted the State/Local WEA test category to provide emergency managers with a way “to test in an environment that mirrors actual alert conditions and evaluate, for example, the accuracy with which various Participating CMS Providers geo-target Alert Messages in their community,” while also protecting wireless consumers from alert fatigue, which could lead the public to opt out of receiving WEA messages entirely.³⁰ State/Local WEA Tests are live code tests that act like any other WEA alert,³¹ with the exception that the public must affirmatively opt in to receive them.³² Because VITEMA has not presented facts that suggest that a State/Local WEA Test would be insufficient to achieve its test’s purposes,³³ we deny VITEMA’s request to use the Imminent Threat category to send its WEA test message.

9. Further, given that VITEMA states that it plans to engage (and has already engaged) in outreach to inform the public of its plans to hold a combined EAS and WEA test,³⁴ as well as the fact that VITEMA held a live code WEA test just last fall using the “Imminent Threat” category (as well as a combined live code combined EAS and WEA test last spring), VITEMA has raised public awareness about the availability of EAS and WEA.³⁵ VITEMA could leverage any ongoing or future public outreach platforms to encourage its community to opt-in to receive State/Local WEA Tests, which would afford residents and visitors alike with the opportunity to become familiar with WEA alerts during non-

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2020) (confirming the number of live code EAS tests undertaken in the past calendar year by VITEMA). *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, PS Docket Nos. 15-91, 15-94 (filed March 4, 2019) *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, PS Docket Nos. 15-91, 15-94 (filed March 5, 2019); *see also* VITEMA Letter. The Bureau approved VITEMA’s prior request for a combined EAS and WEA test on March 14, 2019. *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, PS Docket No. 15-91, DA 19-154, 34 FCC Rcd 1100 (PSHSB 2019).

²⁶ *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Order, PS Docket Nos. 15-91, 15-94, 34 FCC Rcd 9331 (PSHSB 2019).

²⁷ 47 CFR § 1.3.

²⁸ *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)).

²⁹ VITEMA Letter at 2.

³⁰ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

³¹ *See* Alliance for Telecommunications Industry Solutions (ATIS), Wireless Emergency Alert (WEA) 3.0 Federal Alert Gateway to CMSP Gateway Interface Specification, ATIS 070037.v002 (2019).

³² 47 CFR § 10.350(c)(4).

emergency circumstances.³⁶ Finally, we remind VITEMA that we require State/Local WEA tests to include conspicuous language in the WEA alert sufficient to make clear to the public that the message is, in fact, only a test to minimize any chance that such test messages might be misconstrued as actual Alert Messages.³⁷

10. We do not reach the merits of whether to grant VITEMA a waiver to conduct its requested EAS test because VITEMA does not need waiver authority in order to proceed with a live code EAS test. The Commission authorizes EAS Participants to participate in two EAS Tests that use a live code each calendar year, and VITEMA has not conducted a live code EAS test in 2020. Accordingly, VITEMA may proceed with a live code EAS test without prior Commission approval. We observe, however, that VITEMA must comply with the specific parameters by which a live code test may be conducted.³⁸

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, of the Commission's rules, VITEMA's request for waiver IS DENIED in part and otherwise DISMISSED as moot. 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

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

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³³ VITEMA Letter at 2.

³⁴ *Id.*

³⁵ See *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, PS Docket No. 15-91, DA 19-154, 34 FCC Rcd 1100 (PSSB 2019); see also Telephone call between Garry Green, Public Information Officer, Virgin Islands Territorial Emergency Management Agency, and James Wiley, Attorney, Public Safety and Homeland Security Bureau, FCC (March 12, 2020).

³⁶ *C.f.*, *Improving Wireless Emergency Alerts and Community-Initiated Alerting*, Order, PS Docket No. 15-91, DA 20-2 (PSSB Jan. 2, 2020) (granting Los Angeles World Airport's WEA waiver where consumers would have had an insufficient opportunity to learn about and choose to receive State/Local WEA Tests by the proposed test dates).

³⁷ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65.

³⁸ 47 CFR § 11.61(a)(5)(iii).