

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 15, 2023

Released: March 15, 2023

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 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) rules to permit Participating Commercial Mobile Service (CMS) Providers¹ to participate in an end-to-end WEA test that it proposes to conduct on March 16, 2023 at 11:00 a.m. Atlantic Standard Time (AST). VITEMA proposes to conduct this test as part of its annual Caribe Wave Tsunami Awareness exercise, which it conducts due to the elevated risk that this type of natural disaster poses to the people of the U.S. Virgin Islands.² Accordingly, we grant VITEMA’s request to use the Public Safety Message category, which would be transmitted to all members of the public with WEA-capable devices and who are opted in, by default, to receive WEA messages, for its upcoming test.

II. BACKGROUND

2. WEA 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.³ The Commission’s rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service

¹ Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR §§ 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission’s rules. See generally 47 CFR § 10.1, et seq.

² Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/.

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).

announcements.<sup>4</sup> The Commission's rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.<sup>5</sup> State/Local WEA test alert messages differ from actual WEAs in order to reduce public confusion and minimize any chance that they might be misconstrued as WEAs about actual emergencies. Consumers will not receive State/Local WEA Test alerts by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.<sup>6</sup> Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.<sup>7</sup> While the rules allowing such State/Local WEA Tests became effective on May 1, 2019,<sup>8</sup> Participating CMS Providers were not required to support State/Local WEA Tests until December 19, 2019, at which time the FEMA Integrated Public Alert and Warning System (IPAWS) infrastructure (through which all alerts are authenticated, validated, and delivered to Participating CMS Providers) was capable of fully supporting these enhancements.<sup>9</sup> 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 from the FCC to permit such WEA test alerts to be transmitted to the public.<sup>10</sup>

3. VITEMA requests a waiver of the Commission's rules to allow Participating CMS Providers in the U.S. Virgin Islands to participate in an end-to-end WEA test on March 16, 2023 at 11:00 a.m. AST. Among other activities, the exercise would involve activating sirens in, and sending a WEA message to, the St. Croix District and St. Thomas District. The message to be sent to each district at 11:00 a.m. AST would read: "\*\*\*\*\*THIS IS A TEST\*\*\*\*\* THIS MESSAGE IS FOR THE CARIBEWAVE23 EXERCISE ON THURSDAY, MARCH 16, 2023. PLEASE PRACTICE YOUR EVACUATION PLANS AND GET TO 82 FT ABOVE SEA LEVEL AS QUICKLY AND SAFELY AS POSSIBLE \*\*\*\*\* THIS IS A TEST\*\*\*\*\*." In its waiver request, VITEMA requests to send this test alert because it wishes to ensure that as many people are aware and participate in the exercise as possible, including both residents that regularly face threats from tsunamis and visitors that are becoming aware of how to respond to those threats for the first time. VITEMA argues that sending the alerts as State/Local

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<sup>4</sup> 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).

<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 and in periodic tests of WEA's C-Interface. *Id.* On November 1, 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*).

<sup>6</sup> *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).

<sup>7</sup> *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

<sup>8</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>9</sup> *See Public Safety and Homeland Security Bureau Announces New Enhancements to Wireless Emergency Alerts Are Now Available*, PS Docket No. 15-91, Public Notice, DA 19-1297 (PSHSB Dec. 19, 2019).

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

WEA Tests would be unlikely to be effective for purposes of this specific exercise because the opt-in nature of State/Local WEA Tests is more limited in the number of devices that it can reach.

4. VITEMA states that it has conducted outreach to the public about the proposed WEA messages. Specifically, VITEMA states its staff has conducted extensive community outreach about the exercise, sent out press releases in electronic and printed media,<sup>11</sup> highlighted the exercise as part of a live broadcast from the Governor's office, heavily promoted the exercise using social media,<sup>12</sup> and made several bilingual radio announcements for over the previous month.

### III. DISCUSSION

5. 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>13</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>14</sup> As stated in the Bureau's prior decisions, given the availability of State/Local WEA Tests, the Bureau does not routinely grant waiver requests from alert originators seeking to conduct end-to-end WEA tests.<sup>15</sup>

6. Based on the circumstances set forth by VITEMA, we find good cause exists to grant a waiver in the instant case. VITEMA has highlighted that the U.S. Virgin Islands, along with the rest of the Caribbean region, is highly vulnerable to threats from tsunamis.<sup>16</sup> In the past the Commission has also recognized that the U.S. Virgin Islands faces heightened risks from natural disasters, such as the two hurricanes caused extensive damage and loss of life in 2017.<sup>17</sup> We believe that the frequency and magnitude of natural disasters that have been observed in the Caribbean in recent years creates a heightened need for emergency managers in that region to ensure both that the populace is prepared in advance of disasters and that WEA works effectively when those disasters do strike. We agree with VITEMA that a State/Local WEA Tests, which need to be opted into by subscribers, would have limited

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<sup>11</sup> See, e.g., Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

<sup>12</sup> See, e.g., @FEMARegion2, Twitter, (March 13, 2023), <https://twitter.com/femaregion2/status/1635252009036320768?cxt=HHwWgMDUzbnCyrEtAAAA>.

<sup>13</sup> 47 CFR § 1.3.

<sup>14</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>15</sup> *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Order, DA 21-302, 2021 WL 960395 (PSHSB rel. Mar. 12, 2021) (*Vail, CO Waiver Order*). See also *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Order, DA 20-190, 35 FCC Rcd 1527 (PSHSB 2020) (*City of Aliso Viejo, CA Waiver Order*).

<sup>16</sup> Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

<sup>17</sup> See, e.g., PBS, *2 years later, U.S. island territories still hurting from Hurricanes Irma and Maria* (Dec. 26, 2023), <https://www.pbs.org/newshour/show/2-years-later-u-s-island-territories-still-hurting-from-hurricanes-irma-and-maria>. See also *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5408, para. 13 (2018) (committing to ensuring the restoration, hardening, and expansion of advanced telecommunications networks in the U.S. Virgin Islands by creating the Bringing Puerto Rico Together Fund and the Connect USVI Fund).

reach and would not be effective in supporting widespread participation in this specific tsunami exercise. We also note that a State/Local WEA Test message would not serve its purpose of reducing public confusion because the exercise will also involve the activation of emergency sirens, which will in themselves create the impression of an active emergency. In this specific instance, we find that sending a Public Safety Message would better achieve the goal reducing public confusion. We believe that widespread receipt of a Public Safety Message stating that a tsunami exercise is occurring will maximize the chance that individuals who are confused or concerned by the sirens will understand their lives and property are not in immediate danger. We also note generally that, as we have previously found, public awareness, alert propagation, and proficiency training exercises are helpful tools that allow the public, city officials, and alert originators to determine geographic reach, public feedback, and effectiveness of internal policies.<sup>18</sup>

7. We condition this waiver to require that the test may only be conducted on the times and dates referenced above and may only be conducted for the purposes described above. Specifically, the waiver is based upon representations that:

- (1) this test is necessary to effectively conduct the Caribe Wave Tsunami Awareness exercise and 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) VITEMA has conducted extensive community outreach about the exercise (including the planned WEA messages), sent out press releases in electronic and printed media,<sup>19</sup> highlighted the exercise as part of a live broadcast from the Governor's office, heavily promoted the exercise using social media,<sup>20</sup> and made several bilingual radio announcements for over the previous month; and
- (3) VITEMA will use the "test" wording in the test message as described above.

8. 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 WEA systems and infrastructure.<sup>21</sup> We encourage VITEMA 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

9. 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 WEA in the U.S. Virgin Islands, as requested by VITEMA, on March 23, 2023, which test must be conducted subject to the conditions described herein. This action is taken under delegated authority

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<sup>18</sup> *Improving Wireless Emergency Alerts and Community-Initiated Alerting; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Public Notice, 36 FCC Rcd 8551 (2021), <https://www.fcc.gov/document/pshsb-grants-waiver-mendocino-california-wea-test>.

<sup>19</sup> *See, e.g.*, Virgin Islands Territorial Emergency Management Agency, St. Thomas Source, VITEMA to Conduct Caribe Wave Tsunami Warning Exercise on March 16 (February 28, 2023), <https://stthomassource.com/content/2023/02/28/vitema-to-conduct-caribe-wave-tsunami-warning-exercise-on-march-16/>.

<sup>20</sup> *See, e.g.*, @FEMARegion2, Twitter, (March 13, 2023), <https://twitter.com/femaregion2/status/1635252009036320768?cxt=HHwWgMDUzbnCyrEtAAAA>.

<sup>21</sup> *See* 47 U.S.C. § 222.

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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