

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF AT&T

The Commission’s 911 Governance and Accountability Notice of Proposed Rulemaking (NPRM)¹ contains sweeping proposals that have drawn criticism from an array of public safety stakeholders, private and public sector entities alike. Private entities that have some involvement in the chain of 911 connectivity have explained how the Commission’s proposals are unnecessary and will harm the competitive 911 marketplace² and public 911 stakeholders have detailed how the Commission’s proposals constitute a regulatory overreach that, if adopted, will increase their costs, thereby chilling the deployment of Next Generation 911 (NG911) technologies.³ No commenter doubts the Commission’s sincerity in trying to minimize the occurrence and effects of future sunny day outages; however, commenters agree that the Commission’s concerns are best addressed through tools that are available today to public and

¹ *911 Governance and Accountability; Improving 911 Reliability*, PS Docket Nos. 14-193, 13-75, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208 (2014).

² *See, e.g.*, Alaska Rural Coalition Comments, AT&T Comments, CTIA Comments, CenturyLink Comments, Competitive Carriers Association (CCA) Comments, Intrado Comments, iCERT Comments, ITTA Comments, Motorola Solutions Comments, NTCA Comments, Sprint Comments, TIA Comments, T-Mobile Comments, USTelecom Comments, Verizon Comments.

³ *See, e.g.*, Boulder Regional Emergency Telephone Service Authority (BRETSA) Comments, Fairfax County Reply Comments, National Association of State 911 Administrators (NASNA) Comments, Texas 9-1-1 Entities Comments.

private parties. AT&T Services, Inc., on behalf of its operating affiliates that provide service to public safety answering points (PSAPs) (collectively, AT&T), filed extensive comments describing why the Commission’s proposed expansion of its Part 12 rules would be both unnecessary and without legal support, and, if adopted, would undermine important public policy objectives. We do not repeat those arguments here; instead, we discuss other parties’ comments, including those commenters that express some support for the proposed Part 12 amendments.

A number of commenters explained how the Commission’s expanded certification, notification, and discontinuance proposals, as well as its 911 Network Operating Center (NOC) provider proposals would delay deployment of NG911 technologies, might incent current 911 system service providers (SSPs) to exit this market, and would increase providers’ costs, which undoubtedly would be passed along to state and localities responsible for funding PSAPs.⁴ This is not mere rhetoric. In the five months since the Commission released its NPRM, AT&T and others have seen the uncertainty prompted by the proposed rules adversely affect ongoing contract negotiations between SSPs and PSAPs and cause several well-known and established SSPs to consider exiting this line of business.⁵ Not only is reducing competition at odds with Congress’s intent that the Commission *promote* competition,⁶ the effect is entirely predictable:

⁴ See, e.g., iCERT Comments at 2, 3, 4; BRETSA Comments at 14-15; Motorola Comments at 4, 7, 9-10; CCA Comments at 7, 11-12; Intrado Comments at 36; Verizon Comments at 2; CTIA Comments at 12; CenturyLink Comments at 23.

⁵ See also CenturyLink Comments at 24 (covered 911 SSP may never enter the market because of the risk that it may not be allowed to exit a market or a line of service).

⁶ See, e.g., Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”).

higher costs, less innovation, and needless delays in the deployment of NG911 networks.⁷ Most troubling, there is no reasoned basis for the Commission to cause such disruption to the industry.

Contracting process sufficient to address most Commission concerns. The Commission proposes significant new requirements purportedly designed to address shortcomings the Commission asserts exist in today's 911 ecosystem. Among other things, the Commission proposes to require Covered 911 Service Providers to notify the public of "major changes" to their network architecture or scope of 911 services and obtain Commission approval to discontinue, reduce or impair 911 services. The Commission also seeks to require entities that propose to provide any capability of a Covered 911 Service Provider to make broad certifications to the Commission prior to offering those services. Most commenters agree that those proposed safeguards as well as the information the Commission proposes to obtain by modifying its Part 12 rules could be achieved much more efficiently and effectively through contract negotiations between state/local government authorities and providers.⁸ It is true that some state commissions have limited or no jurisdiction over IP-enabled services and PSAPs are increasingly served by interstate service providers.⁹ However, that does not mean that a PSAP in such a state is incapable of issuing a request for proposal that requires respondents to make certain information available to the PSAP (*e.g.*, notification of a "major change," however the PSAP chooses to

⁷ *See, e.g.*, Verizon Comments at 3 (states and localities will be reluctant to commit taxpayer dollars and government resources to develop innovative solutions if it is unclear whether the provider or other party is legally permitted to cease an existing service to implement new capabilities or to upgrade old ones).

⁸ *See, e.g.*, NASNA Comments at 5; Texas 9-1-1 Entities Comments at 13 ("these types of issues should generally be addressed via contracts"); iCERT Comments at 2 ("our member companies maintain Service Level Agreements (SLAs) with our customers and today face penalties and loss of business when we fail in our duties to the 911 SSPs whom we serve").

⁹ *See, e.g.*, Virginia Commission Comments (attaching Virginia Commission staff report at 17); NENA Comments at 8 ("Calls and data streams that, at one moment, are handled through facilities located within a state can, at the drop of an electronic hat, be re-routed through facilities thousands of miles away").

define that term) or to agree to obtain PSAP approval prior to discontinuing or reducing a service or introducing a new service as a condition of winning the bid. The type of technology that the respondent proposes to use or the fact that the respondent may fulfill the proposed service obligations using facilities located in another state has no effect on a PSAP's ability to impose these conditions through the contracting process.¹⁰ Nor does it matter that the respondent may use subcontractors to satisfy its contractual obligations.¹¹ Indeed, in two recent Commission orders, 911 SSPs have acknowledged that they are fully responsible for complying with 911 requirements regardless of any alleged failures by their subcontractors.¹²

Relying on the well-established contracting process empowers public safety agencies to make market choices that best achieve their specific service needs within their specific budgets.¹³

¹⁰ We respectfully disagree with NENA's assertion that a SSP could "escape public oversight merely by removing [its] facilities from the state served." NENA Comments at 8.

¹¹ NASNA Comments at 2 (SSP should be responsible for guaranteeing to the PSAP or 911 authority that its agents and subcontractors are qualified and the contract's provisions should hold the SSP accountable for quality of service and performance); Fairfax County Reply Comments at 8 (having a subcontractor report major changes will cause confusion; notification system would be part of the contractual relationship between the provider and the PSAP)

¹² CenturyLink, Inc., Consent Decree, DA 15-406, ¶ 4 (rel. April 6, 2015); Verizon, Consent Decree, DA 15-308, ¶ 5 (rel. March 18, 2015). *See also* Intrado Comments at 20 ("only the entity with a direct responsibility to the PSAP should be responsible for certification and [] agents of regulated providers should not be regulated"). AT&T agrees and notes that the entity with the direct responsibility to the PSAP could be a regulated entity (*e.g.*, an ILEC or CLEC), an unregulated entity (*e.g.*, an independent, public safety solutions vendor) or some combination thereof (*e.g.*, a non-regulated affiliate of a regulated entity). In the event that the prime contractor is a non-ILEC, the fact that it may be affiliated with an ILEC should not subject that ILEC to regulation. Instead, in this circumstance, the ILEC agent should be unregulated just as a non-ILEC agent of the prime contractor. However unnecessary AT&T believes such a modification is, it has no objection to the Commission clarifying that the prime contractor that directly provides service to a PSAP is responsible for complying with the Commission's Part 12 rules, regardless of what roles or responsibilities have been subcontracted to other parties. *See* Verizon Comments at 13.

¹³ Texas 9-1-1 Entities Comments at 7 ("regulations applicable to Covered 911 Service Providers must be technically feasible, and any resulting increases in costs should be prudent and justified"); Motorola Comments at 5 ("most design, implementation, operation, and regulation of the actual activities of 911 . . . is best administered at the state or local level. . . . Local control best ensures that new technologies and processes are deployed in a manner appropriate for local areas, as local agencies have the best understanding of local needs, abilities, and resources."); Intrado Comments at 35-36.

On the other hand, imposing the proposed, one-size-fits-all federal mandates on 911 stakeholders could have the unintended consequence of causing public safety agencies to, among other things, “divert[] limited local budgets from expenditures which more significantly contribute to favorable outcomes of public safety incidents.”¹⁴ Rather than inappropriately substituting the Commission’s judgment for that of state and local governments and public safety agencies, AT&T and others urge the Commission to respect the secondary and supporting public safety role that Congress gave it.¹⁵

Support for the NPRM’s proposals is based on the unrealistic premise that the proposals would not disturb state authority over 911 matters. Several commenters expressed support for some of the Commission’s proposals. For example, the California Public Utilities Commission (California Commission) seems to support every proposal in the NPRM yet it states that these proposed rules should not “usurp state and local governance over this vital service.”¹⁶ The King County E911 Program also supports many of the Commission’s proposals although it, too, states that “nothing in the NPRM should impede state commission or local governmental authority over reliable 911 service. . . .”¹⁷ These commenters and others that offered such qualified support fail to explain how these proposals could *ever* satisfy their criterion that the Commission

¹⁴ BRETSA Comments at 14.

¹⁵ *See, e.g., id.* at 36 (noting that section 615 of the Act directs the Commission to “‘encourage and support’ state efforts to deploy emergency communications infrastructure and programs, not *supplant* state efforts.” (emphasis in original)); CCA Comments at 7; iCERT Comments at 5-7.

¹⁶ California Commission Comments at 3. *See also* Washington Utilities & Transportation Commission Comments at 2 (supporting the Commission’s proposals “as long as they do not disturb or work to undermine efforts at the state and local levels where 911 oversight has historically been conducted”), 4 (urging the Commission to “focus on measures that are complementary to, and do not limit or restrict, state and local government efforts”).

¹⁷ King County E911 Program Comments at 2. *See also* Pacific County Communications Comments at 1 (“there is nothing in the NPRM that should act or be construed to impede state commission and local governmental authority over reliable 911 service”).

not usurp state authority over 911 service. This seems particularly true given that the most predictable effect of the Commission’s proposals is to increase the costs and obligations of Covered 911 Providers above and beyond the terms and conditions of their existing contracts with state public safety agencies. As for-profit entities, Covered 911 Providers will recover those increased costs from PSAPs, which may or may not be able to increase 911 fees to recover those Commission-caused increased costs.¹⁸

Other public safety commenters recognize that the inherent tension between the Commission’s proposals and state authority cannot be reconciled and, instead, these commenters urge the Commission to maintain its supporting public safety role.¹⁹ Fairfax County, which is home to one of the ten largest PSAPs in the United States, urges the Commission to continue its role of coordinating and consulting with associations to define standards.²⁰ With its resources, the Commission is best positioned to develop and issue reports – as it did with last year’s multistate outage – that identify the root causes of such outages. Coupled with its leadership role in convening and managing working groups such as the Communications Security, Reliability and Interoperability Council (CSRIC), the Commission could arm states and localities with essential information to ensure that PSAPs make informed purchasing decisions. This approach respects and supports the “decades of experience” PSAPs have running a “highly-efficient public safety and emergency response system.”²¹

¹⁸ See, e.g., BRETSA Comments at 8 (describing a Colorado law that prohibits increases in local and state taxes without voter approval).

¹⁹ See, e.g., Motorola Comments at 6.

²⁰ Fairfax County Reply Comments at 4. See also Intrado Comments at 42.

²¹ BRETSA Comments at 2, 27-28 (recommending that the Commission establish public and private clearinghouses for 911-related information).

Most commenters oppose the Commission's 911 NOC Provider proposal. The Commission's proposal to require the 911 transport provider to be responsible for situational awareness and information sharing throughout a PSAP's jurisdiction was panned by public and private sector commenters as unworkable.²² As a 911 transport provider to many PSAPs, AT&T agrees with CenturyLink that taking on the 911 NOC Provider role as envisioned by the Commission "would be a staggering undertaking," lacking any cost-benefit analysis to justify the creation of this new role.²³ If the Commission adopts this proposal, which it should not, there will be a cost associated with this new designation and its associated responsibilities. And while there is no explicit acknowledgement in the NPRM over who is the actual customer for this new service, the 911 transport provider's increased costs will assuredly flow through to PSAPs.

In addition, this new position also ignores preexisting roles contractually assigned by states to 911 service providers. As Intrado explains, the 911 NOC Provider responsibilities would add responsibilities to the existing SSP role, a role governed by state regulators.²⁴ It is unclear to all involved how providers would comply in the event that there are potentially conflicting regulatory requirements and how any such conflict affects existing tariffs or contracts. Moreover, the entity that the Commission selected – the 911 transport provider – "may be the least informed about the underlying 9-1-1 network configuration and facilities being

²² *See, e.g.*, Texas 9-1-1 Entities Comments at 16-18; APCO Comments at 5-6; ATIS Comments at 8 (911 NOC Provider proposal is not feasible and there could be significant liability issues associated with performing these duties); CenturyLink Comments at 14-17 (among other things, explaining that, as proposed, the 911 NOC Provider risks substantial financial penalties); iCERT Comments at 4-5; Intrado Comments at 59-66; ITTA Comments at 5-7; Verizon Comments at 5-6.

²³ CenturyLink Comments at 14.

²⁴ Intrado Comments at 63.

used”²⁵ Instead, the Texas 9-1-1 Entities propose that the Commission empower local jurisdictions to identify their own 911 NOC Provider or Providers, which could include a governmental authority.²⁶ AT&T respectfully submits that state and local governmental authorities do not need a federal rule to create such a function should they so desire one.

Regardless of which entity is assigned the 911 NOC Provider, a designation AT&T and others continue to believe is unnecessary, commenters also express concern over competitors being forced to share commercially sensitive information, which could include information about non-outage service degradation events.²⁷ Additionally, by unilaterally preordaining one carrier – most likely the ILEC – as the 911 NOC Provider, the Commission is essentially creating a new 911 provider of last resort designation. Not only is such a designation counter to the Commission’s obligation to promote competition, it is inconsistent with the Commission’s prior support of NENA’s i3 standard, in which multiple providers play multiple roles in the 911 ecosystem.²⁸

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The record is clear that the Commission has not demonstrated why its proposals are necessary and would have prevented the sunny day outages described in the NPRM. Indeed, many commenters urge the Commission to allow the industry to implement fully the rules it

²⁵ Texas 9-1-1 Entities Comments at 17.

²⁶ *Id.* See also ACS Comments at 9 (recommending that the Commission assign this role to the entity that owns or operates the selective router).

²⁷ See, e.g., Verizon Comments at 5; Sprint Comments at 5; CCA Comments at 7-8; iCERT Comments at 4-5; CTIA Comments at 12; CenturyLink Comments at 13.

²⁸ Intrado Comments at 59-60.

adopted just over a year ago before it expands significantly those very requirements. It also is evident that the Commission failed to perform its mandatory cost-benefit analysis to justify *any* of its proposals.²⁹ Finally, commenters agree that the Commission has not demonstrated that it has the authority to mandate proposals that have historically and properly been within the domain of state and local governments. To be sure, there is and will continue to be a public safety role for the Commission but that role is limited by Congress. Rather than proceed with adopting rules of questionable legal validity and utility, AT&T and others recommend that the Commission “encourage and support” the states³⁰ by focusing its resources on being a clearinghouse of information that has been gathered and developed through CSRIC and other federal advisory committees.

AT&T requests that the Commission take action in accordance with the recommendations provided above and in AT&T’s previously submitted comments.

Respectfully Submitted,

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²⁹ See, e.g., T-Mobile Comments at 7-10.

³⁰ 47 U.S.C. § 615.