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

In the Matter of	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF SOUTH CAROLINA STATE 911*

Introduction

The South Carolina (SC) Budget and Control Board Office of Research and Statistics (ORS or SC State 911) is the state government entity with responsibility and authority under the SC Public Safety Communications Center; i.e. 911, Act, Section 23-47-10, et seq., as amended. This includes approving local government wireline 911 surcharge plans, and administering the state wireless 911 surcharge. It distributes 58.2% of that fund's revenue to reimburse the Public Safety Answering Point (PSAP or 911 Centers) and Commercial Mobile Radio Service provider (CMRS, wireless service provider, wsp, or wireless) costs of compliance with the FCC requirements of Docket #94-102. Wireless Enhanced 911, and 39.8% to PSAPs in proportion to their CMRS 911 call volume for 911 center operations.

The SC 911 Coordinator signatories represent SC 911 Coordinators and other PSAP employees, as such, by their tacit consensus. Renee Hardwick is Horry County's 911 Coordinator, the President of SC National Emergency Number Association (SC NENA), and one of the two only and last PSAP Employee representatives on the SC CMRS E9-1-1 Advisory Committee, which sunsetted August 1, 2004. Ralph Inman is the other only and last PSAP representative and last Chairman of that Committee, a past President of SC NENA, and a principal drafter of SC's state 911 legislation. David Jones is a member of the FCC's Intergovernmental Advisory Committee (IAC), the Spartanburg County Communications Director, President Elect of NENA, and a defacto member of the Advisory Committee and representative of SC PSAPs.

These are the state and local government personnel of the SC State 911 and its SC CMRS E9-1-1 Advisory Committee most responsible for implementing the state's coordination and funding of Phase 1 and 2 Enhanced wireless 911 of the FCC's Order in Docket 94-102, and those who perceive responsibility for informing subscribers, and for how the South Carolina Public/Private Partnership (SC 911), to include VoI

Providers, should respond-to all telecommunications users, to the SC General Assembly and to the FCC.

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*Submitted ex parte pursuant to Section 1.1206 of the Rules (47 CFR 1.206).

SC State 911 and SC NENA have participated in 911 FCC proceedings and discussions, and applaud, appreciate, and benefit from, them and their results. The FCC threshold requirement that the CMRS Providers furnish their part of these expensive services wherever the PSAPs can use them has proved essential, in fact necessary, to SC's implementation of CMRS Enhanced 911. Our experience convinces us that there would have been far less implementation and little hope of equity or ubiquity in wireless Enhanced 911 absent that requirement and its progeny.

COMMENT

Conclusions/Summary

i. Primacy of Enhanced 911 Services in Public's Safety, Expectations, and Support.

911 is the nation's primary public safety system and means for emergency communication and assistance routing. Implementing enhanced, ubiquitous, equitable 911 services throughout the nation's telephonic communications is a national goal with the highest order and priority. Almost all Americans expect these services to be part of any telecommunication means and support doing whatever is necessary and feasible to require and fund this implementation by all necessary parties to the requisite 911 Public/Private Partnerships.

1. FCC Requiring VoI Providers to Furnish E9-1-1 Services to Subscribers and 911 Centers

The federal government has preempted regulation of the Internet and should so regulate to require Internet enabled telephony providers to include their portion of Enhanced 911 delivery in the services they provide their subscribers, allowing their recovery of costs from those subscribers.

2. FCC Providing or Allowing for Funding the Costs of PSAP Provision of E9-1-1 Services to VoI Subscribers

The federal government has not and should not pre-empt state and local government surcharge or user fee taxation of Internet enabled

> telephony services. The FCC should provide, or allow for, state and local government recovery of their costs associated with their portion of the 911 services provided to Internet enabled telephony subscribers.

These statements of the obvious are consonant with the sound, good faith, technological, governmental, and business principles presented in this Docket. They are the conclusions of NENA (in which these signatories are members), which best represents the private, as well as public, entity and personnel partners in United States 911, and of the Intergovernmental Advisory Committee (of which David Jones is a member), the commenter in this docket which best represents state and local government, including 911. It appears probable that the FCC is reaching similar conclusions in this Docket, particularly i. the primacy of public/private partnership implementation of emergency communication systems, and 1. the necessity of requiring VoI providers to furnish their portion of E9-1-1 services.

i. Primacy of Enhanced 911 Services in Public's Safety, Expectations, and Support

Years of terrorism, thousands of rescue triumphs and tragedies, opinion polls, and experience implementing wireline and wireless 911 systems demonstrate and reinforced the unquestioned validity and prominence of 911 systems' premier, primary and essential role in public safety and the necessity of telephony vendors' participation in 911. The Congress institutionalized these interrelated realities and industry obligations in Section 255 of the Communications Act. The FCC and the public safety community have done so in the FCC E9-1-1 Dockets, including this one. Some industry commenters affirm these axioms of policy and reality. They are almost tautological, and so generally accepted as to be unquestioned and worthy of this Commission's quasi-judicial notice.

1. FCC Requiring VoI Providers to Furnish E9-1-1 Services to Subscribers and 911 Centers

The State and Local Government 911 perspective is that such a threshold FCC VoI E9-1-1 provider requirement is required by the 911, emergency telecommunications and response, public safety needs of VoI subscribers and the first responders who address their emergencies-preferably and ultimately with Enhanced 911 services/information. Such institutionalization of the industry obligation to provide its piece of the 911 systems in law is a keystone of E91-1-1, along with technology, funding, and public/private partnership in humane pursuit of public safety communication. Leaving 911 to purely voluntary compliance renders impossible ubiquity and equity in emergency communications, and rewards reluctance, delay and recalcitrance.

As the FCC stated in its Amicus Brief for pre-emption of Minnesota regulation, including requiring VoI Providers to provide and fund 911 services in Vonage v. Minn. PSC,

> Vonage's own regulatory status, and the status of Internet telephony services more generally, present complex questions of law, fact, and policy that are uniquely within the expertise of the FCC. The Commission has direct and ongoing responsibility for administering the Communications Act and evaluating the often complex interactions between law and technology that the Act's regulatory scheme entails. The Commission is intimately familiar with the existing architecture and ongoing evolution of the Internet. This expertise gives it special insight into how the distinction between information services and telecommunications services can best be applied to Internet telephony services like the one provided by Vonage

The FCC alone can, and therefore must, require the VoI providers to implement VoI E9-1-1 for all their subscribers everywhere in the country. As a group which has implemented CMRS E9-1-1 and studied the FCC's VoI dilemma's and comments thereon and in this proceeding, we ask that you not leave us to implement VoI E9-1-1 without any avenue toward a legal requirement that VoI providers include E9-1-1 service to all subscribers. They are the only ones to do it. They are not all committed to doing it at all, let alone trying to do it. They will do so somewhat universally and timely, only if required by law; i.e., by the FCC.

Reply to Industry Comments

The industry comments are accurate as far as they go; that is in stating the technical, technological and commercial definitions, models, and fields.

The FCC's NPRM request for comment on sub-classifications, more complex definitions or sub categorizations of internet services indicates recognition of the complex societal, subscriber and emergency response demands, models and fields those services entail. The FCC and its NPRM encapsulates this core principle in its use of the more specific "Internet enabled telephony."

Our experience, focus and results in implementing SC 911 are that it must be a partnership of industries and governments. Thus it must give principles and validity and accommodation of the legitimate interests of the other partners. Fashioning consensual solutions to complex problems is thus a matrix and calculus of vectors of priorities, practicalities, and technological, financial and fiduciary factors.

We respect and accept the industry technological and commercial analysis, interests in a free Internet, and part of the definitions and categorizations the docket addresses. However, it is our responsibility to assert, with the FCC, additions to those definitions to encompass the subscriber public safety, emergency response, communication s aspects, interests and their priorities, necessities, and realities.

The industry comments acknowledge the necessity of 911 services. Their argument here is that Internet related industries, and even their part of 911 implementation, would develop more efficaciously, if voluntarily.

The Internet and Computer Industry well reasoned, good faith arguments are drawn from, and supported by, the technological fact, and related policy and principles, that Internet enabled telephony, like other Internet services transmits packets of digitized data, not sound or picture, and therefore constitutes "information" not "communications" "services", as the FCC has ruled, and is, or can be, more, or even solely, an interstate industry than other forms of "telephony", wireline and wireless.

However the industry analyses omit essential analytical and policy definitional aspects of Internet enabled telephony, which the FCC recognizes. The NPRM queries whether this simplistic categorization of all telephony service in the US as regulated "communications" or unregulated "data" adequately serves public safety and welfare and other policy goals and requirements. Implicit in this question is the concept that Internet enabled telephony may be characterized and categorized based on concepts in addition to the technological means of transmission. So does the accurate term "Internet enabled telephony". So does that term's recognition of the common, ordinary understanding of an Internet phone call, and the Internet's use of the PSN and its backbone.

Proper categorization of Internet enabled telephony as "telecommunications" for some purposes or aspects is most apparent in terms of, and is required by, the highest public policy priority, public safety, and the corollary public safety importance and ubiquity of the country's emergency "telephony" telecommunications/911, systems. Traditional, wireline, telephony E9-1-1 services are ubiquitous in South Carolina and much of the rest of the country. With statewide wireless 911 surcharge funding, most SC local government and WSPs provide wireless E9-1-1 Phase 1 services and are implementing wireless E9-1-1 services. Increasing numbers of South Carolinians will have only Internet enabled telephony on which to call 911, to call the government portion of the 911 system which delivers the correct emergency responder to the caller in emergencies. For emergency callers and responders there should be little difference between a 911 call delivered over one form or another of telephony, and all forms should deliver such calls with as much enhanced information as the FCC deems feasible. It is clear that Enhanced 9-1-1 Internet enabled telephony services for the subscriber's fixed site are essentially the same as wireline Enhanced 9-1-1 services are feasible and not terribly complex or expensive. Internet enabled telephony is analytically and de facto as much a part of the emergency telephony communications system(s), as wireline and wireless telephony. The FCC should make it so dejure and treat it analogously where practicable.

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<u>Other Commercial Interests</u>.

Other commercial interests mentioned in this docket support this Comment's two conclusions, including competitive neutrality between new entrant Internet enabled telephony and wireline and wireless telephony which already sustain Enhanced 911 costs, including users fees, and maintenance of the wireline telecommunications backbone, a physical part of almost all telephone calls, the predominant part of most calls, and the industry parent of 911 telecommunications.

Comments of the NENA and IAC

The comments of NENA and IAC also appear to be well reasoned, in good faith, and compelling. In addition, they are authoritative, representative, balanced, and include proper public safety policy, as well as technological and competitive, considerations.

Reply To Comments of NENA

As NENA states, its "sole mission is the extension and improvement of emergency (9-1-1) calling." It is best constituted and positioned to provide technical information about it and to represent the public and private participants in its delivery, nationwide. SC 911 defers to NENA in its suggestions for which Internet services should be required to provide 911 services, for which of the fixed, nomadic or migratory aspects, and with what timetables. However Commission determinations that providing 911 services is infeasible for some of the Internet services or aspects should not interfere with requiring them of others.

As its comments document, NENA has also made great progress in the necessary addition of the VoI providers to the 911 public/private partnership. This includes developing with twelve of the VoI Providers the most productive, present, voluntary approach and agreement to provide 911 services and contribute to wireline 911 surcharge funds. NENA's all 911 inclusive charter, its developing, essential partnership with VoI providers, particularly in this agreement, and integrity require balance and nuance in its Comments' references to the inadequacies of such purely voluntary VoI participation in 911 emergency reporting and the resulting necessity of a FCC Internet enabled telephony E9-1-1 requirement. "Voluntary" VoI 911, by agreement, has failed from the outset in the absence of some VoI Providers from the December 2003 agreement, despite that failure's emphasis on the necessity of regulation. Furthermore only one VoI Provider in South Carolina has contacted 911 authorities. SC 911 would re-assert here that 911 emergency reporting services are too important to preserving life and safety to risk or delay, even in part, by relying solely on "encouragement". Mere encouragement rarely works when the encouraged service is costly and non-remunerative. It did not work with CMRS E9-1-1, in South Carolina, or the nation as a whole. NENA's Comment's argument supports this conclusion, and their Comments so conclude, but with a "light touch". We defer to NENA, the IAC, and most of all to the FCC how "light" to "touch", as well as how much to touch of fixed, migratory and nomadic Internet enabled telephony, as long as

it does regulate as this comment concludes is essential, if not necessary, to the nation's premier public safety communications system, 911.

The NENA First Comment affirms that:

> Agreements reached must be founded on the ultimate authority of the Commission to assure access to 9-1-1 services. If that authority is lacking under present law, Congress could be asked to fill the gap.
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> NENA believes the FCC is correctly confident in its authority "to determine whether the public interest require[s] that a provider of a particular service should be required to provide 911/E911 to its customers." (Notice, ¶53, n.162) The amplitude of that authority makes it unnecessary, we suggest, to strain at fitting IP-based services into existing regulatory classifications such as Title II common carriage.[1]
>
> Instead, the *a priori* importance of "promoting the safety of life and property," 47 U.S.C. §151, causes us to recast the risk-benefit analysis expressed in the Notice. We respectfully suggest that the question should not be: "How should we weigh the potential public benefits of requiring emergency calling and other public safety capabilities against the risk that regulation could slow technical and market development." (Notice, ¶53) Instead we would ask:
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> Given the obvious importance of emergency calling, how can we encourage (or require, if need be) 9-1-1 access as an essential ingredient of early planning for "technical and market development" of new communications or information services and products?
>
> ……
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> VOIP discussions already show that the aspects of VOIP that are getting serious discussion are those where there are regulations and those where there is enforcement (or threat of enforcement).[2]

Despite its proper shift of the analysis to the a priori primacy of public safety and 911, and the dearth of available evidence concerning the extent to which VoI providers that <u>have</u> committed to the voluntarily provision and funding of 911 services are doing so,

> [NENA's leadership] remain(s) hopeful but realistic about voluntary behavior in a competitive marketplace. Commercial concentration on proliferation of services and applications for profit may well minimize attention to full E9-1-1 solutions as part of those applications. Historically, this has been the case. E9-1-1 support frequently has been an afterthought. It would seem imprudent to assume that this round of VOIP technology application development should automatically be different. Rather, we must consciously and deliberately apply forethought. NENA prefers a voluntary and collaborative approach with the industry. However, we consider it likely that carefully defined, minimal regulatory specifications will be desirable in order to see that the needs of E9-1-1 are met steadfastly and reliably across the predictable proliferation of services and applications.

SC 911 agrees with NENA's realism, but sees no basis for hope that purely voluntary implementation will be either fast, effective, coordinated, integrated, uniform, or

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[2] VOIP Forum, December 1, 2003, http://www.fcc.gov/voip/voipforum.html.

ubiquitous. Nor can the nation's governments leave this essential aspect of the people's safety to hope, any more than to encouragement, in any case. Rather we agree with NENA's that:

> [S}ome direction and monitoring functions are needed to see that this happens on a consistent and "best-efforts" basis across the myriad of opportunities. This direction is best set before the fact, rather than reactively. Directive influence is the key, and the FCC is best positioned to coordinate the process of industry and public safety collaboration. (First Comment)

We would simply add that that "coordination…and collaboration" will only come, as with wireless E9-1-1, if Congress or the FCC require these new telecommunications entrants to provide 911. SC 911 like

> NENA seeks reasonable but specific requirements for 9-1-1 service across all types of IP-based originating services that can generate emergency messaging. In that context, classifications may be less important to our needs than a specific objective of consistent capabilities across all varieties of service that can generate 9-1-1 calls and data.
>
> We are conscious of economic issues in the challenge of 9-1-1 solutions for IP-based services. They fall upon PSAPs as well as device and service providers. We believe: (1) the challenges are worth assuming; (2) they should fall equally on similarly situated competitors; and (3) they will be easier to meet if planned and budgeted early in the product or service development cycle. The challenges, we maintain, simply cannot and must not be ignored or postponed when the competitive objective is to replace telecommunications services that already are providing E9-1-1 access, services and network components.

NENA's Supplemental Comments, while remaining faithful to its agreement with VoI Providers and thus subtle, further demonstrate the inadequacies of voluntary 911 implementation.

> We believe, however, that all VOI service providers now have wide opportunity to access E9-1-1 systems through CLEC and cable providers who already have E9-1-1 access, and should be aggressive in their efforts to provide subscribers access to E9-1-1 service that the vast majority of those subscribers had -- or could have obtained -- through more traditional service providers in their community.[3]
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> Time is not necessarily on our side in the pacing of voluntary and consensual solutions. With each media report of an IP caller's failed attempt to reach nearby 9-1-1 help, public pressure for a mandatory requirement is bound to grow. The attachment at Exhibit B is one of a mounting number of tragic or near-tragic examples. A recent Congressional hearing took extended note of the problem.[4]
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> Even as an acceptable consensual solution evolves, the likelihood is that carefully defined, minimal regulatory specifications will be desirable in order to see that the needs of E9-1-1 are met steadfastly and reliably across the predictable proliferation of services and applications.

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[4] *Hearing, February 9, 2005, House Energy and Commerce Committee, Subcommittee on Telecommunications and the Internet: "How Internet Protocol-Enabled Services are Changing the Face of Communications: A View from Technology Companies."*

At this point in the development of Internet enabled telephony and 911, including this docket, it appears it is more than a "likelihood" that such regulation is more than "desirable", that it so essential as to be necessary.

Intergovernmental Advisory Committee Comments

SC 911 adopts the FCC IAC comments on the inadequacies of the status quo and purely voluntary implementation and, 1. FCC Requiring VoI Provider E9-1-1 Services, and 2. FCC Providing or Allowing for Funding the Costs of PSAP Provision of E9-1-1 Services to VoI Subscribers (see argument below).

[IAC on]Public Safety and Homeland Security

> For public safety and Homeland Security issues, particularly E911, the *IP NPRM* invited comments whether "voluntary consensus" instead of regulation may "spur deployment of IP-enabled E911 services".24 As an IAC member recently stated before a Senate hearing, "the ability to call for help in times of an emergency is not 'voluntary' – it's mandatory." 25 Microsoft's Comments suggested that IP-enabled services should only be regulated where the same has substantially replaced traditionally regulated services and when, "innovators have failed to resolve important social or economic problems". 26 In the IAC's view, there are several aspects of 9-1-1 service that may require regulatory leadership: (1) funding (access points) integrity of the 9-1-1 system; (2) technology planning and deployment (not a patchwork, but a systemic plan); and (3) consumer expectations (public at-large, various communities, deaf, hard-of-hearing, elderly, etc). Comments filed by the King County E911 Program detailed an alarming account of that county's E911 service. That county's funding for E911 was jeopardized because states have been prohibited from "assessing 911 taxes". 27 While voluntary consensus as an ideal may sound laudatory, but without clear direction or path, it likely will not work because many IP-enabled service providers may simply choose to ignore E911 programs.28
>
> Without any legislative or regulatory oversight, VoIP and other IP-enabled services will not have the incentive to develop functions and features that accommodate emergency services, such as call back or location information.29 Contrast that lack of industry incentive to develop and implement E911 in IP-enabled services with an inherent consumer expectation, as vividly described by Commissioner of Georgia Public Service Commission, Stan Wise: "imagine a consumer in upstate New York who replaced his traditional phone line with this service had the rotten luck of experiencing a heart attack or stroke after 'normal business hours'. He dials 911 and, because it only goes to the business line, no one picks it up. Brutal as it sounds, he is simply out of luck."30

24 *IP NPRM*, ¶¶ 55-56

25 Hearings on The VOIP Regulatory Freedom Act, S 2281 Before the full Committee on Commerce,
Science and Transportation, 108th Cong., 2nd Sess. (2004) (testimony of Mr. David Jones, Director of
Emergency Services, Spartanburg County Communications/9-1-1, the First Vice President of the National
Emergency Number Association) Mr. Jones is also vice-chairman of the IAC.
26 Comments of Microsoft Corporation at i.
27 Comments of the King County E911 Program, WC Docket No. 04-36 at 3-5, 8-10.
28 Indeed, some VoIP providers not only ignore E911, but actually require that their customers agree to
hold the provider harmless if the customer is unable to obtain emergency service using their VoIP services.
See Vonage Holdings Corporation's Terms of Service on its website, www.vonage.com. This has led local
governments to also issue warnings to potential VoIP consumers that the local government will similarly
not be responsible if a resident is unable to obtain emergency service in a prompt fashion using VoIP. City
of Weston, FL Letter to Vonage Holdings Corporation. dated February 24, 2004.
29 Comments of the King County E911 Program, WC Docket No. 04-36 at 3-5, 8-10.
30 The result on a small scale is one family's tragedy. Add in the real threat of terrorism, and the result is a national catastrophe,[whereas] (m)any of the comments urge that it is "too early" to mandate 911 requirements on VoIP.
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The New York Public Services Commission took another approach, finding traditional economic regulation not applicable to IP-enable services, but instead requiring that industry guarantee consumers
certain basic protections, such as E911.45

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45 New York Public Service Commission, Order Establishing Balanced Regulatory Framework for Vonage
Holdings Corporation, Case 03-C-1285 (Issued and Effective May 21, 2004). After the PSC ruling,
Vonage sought judicial relief and the federal district court sided with Vonage issuing a preliminary
injunction against PSC pending FCC's decision of IP-enabled service through current IP NPRM. See Ben
Charny, Vonage beats back New York ruling, CNET News.com.

By pre-empting such state government "approaches", the FCC and, if necessary, Congress, are left to follow similar analyses and approaches, and take similar regulatory action for the nation's delivery of 911 services to emergency reporters and responders.

2. <u>FCC Providing or Allowing for Funding the Costs of PSAP Provision of E9-1-1 Services to VoI Subscribers</u>

As South Carolinians switch from wire to wireless, local government 911 user fee revenue declines. This will happen as they switch from wire to VoI, as well. At the same time, as VoI telephony services include the providers' portion of E9-1-1 services, the PSAPs will bear costs for providing their portion of VoI E9-1-1.

The best of the status quo is a dozen or so VoI Providers compliance with their agreement to voluntarily pay the local government 911 surcharge for each of its customers in each such 911 jurisdiction. SC state and local 911 officials are aware of one VoI provider that is doing so. Nor is their a way of knowing all the others who may be providing VoI to South Carolinian residents, the extent of their voluntary payment of local wireline 911 surcharges, or whether any such would continue without the possibility of mandatory (surcharge) payments.

Unless the FCC provides some nationwide funding methodology, such as codifying the now voluntary payment of state and local government wireline surcharges, or reopens the field to the states to collect financial support for their 911 PSAP services from their VoI 911 subscribers/users, the wireless and wireline subscribers and local taxpayers will bear the VoI subscribers' share of the 911 centers' financial burdens, or all telecommunications users will bear the impact of any degradation of funding and 911 services.

Replies

SC 911 here adopts the IAC's comment (above) that Internet enabled telephony subscribers should contribute to funding government 911 services, and that "voluntary" contributions are neither workable, ubiquitous nor equitable, and adopt part of NENA's First Comment, as follows:

> Funding
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> The changes predictable (and unpredictable) in the evolution of IP-enabled services will not come free. Public safety authorities cannot be left for long in the position of reliance on conventional service surcharges that may actually shrink as consumers give up those services. Nor can the federal government be viewed as the sole answer to these financial requirements. Although we support the need for national direction from the FCC, just as we support – in pending legislation – cabinet-level attention to 9-1-1 issues, state and local governments may still require the authority to consider, and should not be preempted from considering, equitable distribution of financial obligations among communication and information service providers offering 9-1-1 capability.
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> As a policy matter, we believe that any domestic service provider originating 9-1-1 traffic should be subject to 9-1-1 requirements and obligations, including financial support, irrespective of the source of the call. We maintain that the responsibility of using and properly supporting 9-1-1 as an originating service to customers should apply equitably among providers that use it in similar ways.

Request for South Carolina's 911 Systems

The undersigned representatives of SC State and Local Government 911respectfully request that the FCC require VoI providers to furnish Enhanced 911 to their subscribers and their subscribers 911 Centers and other emergency responders, and provide nationally for VoI contribution to providing PSAP 911 services to VoI 911 callers or allow the state and local governments to do so.

Respectfully submitted, April 12, 2005,

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