Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the NET 911 Improvement Act of 2008	)	WC Docket No. 08-171
	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

I. INTRODUCTION: THE RULEMAKING SHOULD FOCUS ON THE FUNDAMENTALS AND STRIVE FOR SIMPLICITY.

The Federal Communications Commission ("Commission") asks for comment[1] on implementing the New and Emerging Technologies ("NET") 911 Improvement Act of 2008.[2] No later than October 21, 2008, the Commission is to promulgate regulations requiring that providers of Internet protocol ("IP")-enabled voice services ("VoIP providers") have access to 911/E911 capabilities, comparable to those offered to Commercial Mobile Radio Service ("CMRS") providers, under non-discriminatory terms and conditions.

The most effective way to promulgate rules responsive to the Congressional timeline is for the Commission to take advantage of as much existing regulatory infrastructure as possible, at least with respect to *carriers* that provide 911/E911 capabilities.[3] In this way, the Commission can promulgate meaningful regulations in the limited time available to it.

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[1] *In the Matter of Implementation of the NET 911 Improvement Act of 2008*, WC Docket No. 08-171, Notice of Proposed Rulemaking ("*NPRM*"), FCC 08-195 (rel. Aug. 25, 2008); 73 Fed. Reg. 50741 (Aug. 28, 2008); Public Notice, DA 08-2018 (rel. Aug. 28, 2008).

[2] New and Emerging Technologies 911 Improvement Act of 2008 ("NET 911 Act"), Pub. L. No. 110-283, 122 Stat. 2620 (July 23, 2008), amending Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 ("Wireless 911 Act").

[3] In these comments, Qwest Communications International Inc. ("Qwest") does not address the issue of what capabilities *non-carrier entities* (such as state or local governments) might be expected or required to provide to VoIP providers. *See NPRM* ¶ 8. As necessary, Qwest may comment on this issue in Reply.

Key among such an approach would be the following:

- The promulgated rules would not "list" 911/E911 capabilities. Rather, the Commission can rely on the fact that 911/E911 capabilities currently made available to CMRS providers are known by carriers across the country. Requiring that such "capabilities" (and any applicable prices) to be made publicly available for VoIP providers would be sufficient for a rule.

- In the event a particular VoIP provider wants a 911/E911 capability that is not currently provided by a carrier (to a CMRS provider), an Open Network Architecture ("ONA") *bona fide request* model should be utilized. A carrier should, within an established time, provide to the requesting VoIP provider information about the feasibility of creating such a desired capability and the cost associated with doing so. The carrier and the VoIP provider can then negotiate the mutually-acceptable outcome.

- No delegation of enforcement authority to state entities with respect to any Commission-promulgated rules should be done at this time. Federal rules first should be promulgated and affected entities allowed some "experience time" before any state delegations occur.

Qwest is confident that a focused, simple approach to rulemaking responsive to the NET 911 Act will allow the Commission to achieve the Congressionally-established timetable while, at the same time, ensuring that the substantive requirements of those provisions -- at least with respect to carriers -- will be achieved.

II. A SIMPLIFIED APPROACH IS SOUND FROM BOTH A LEGAL AND POLICY PERSPECTIVE.

A. Existing 911/E911 "Capabilities" Are Already Known By Carriers And Can Be Extended To VoIP Providers Without Significant Burden.

Carriers today provide 911/E911 "capabilities" to CMRS providers.[4] As a result, the Commission can adopt a fairly broad definition of "capabilities" in the context of VoIP

[4] The Commission asks "[t]o what extent . . . capabilities [are] made available to [CMRS] providers under tariff, interconnection agreement, or some other form of agreement[.]" *Id.* ¶ 9. Qwest provides 911/E911 information in its Wholesale Product Catalog. Qwest's particular 911/E911 service offering is structured such that Public Safety Answering Points ("PSAP") are charged for 911/E911 service elements (or "capabilities") under state tariffs. Qwest's Product Catalog provides administrative information regarding what a carrier seeking to provide

providers. The Commission need not include a list of each and every capability; nor is it necessary to determine *whether* such capabilities include "network services, testing, and agreements."[5]

The Commission can define 911/E911 "capabilities" in the context of the NET 911 Act as:

> those network services, testing, and agreements, including information access, that are currently made available by carriers to CMRS providers; as well as any additional services that a carrier and VoIP provider mutually agree to be necessary or that the Commission determines in the future are necessary. 911/E911 capabilities must be made publicly available.

Such a definition, while broad, does not compromise the objective of the NET 911 Act.[6] Rather, it assures "parity" of offerings to CMRS and VoIP service providers on October 21, 2008 (as required by the Act) because it builds on existing commercial and regulatory models; and it is transparent. It also incorporates a component allowing for future identification of new "capabilities" due either to technology innovation, marketplace response (*i.e.*, carrier/VoIP negotiation) or Commission imperative. Such approach is preferable to one that attempts to "list" potential "capabilities," either along the lines outlined in the *NPRM*[7] or advocated in a recent Vonage *ex parte*.[8]

911/E911 must do *vis-à-vis* the PSAP community *and* (if desired) how the carrier can purchase transport from Qwest from its platform to Qwest's Selective Routers ("SR").

[5] *Id.* ¶ 6.

[6] This approach would be in line with the Commission's query whether it would be "enough to mandate . . . that those [carrier] entities owning or controlling the capabilities needed [to enable] voice service providers provide such capabilities at the same rates, terms and conditions [as] offered to [CMRS] providers[.]" *Id.* ¶ 10.

[7] *Id.* ¶ 6 (where the Commission recites a litany of possible "capabilities" that might be identified, gleaned in large part from a Vonage *ex parte* cited immediately below).

[8] *See* Letter from Ronald W. Del Sesto, Jr., Counsel for Vonage, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 04-36 and 05-196, filed July 11, 2008, referenced in the *NPRM* at note 11 ("Vonage *ex parte*"). Those elements include,

B. An Open Network Architecture *Bona Fide Request* Model Should Be Utilized When A VoIP Provider Requests A 911/E911 Capability Not Currently Available To CMRS Providers.

In its July 11 *ex parte*, Vonage argues that when a VoIP provider "makes a *prima facie* showing that [a requested 911/E911] capability will be necessary in its provision of E911 service [with the implication that the capability is not currently made available to CMRS providers], [the carrier] should be required to provide access to such capability pending dispute resolution."[9] Qwest opposes the Vonage proposal.

Rather, Qwest believes that a process similar to the ONA 120-day process should be instituted,[10] if a 911/E911 capability is not currently provided to a CMRS provider but is desired by a VoIP provider. In mandating the 120-day process, the Commission required that the affected carriers "answer [BFR] requests definitively within a reasonable period of time with an explanation of the grounds for such decisions, based on the same factors that [were] established [earlier] -- market demand, utility as perceived by [requesting providers], and costing and technical feasibility. If [a requesting service provider] then believes that [the responding carrier]

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among other things, ESQKs/p-ANIs (noting that the North American Numbering Council ("NANC") and Alliance for Telecommunications Industry Solutions ("ATIS") have submitted permanent guidelines to the Commission in April 2007 on these capabilities), Real-Time ALI Database Access; Emergency Service Numbers; Master Street Address Guides; Shell Record Creation, and Selective Router Interconnection. Qwest's provision of 911/E911 reflects the specific elements identified above. However, as discussed above in note 4, Qwest charges the PSAP for most of these capabilities, rather than the CMRS provider.

And it should be noted that Qwest disagrees with Vonage's suggestion that the Commission should revise the NANC/ATIS April 2007 proposed guidelines and grant VoIP providers direct access to ESQKs. *Id.* at 2. A reading of the filed proposed guidelines reveals the complexity of ESQK number administration. Carriers should not have to replicate, at a micro level, the administrative structure or costs associated with such complex administrative tasks.

[9] Vonage *ex parte* at 4.

[10] *In the Matter of Filing and Review of Open Network Architecture Plans (Phase I)*, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rcd 1, 207-08 ¶ 397 (1988) ("*ONA Plan Phase I Order*"); Memorandum Opinion and Order, 5 FCC Rcd 3103, 3117 ¶ 124 (1990).

is providing the 'wrong' answers, it has a basis for then pursuing further discussions with the [carrier], or if necessary, seeking redress from this Commission. The 120-day response period . . . appears to be reasonable for these purposes."[11]

This ONA *bona fide* request process has the benefit of being well-known, understood and already implemented at least by the largest carriers. And as the Commission previously concluded, it provides a fair balance between the requests of a service provider and the ability of a carrier to provide a particular "capability" within reasonable cost and temporal time frames. This model, rather than the one proposed by Vonage, should be adopted.

C. The Commission Should Promulgate 911/E911 Capability Rules, And The Industry Should Have Some Time To Respond And Deploy Them, Before Any Delegation Of Enforcement Authority To The States Occurs.

The Commission asks whether it should "delegate authority to enforce any regulations [it promulgates in response to the NET 911 Act] to State commissions or other State or local agencies or programs with jurisdiction over emergency communications."[12] Given the very short time frame that the Commission has to promulgate 911/E911 capability rules in the first instance, Qwest believes the issue of delegation of enforcement authority to state entities is premature.

Before the issue of delegation of enforcement authority occurs, the Commission as well as affected entities, should know what the rules are. Then, entities affected by the rules should have some time to implement them. This approach will undoubtedly surface any regulatory or

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[11] *ONA Plan Phase I Order*, 4 FCC Rcd at 207-08 ¶ 396, ¶ 397 ("after receiving any complete, written request for a new . . . capability, [the carrier] will provide a response that indicates whether it will provide that capability and, if so, when it will make the requested capability available, approximately how much it will charge for the service if actual demand meets estimates provided by the requesting ESP, and what, if any, technical problems it anticipates.") (footnote omitted); *see also* Memorandum Opinion and Order, 6 FCC Rcd 7646, 7654 ¶ 11 & n.24 (1991).

[12] *NPRM* ¶ 12.

operational flaws in the rules and would allow the Commission the opportunity to revise or further clarify them.

Once the Commission's rules have stabilized for operational purposes, the Commission should then revisit the issue of delegation of enforcement authority to state entities. In that rulemaking, the Commission can provide further articulation of *what* state entities it might be inclined to delegate authority to. For example, while many entities within a state might have had an interest in consumer carrier "slamming," the Commission only delegated enforcement authority to those state public utility commissions who expressed an interest in enforcing the Commission's rules.[13] There was no delegation to state attorneys general, for example.

Parties interested in commenting on this issue in a meaningful way would benefit from having a specific delegation proposal to address. For example, if the delegation were going to be to more than a single state entity, there would likely be chaos and confusion regarding the enforcement process. What kind of "appeal" to the Commission would parties have?

Clearly, the matter of delegation of enforcement authority is a significant issue that is best resolved through the development of a firm proposal, allowing for educated comment. For

[13] *See, e.g.*, *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158, 8171-72 ¶¶ 26-28 (2000).

the time being, and especially until the text of any rules is made operational, the Commission should not engage in delegation of its enforcement authority.

Respectfully submitted,

By: /s/Kathryn Marie Krause

Craig J. Brown
Kathryn Marie Krause
Suite 950
607 14th Street, N.W.
Washington, DC 20005
303-383-6651

Attorneys for

QWEST COMMUNICATIONS INTERNATIONAL INC.

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CERTIFICATE OF SERVICE

I, Richard Grozer, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed via ECFS with the Office of the Secretary of the FCC in WC Docket No. 08-171; 2) served via e-mail on the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission at CPDcopies@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

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