

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
911 Governance and Accountability)	PS Docket No. 14-193
)	
)	
Improving 911 Reliability)	PS Docket No. 13-75
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)¹ hereby submits these comments in response to the Policy Statement and Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“Commission”) that proposes a comprehensive national governance structure and new guidelines to ensure the reliability and accountability of the nation’s 9-1-1 (“911”) ecosystem across communications platforms and transitioning technologies.²

USTelecom member companies understand the special responsibility of ensuring reliable and resilient 911 services and have long taken steps to ensure that public safety services are available in times of disasters and on sunny days. USTelecom and its member companies are longtime leaders in national security emergency preparedness communications, and they understand the critical role of 911 services to the community. USTelecom supports the

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See *911 Governance and Accountability, Improving 911 Reliability*, Policy Statement and Notice of Proposed Rulemaking, PS Docket Nos. 14-193,13-75, FCC 114-186 (rel. Nov. 21, 2014) (*911 Governance and Accountability NPRM*).

Commission's efforts to address issues leading to the 2014 multi-state 911 outages. The Commission, as well as state and local authorities, have investigated and addressed the events and actions taken by particular vendors and/or providers. We believe there are sound approaches the Commission can take that will help improve 911 reliability, guard against multi-state 911 outages, provide greater accountability in a transitional environment, and ensure availability of services as the 911 ecosystem transitions to IP-based technology.

I. THE COMMISSION SHOULD ADOPT THE RECOMMENDATION TO DEVELOP AND IMPLEMENT NG911 TRANSITION BEST PRACTICES

The Bureau's outreach efforts³ to educate "Covered 911 Service Providers" have been helpful as impacted entities work to comply with the recently adopted *911 Reliability Order*⁴ and voluntarily undertake significant efforts to ensure reliable and resilient 911 service. As the Commissioner has indicated, initial certifications of substantial progress toward meeting the requirements of the annual reliability certification with regard to critical 911 circuit diversity, central office backup power, and diverse network monitoring must be submitted to the Commission by October 15, 2015⁵. The first full Annual Reliability Certifications are due October 15, 2016. Before proceeding with more new requirements, USTelecom urges the

³ See Small Entity Compliance Guide: Improving 911 Reliability, DA-14-643, released May 13, 2014. See also PSHSB 911 Reliability Webinar Series, including the 911 Certification Rules Webinar, available at <http://www.fcc.gov/events/911-certification-rules-webinar>.

⁴ *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75, 11-60, Report and Order, 28 FCC Rcd 17476 (2013) (*911 Reliability Order*).

⁵ See *Public Safety and Homeland Security Bureau announces the effective dates of new reliability certification and PSAP notification requirements for 911 communications providers*, following approval of the associated information collections by the Office of Management and Budget (OMB), PS Docket Nos. 13-75, 11-60, Public Notice, DA 14-1664 (Pub. Safety Homeland Sec. Bur. Nov. 18, 2014).

Commission to allow more time for these existing requirements to be met and for their effectiveness to be properly evaluated.

The Public Safety and Homeland Security Bureau (“Bureau”) has recommended that the FCC’s Communications Security, Reliability and Interoperability Council (CSRIC) be tasked with developing and refining a comprehensive set of best practices for maintaining a reliable end-to-end 911 system.⁶ USTelecom agrees with that recommendation, given the successful track record of the CSRIC and its ability to bring together the Nation’s preeminent subject matter experts to develop real-world solutions and provide invaluable expertise in this area. In addition to implementing CSRIC recommendations where feasible, USTelecom also encourages the Commission to advance technical guidelines for the implementation of next-generation 911 technology to support public-safety answering points (PSAPs).

The Commission’s long-standing collaborative and consensus-based approach to communications reliability has resulted in substantial increases in 911 resiliency and reliability. Since 1992, the Commission has turned to federal advisory committees such as the CSRIC, which was created as a forum for communications service providers, public safety entities, state and local governments, tribal entities, consumer groups, and federal government agencies, to share information and develop recommendations to provide to the FCC. This collaborative approach has been successful; recommendations from the CSRIC have helped to ensure, among other things, reliable and resilient 911 service, and led to the development of appropriate best practices.⁷ Unlike top-down federal regulation, this multi-stakeholder, multi-jurisdictional,

⁶ See *April 2014 Multistate 911 Outage: Cause and Impact*, Report and Recommendations, PS Docket No. 14-72, PSHSB Case File Nos. 14-CCR-0001-0007, at 25 (Oct. 2014) (*Multistate 911 Outage Report*), available at <http://www.fcc.gov/document/april-2014-multistate-911-outage-report>.

⁷ *911 Reliability Order*, 28 FCC Rcd at 17479, ¶ 10.

public-private collaborative approach has yielded more innovative and evolving solutions for improving the resiliency and reliability of transitional 911 systems and local communications.⁸

USTelecom strongly urges the Commission to allow existing forums to continue to play an integral role in these network reliability improvement efforts. We therefore encourage the Commission to obtain broad stakeholder input - particularly, consensus-based technical and operational expert guidance from entities such as CSRIC and the ATIS Network Reliability Steering Committee (NSRC) - before adopting and applying far-reaching, unnecessary federal regulations across the entire 911 ecosystem.

II. THE COMMISSION MUST ENSURE THAT IT HAS CLEAR LEGAL AUTHORITY TO ADOPT PROPOSED REGULATIONS

The existing partnership of state, local, and federal entities responsible for governance of emergency response services is critical to ensuring that 911 is available when needed. Although many of these public safety obligations overlap, the Commission has acknowledged that certain responsibilities, including those related to establishing and designating PSAPs or appropriate default answering points, retaining and training PSAP personnel, purchasing 911 network services, and implementing a funding cost recovery mechanism fall “squarely within the purview

⁸ See **CSRIC II Final Reports**: WG-1A Public Safety Consolidation - Best Practices and Recommendations; WG-4A Best Practices for Reliable 9-1-1 and E9-1-1 Report; WG-4B Transition to NG9-1-1; WG-4C Technical Options for E9-1-1 Location Accuracy, available at <http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-ii>; **CSRIC III Final Reports**: WG-1 NG 9-1-1; WG-3 E9-1-1 Location Accuracy; WG-8 E9-1-1 Best Practices; WG-10 9-1-1 Prioritization, available at <http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii>; **CSRIC IV Final Reports**: WG-1 NG911; WG-7 Legacy Best Practice Updates; WG-9 Infrastructure Sharing During Emergencies, available at <http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iv>.

of states and localities.”⁹ Nevertheless, the Commission proposes a broad set of actions in the NPRM that could, if not appropriately implemented, reach far beyond the “promote,”¹⁰ and “encourage and support”¹¹ role that Congress apparently intended the Commission to undertake.

The Commission cites to multiple sources of authority to implement its proposals. In addition to the general mandate in section 151 of the Act to promote safety of life and property, it relies on the 911 Act, which authorizes the Commission to “designate 911 as the universal emergency telephone number within the United States,”¹² and directs it to “encourage and support *efforts by States* to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 911 service.”¹³ The Commission likewise asserts that the NET 911 Act, which authorizes the Commission to require IP-enabled voice service providers to provide 911 and enhanced 911 service and to promulgate implementing regulations, further supports its authority to adopt the far-reaching measures proposed in the NPRM.¹⁴ It also asserts that the CVAA supports implementation of these proposals because it grants the Commission authority to take action “to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet

⁹ *911 Governance NPRM* at ¶ 13, (citing *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 05-196, 04-36, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10249, ¶ 6 (2005)).

¹⁰ See 47 U.S.C. § 151 (establishing the FCC for the purpose of “promoting safety of life and property”).

¹¹ Wireless Communications and Public Safety Act of 1999, PL 106-81, 113 Stat 1286 § 3(a) (1999) (911 Act) (codified at 47 C.F.R. § 251(e)(3)).

¹² *911 Governance NPRM* at ¶¶ 29, 76 (citing the 911 Act at § 3(a) (codified at 47 U.S.C. § 251(e)(3)).

¹³ *911 Governance NPRM* at ¶¶ 29, 76 (citing the 911 Act at § 3(b) (codified at 47 U.S.C. § 615) (emphasis added)).

¹⁴ *911 Governance NPRM* at ¶ 76 (citing New and Emerging Technologies 911 Improvement Act of 2008 (*NET 911 Act*), PL 110-283, 122 Stat 2620 (2008)); 47 U.S.C. § 615a-1(a), (c)(1)(B)). The Commission notes that additional authority can be found in section 615(a-1(g) of the NET 911 Act to compile information concerning 911 and enhanced 911 elements. See *911 Governance NPRM* at ¶ 78.

protocol-enabled emergency network, where achievable and technically feasible.¹⁵ The Commission further relies on its broad, general Title II authority over common carriers¹⁶ and case law¹⁷ as authority to ensure effective public safety communications.

We encourage the Commission to consider carefully the intended scope of its authority to establish regulations and otherwise determine what is necessary to achieve the 911 availability and reliability goals discussed in the *NPRM*. As a general matter, however, other than discrete mandates concerning the 911 dialing code and E911 requirements for wireless and interconnected VoIP providers, Congress did not apparently intend the Commission to go beyond a role consisting of encouragement, support, consultation, and cooperation.¹⁸ Notably, Congress expressly does not “authorize or require the Commission to impose obligations or costs on any person”¹⁹ in implementing the NET 911 Act, and it is difficult to see how some of the proposals in the Notice will comport with this express limitation. Moreover, section 615(c) appears to limit the Commission’s regulatory authority to act only on proposals from the Emergency Access Advisory Committee, with the one exception mentioned above: the

¹⁵ *911 Governance NPRM* at ¶ 76 (citing Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), PL 111-260, 124 Stat 2751 (2010) (codified at 47 U.S.C. § 615c(g)).

¹⁶ *See, e.g., 911 Governance NPRM* at ¶ 78 (citing 47 U.S.C. §§ 218 (authority to “inquire into the management of the business of all carriers” and obtain from them information necessary for the Commission to perform its duties), 251(c)(5) (authority to require ILECs to “provide reasonable public notice of changes in the information necessary for the transmission and routing of services” or other services affecting interoperability), and 4(o) (directing the Commission to obtain maximum effectiveness from the use of communications in connection with safety of life and property by investigating and studying to obtain cooperation and coordination of communications systems)).

¹⁷ *See id.* (citing *Nuvio Corp. v. FCC*, 473 F.3d 302, 312 (D.C. Cir. 2006) (Kavanaugh, J.. concurring) (recognizing “[t]he broad public safety and 911 authority Congress has granted the FCC”)).

¹⁸ *NET 911 Act*, 47 U.S.C. § 615 (the Commission “shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs,” including consulting with State and local officials and other stakeholders; and “shall encourage each State to develop and implement coordinated statewide deployment plans”).

¹⁹ *Id.* (“Nothing in this section shall be construed to authorize or require the Commission to impose obligations or costs on any person.”).

Commission may take actions related to access by disabled persons.²⁰ Finally, any assertion of ancillary authority by the Commission would likely be subject to challenge to the extent it seeks to impose extensive requirements on non-carriers.²¹ The Commission therefore should ensure that the actions it proposes and ultimately implements are clearly within its statutory authority.

III. CONCLUSION

USTelecom appreciates and supports Commission actions to improve 911 reliability, guard against multi-state 911 outages, provide greater accountability in a transitional environment, and ensure availability of services as the 911 ecosystem transitions to IP-based technology. The transition from legacy networks to modern, robust IP-enabled networks will be better served if the Commission refrains from over-regulation, and implements only what is necessary to ensure the reliability and availability of 911 service. The Commission should therefore rely on and facilitate existing and ongoing efforts by states and local entities, as well as industry participants through consensus and adoption of best practices, as part of this proceeding.

Respectfully submitted,

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²⁰ See 47 U.S.C. § 615c(g).

²¹ See *911 Governance NPRM* at ¶ 80 (stating that, because of the recent multistate 911 outages, its proposals would be reasonably ancillary to fulfillment of the statutory mandates to ensure reliable and resilient 911 services).