

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

In the Matter of)	
)	
Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications)	PS Docket No. 11-153
)	
Framework for Next Generation 911 Deployment)	PS Docket No. 10-255
)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Matthew Gerst
Counsel, External & State Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

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COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY.

CTIA – The Wireless Association® (“CTIA”) hereby submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) seeking comment on the short- and long-term deployment of Text-to-911 and other Next Generation 9-1-1 (“NG911”) applications and 9-1-1 call prioritization in major emergencies.¹ As Americans increasingly use mobile devices and services as their central communications tools, the wireless industry shares the goal of ensuring that all citizens can effectively utilize wireless emergency services, such as 9-1-1, during times of need. As the Commission considers the next generation of 9-1-1 services, CTIA believes that the Commission should:

- Take a forward-looking and industry standards based approach to any actions to implement text-to-911, NG911 services and 9-1-1 call prioritization and encourage the development of common solutions to ensure that all citizens, including persons with disabilities, can utilize 9-1-1 services during emergencies;
- Address critical regulatory issues prior to the adoption of any interim text-to-911 solutions, while maintaining focus on the deployment of long-term NG911 services;
- Utilize a state level approach to coordinate NG911 deployment and assess Public Safety Answering Point (“PSAP”) readiness; and

¹ *Facilitating the Deployment of Text-to-911 and Other Next Generation Applications, Framework for Next Generation 911 Deployment*, Notice of Proposed Rulemaking, FCC 11-134 (Sept. 22, 2011) (“*NPRM*”).

- Carefully consider whether the Commission has the necessary authority under the Communications Act of 1934, as amended (“Communications Act” or “Act”), including the Communications & Video Accessibility Act (“CVAA”), to require wireless service providers and equipment manufacturers to support the proposed services.

CTIA supports the development of and transition to a NG911 system. As part of the transition, the FCC should carefully consider the implementation of text-to-911 and NG911 through the least burdensome approach.² Accordingly, the initial steps the Commission has taken in this proceeding are appropriate and needed with respect to any further amendments to the 9-1-1 rules. However, CTIA reminds the Commission that there are a variety of technical, operational and regulatory issues that must still be addressed and studied in order to ensure that all citizens will benefit from a NG911 system.

In fact, the Commission is still working through numerous issues in the existing 9-1-1 system. In the past few years, the Commission has altered its 9-1-1 rules three times,³ instituted three rulemakings,⁴ and worked on issues similar to those raised in the *NPRM* through the

² *Id.* at ¶ 4.

³ Wireless E911 Location Accuracy Requirements; Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; 911 Requirements for IP-Enabled Service Providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, *First Report and Order*, 22 FCC Rcd 20105 (2007); Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114, *Second Report and Order*, 25 FCC Rcd 18909 (2010); Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers, GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, 26 FCC Rcd 10074 (2011).

⁴ Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers, GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, 26 FCC Rcd 10074 (2011); Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers, PS Docket no. 07-114, WC Docket No. 05-196, *Further Notice of Proposed Rulemaking and Notice of Inquiry* (2010); Wireless E911 Location Accuracy Requirements, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Association of Public-Safety Communications Officials International, Inc. Request for Declaratory

Emergency Access Advisory Committee (“EAAC”) and the Communications Security Reliability and Interoperability Council (“CSRIC”).⁵ As the Commission continues to seek input on 9-1-1 issues, CTIA and its member companies have been actively involved and supported the NG911 development process that has been taking place for years in standard-setting organizations and regulatory bodies. The wireless industry stands ready to collaborate with the Commission, appropriate federal and state agencies, and the Public Safety community on these important issues.

II. CTIA SUPPORTS THE DEVELOPMENT OF AND TRANSITION TO A NG911 SYSTEM BASED ON COMMON SOLUTIONS, BUT FURTHER STUDY IS NECESSARY BEFORE THE COMMISSION TAKES ANY ACTION

The wireless industry has demonstrated a commitment to providing the most advanced emergency communications capabilities possible by devoting considerable resources to upgrading network infrastructure and developing technologies that enable the public to reach emergency services anywhere, anytime, and from any wireless handset. As Motorola Solutions notes, “NG911 is more than just an upgrade of existing 911 facilities. NG911 is a transition to an entirely new communications system that has necessitated a ground-up research, engineering, and development process involving standards bodies, public safety entities, telecommunications service providers, technology developers, and representatives of federal, state, and local governments.”⁶

Ruling; 911 Requirements for IP-Enabled Service providers, PS Docket No. 07-114, CC Docket No. 94-102, WC Docket No. 05-196, *Notice of Proposed Rulemaking* (2007).

⁵ See EAAC, Mission, <http://www.fcc.gov/encyclopedia/emergency-access-advisory-committee-eaac> (last visited Dec. 12, 2011); CSRIC, Working Groups, <http://transition.fcc.gov/pshs/advisory/csric/> (last visited Dec. 12, 2011).

⁶ Comments of Motorola Solutions, Inc., PS Docket No. 10-255, at 2 (Feb. 28, 2011) (“Motorola Solutions NG911 NOI Comments”).

Given the evolving nature of innovative wireless services and equipment, the *NPRM* appropriately seeks comment on a number of critical issues that are unsettled at this time. The transition to Internet Protocol (“IP”) technologies and a more substantial reliance upon data, rather than voice, means that the framework currently in place for handling 9-1-1 emergency communications will require considerable modifications to implement NG911. CTIA believes that the *NPRM* has correctly raised the most critical issues at this time and welcomes careful deliberation by the Commission prior to any further action on the *NPRM*.

Standards Efforts. CTIA and its member companies have played an active role in developing NG911 solutions, recognizing the crucial role that wireless networks and their ever-evolving capabilities play in 9-1-1 emergency communications. Qualcomm, for example, has highlighted its involvement in standards groups such as the Alliance for Telecommunications Industry Solutions (“ATIS”) and 3GPP “to develop standards, guidelines and best practices to support NG911 services.”⁷ AT&T reports being “deeply engaged” in the NG911 transition by highlighting contributions to the CSRIC, the EAAC, and the National Emergency Number Association (“NENA”).⁸ CTIA has also been active in most of these efforts, which will be central to a successful transition to NG911.

As the Commission correctly highlighted in the *NPRM*, there are numerous industry standards groups and best practice efforts – such as those of the ATIS Interim Non-voice Emergency Services (“INES”) Incubator – that are on-going.⁹ CTIA supports a thorough examination of these efforts by the Commission and interested stakeholders to determine how

⁷ Comments of Qualcomm Incorporated, PS Docket No. 10-255, at 8 (Feb. 28, 2011).

⁸ Comments of AT&T Inc., PS Docket No. 10-255, at 1 (Feb. 28, 2011) (“AT&T NG911 NOI Comments”).

⁹ *NPRM* at ¶ 78.

they impact the proposals raised by the Commission. At this stage, CTIA believes that the Commission will best promote its policy goals by allowing interested parties to continue developing recommendations and to provide industry experts with the opportunity to fully vet any proposals.

Common Solutions. CTIA also generally agrees that IP-enabled emergency communications offer significant opportunities to use “common solutions” for all citizens, including individuals with disabilities, rather than inefficient and segmented specialized technologies.¹⁰ Indeed, CTIA applauds the Commission’s focus on IP-enabled emergency technologies and forward-looking approach to emergency communications technologies as a general matter. The Commission should not discount that specific services may be necessary to address unique and specialized needs, such as relay or language interpretive services for the deaf, hard of hearing or speech impaired individuals and non-native English language speakers. However, CTIA agrees with the Commission that by focusing on common solutions, considerable efficiencies may be achieved while providing a consistent technological platform of emergency communications functionality for all citizens.

At the same time, as CTIA notes below, the Commission must balance a common solutions approach with the specific regulatory authority provided to the Commission by the Communications Act. Under the CVAA, the Commission has the authority to ensure that electronic message services are generally accessible to persons with disabilities. However, it is

¹⁰ *NPRM* at ¶ 113 (“There is considerable overlap between the NG911 text and multimedia capabilities discussed in this Notice and the NG911 accessibility issues being considered by the EAAC in its implementation of the CVAA. As we have observed in our discussion of potential benefits earlier in this Notice, adding text and multimedia applications to the 911 system can provide significant benefits to both people with disabilities and non-disabled people. Moreover, we believe it is important to encourage to the fullest extent possible the development of common text-to-911 and multimedia-to-911 solutions that serve both the broad goals of NG911 and the NG911 accessibility goals of the CVAA.”).

not clear that Congress intended this authority to allow the Commission to require wireless service providers and equipment manufacturers to support text-based communications for 9-1-1 emergency communications purposes and extend the availability of such services to all citizens.

Thus, CTIA believes that the Commission can best achieve its important NG911 objectives by allowing common solutions to be developed through industry standards organizations and other groups representative of a broad range of stakeholders. Such an approach is highly preferable to the imposition of specific technical mandates or solutions, which could impede the efficient development and deployment of innovative NG911 solutions for all citizens.

III. THERE REMAIN NUMEROUS UNRESOLVED TECHNICAL AND POLICY QUESTIONS THAT THE COMMISSION MUST ADDRESS BEFORE TAKING ACTION ON THE NPRM PROPOSALS

As CTIA noted above, its member companies are committed to the implementation of a NG911 system. CTIA supports the efforts of its member companies and of industry stakeholder groups that are currently studying these important issues. As the Commission concedes in the *NPRM*, there remain numerous unresolved issues regarding the support for text-to-911, multimedia NG911 applications,¹¹ and 9-1-1 call prioritization. CTIA believes these issues must be addressed before the Commission takes any action on the NPRM.

A. The Commission Should Focus on Long-Term Rather Than Interim Text-to-911 Solutions.

In the *NPRM*, the Commission devotes significant attention to the short-term deployment of text-to-911, citing the popularity and ubiquity of text messaging, as well as the potential for text messages to support delivery of photos, videos, and other data.¹² While CTIA appreciates

¹¹ *NPRM* at ¶ 33.

¹² *Id.* at ¶¶ 4, 34.

the desire to create an emergency communications system that uses a familiar and consumer friendly service, CTIA reminds the Commission that significant technical, economic, and policy issues surround the use of Short Message Service (“SMS”) as a national emergency communications solution. SMS was not designed to be used as an emergency service. Instead, CTIA urges the Commission to encourage the deployment of advanced 9-1-1 emergency communications services in emerging wireless technologies, such as LTE and WiMAX, that will allow the scarce resources of Public Safety and the wireless industry to focus efforts that will best provide a long-term transition to the full gamut of NG911 services.

The record demonstrates significant technical concerns with SMS as a means of providing direct, text-based communications to PSAPs. Indeed, T-Mobile described SMS as “fundamentally unsuited for emergency communications.”¹³ One of the challenges inherent in SMS-to-911 is the fact that there currently exists only proprietary means to route text messages to emergency services.¹⁴ Further, as the Commission acknowledged in the *NPRM*, SMS “is not designed to provide immediate or reliable message delivery; does not support two-way real-time communication; does not provide the sender’s location information; and does not support the delivery of other media such as photos, media, or data.”¹⁵ Similarly, 4G Americas released a white paper documenting the limitations of SMS-to-911 and noting that, in addition to the

¹³ Reply Comments of T-Mobile USA, Inc., PS Docket No. 10-255, at 1 (March 14, 2011); *see also* Comments of Spring Nextel Corporation, PS Docket No. 10-255, at 3 (March 14, 2011); Reply Comments of AT&T Inc., PS Docket No. 10-255, at 4 (March 14, 2011); Reply Comments of Verizon and Verizon Wireless, PS Docket No. 10-255, at 2, 4-8 (March 14, 2011) (discussing the limitations current SMS and MMS technologies would have in the emergency communications context, especially with regards to location accuracy and security).

¹⁴ Comments of Sprint Nextel Corporation, PS Docket No. 10-255, at 3 (Feb. 28, 2011) (“Sprint NG911 NOI Comments”).

¹⁵ *NPRM* at ¶ 53.

technical limitations of SMS, SMS does not provide any type of authentication or security, and that SMS is subject to malicious attacks that could affect SMS access to 9-1-1 emergency services.¹⁶

There also are numerous policy challenges that surround the use of SMS as a means to communicate with PSAPs via 9-1-1. Already, the “all calls” rule for 9-1-1 voice calls has raised significant concern from the Public Safety community about the volume of false or fraudulent calls received and calls from devices that cannot be called back by the PSAP to verify an emergency.¹⁷ These challenges would be exacerbated under a SMS solution that does not provide for contiguous communications or the transmission of sufficient information about the caller.

Further, as Sprint Nextel notes, “[t]he current regulatory model is not equipped to address the liability issues that may arise when data is originated by a source that is not regulated by the Commission.”¹⁸ The use of SMS as a national emergency communications service creates uncertainty about liability protection that must be resolved prior to any reliance on such a solution.¹⁹ Finally, it is not clear how such an interim solution would be funded. Appropriate

¹⁶ 4G Americas Texting to 9-1-1, Examining the Design and Limitations of SMS at 41 (Oct. 2010), *available at* <http://www.4gamerica.org/documents/SMS%20to%20911%20White%20Paper%20Final%20October%202010.pdf>.

¹⁷ See *Petition for a Notice of Inquiry Regarding 911 Call-Forwarding Requirements and Carriers' Blocking Options for Non-Initialized Phones*, Notice of Inquiry ¶ 7, FCC 08-95 (according to studies from the Public Safety community, "a very small minority of the 911 calls from [Non-Service Initialized] devices were made to report actual emergencies...The majority of calls from NSI devices were hang-ups, but there were also significant numbers of harassing calls, many made by repeat callers, often children.)

¹⁸ Sprint NG911 NOI Comments at 8.

¹⁹ See generally Comments of CTIA – The Wireless Association®, PS Docket No. 10-255, at 10-12 (Feb. 28, 2011) (noting that “it is crucial to an efficient NG911 deployment that the

funding is a significant uncertainty given the considerable resources that would be needed to deploy text-to-911 capabilities on a nationwide basis. There are, therefore, numerous unknowns and limitations surrounding text-to-911 as an interim means of accessing emergency services.

It is also unclear how a national SMS-based interim solution would work in the context of over-the-top applications or other non-carrier-provided SMS solutions. The Commission found in the *NPRM* that there remain questions as to whether “over the top” software applications are able to support the delivery of text and other media to 9-1-1.²⁰ As a practical matter, CTIA has noted that the Commission must carefully consider the severed link between the licensed CMRS service provider and the emergency calling capabilities, such as location accuracy, of end-user devices and over-the-top applications.²¹

For example, Wi-Fi enabled tablets, game controllers, and MP3 players with a microphone or auxiliary input may be able to access the Internet and send and receive Public Switched Telephone Network messages (and voice) through over-the-top application providers that can map IP addresses to temporary, dynamically-assigned Plain Old Telephone Service numbers.²² In contrast to devices operating with licensee control and coordination at the edge of a CMRS provider’s network, in these instances, the service provider has no control – much less visibility – over the end-user devices accessing their network over unlicensed spectrum, and even less control over the features and capabilities of those devices. Moreover, unlike circuit-

Commission take steps to ensure uniformity in liability protection with respect to actions taken to facilitate the provision of NG911 services”).

²⁰ *NPRM* at ¶ 34.

²¹ Comments of CTIA-The Wireless Association®, PS Docket No. 07-114, at 6 (Oct. 3, 2011) (“CTIA VoIP Location Accuracy Comments”).

²² *Id.*

switched CMRS providers' use of Pseudo Automatic Number Identifications (“pANIs”) to send location information to PSAPs, there exist many protocols – both open and proprietary – for IP-based location-based services applications sending latitude/longitude data. Before taking any action on the NPRM, the Commission should recognize the complexities created by this new age of IP-enabled end-user devices, open application markets and third party services when evaluating SMS as an interim solution to access existing 9-1-1 emergency services, before NG911 services are available.

In the *NPRM*, the Commission suggests that SMS could be used for emergency communications bypass on an “optional” basis.²³ Beyond the significant question of whether the public would be served by a patchwork and “band aid” approach to emergency communications, CTIA believes that a national regulatory framework would still be needed to ensure a consistent approach to SMS as an emergency communication service. For example, the Commission must consider whether existing expectations of voice 9-1-1 call features can be applied to an SMS based solution, such as Automatic Number Identification, Automatic Location Identification, and routing to the appropriate PSAP. Further, a national regulatory framework must address provider liability and consumer education regarding the capabilities and limitations of SMS as a 9-1-1 solution. In addition, CTIA suggests that existing procedural requirements for E-911 deployment outlined in Section 20.18(j) of the Commission’s rules should be applied where SMS-to-911 is adopted on a per PSAP basis. Even as an option, the interim implementation of SMS as a means of contacting 9-1-1 will require substantial effort by stakeholders and technical experts, significant network and operational resources of wireless providers and PSAPs, and work by regulators to establish a policy framework for this system.

²³ *NPRM* at ¶ 54.

Given that the Commission, wireless service providers, and standards bodies have generally viewed SMS-to-911 as an interim solution at most, and in light of the significant challenges in implementing a national SMS-based solution, CTIA supports efforts to focus resources on longer term NG911 solutions. As Sprint Nextel observes, “an interim solution based on SMS could present significant challenges. The time and resources that would be spent on overcoming such challenges would be better spent working toward the long-term NG911 solution and the enhanced features and capabilities that solution will include.”²⁴

B. The Commission Should Take a Forward-Looking Approach to 9-1-1 Call Prioritization Issues.

In the *NPRM*, the Commission seeks to address concerns regarding the prioritization of 9-1-1 traffic as a means of ensuring that the public can use 9-1-1 services to reach a PSAP during a mass calling event, such as the August 2011 East Coast earthquake.²⁵ While CTIA supports the Commission’s efforts to ensure citizens can use 9-1-1 services at all times to contact PSAPs, the Commission must be careful not to impose a solution that would do little to address the problem of unanswered 9-1-1 calls during massive calling events. For example, wireless networks performed as designed – indeed, they processed communications at rates substantially higher than normal – while handling the massive spike in traffic that immediately followed the August 2011 East Coast earthquake.²⁶ As wireless networks continued to deliver 9-1-1 calls,

²⁴ Sprint NG911 NOI Comments at 5; *see also* Reply Comments of T-Mobile USA, Inc., PS Docket No. 10-255, at 1 (March 14, 2011); Reply Comments of AT&T Inc., PS Docket No. 10-255, at 4 (March 14, 2011); Reply Comments of Verizon and Verizon Wireless, PS Docket No. 10-255, at 2, 4-8 (March 14, 2011) (asserting, also, that SMS and MMS are technologies not easily adapted to the requirements of emergency communications).

²⁵ *NPRM* at ¶ 60.

²⁶ Olga Kharif and Brian Womack, “Verizon, AT&T Say Calling Surges, See No Network Damage,” *Bloomberg* (Aug. 23, 2011), *available at* <http://www.bloomberg.com/news/2011-08-23/verizon-at-t-sprint-say-calling-surges-after-quake-no-network-damages.html>.

PSAPs were similarly inundated with a massive influx of 9-1-1 communications. In considering 9-1-1 prioritization that ensures the completion of 9-1-1 communications to PSAPs, the Commission must not ignore the significant question of whether PSAPs currently or will have the network or operational capabilities to handle a massive influx of prioritized 9-1-1 communications during a similar event.

Similarly, 9-1-1 call prioritization requirements raises significant legal and policy questions as to whether the Commission should deem certain communications to be “more important” than others. The Commission correctly notes in the *NPRM* that prioritizing 9-1-1 calls during and after a major emergency may limit the public’s ability “to complete non-911 calls that serve a socially important purpose, such as calls to confirm the safety or whereabouts of family members.”²⁷ Any prioritization scheme inherently requires a policy determination of whether the public interest is served by deeming certain communications “more important.”

As an example, Wireless Priority Service was established to ensure communications among authorized national security and emergency preparedness personnel are prioritized to serve the general welfare during times of emergency.²⁸ Conversely, substantial numbers of calls to 9-1-1 made by the general public during times of emergency may be merely informational, *i.e.*, these calls may not be true emergency calls. During the August 2011 East Coast earthquake, for example, PSAPs reported receiving hundreds of calls from residents seeking confirmation

²⁷ *NPRM* at ¶ 61.

²⁸ Wireless Priority Service, http://wps.ncs.gov/program_info.html (last accessed December 8, 2011) (stating that the program is open to national security and emergency preparedness personnel, and that a call to any number can be designated a prioritized emergency call by first dialing *272).

that an earthquake had taken place.²⁹ While the wireless industry recognizes and supports the expectation that 9-1-1 emergency communications will be available during times of emergency, the Commission should carefully consider the full implications of 9-1-1 prioritization, particularly during mass calling events when wireless and PSAP network and operational capabilities may already be constrained.³⁰

If the Commission proceeds to address 9-1-1 prioritization issues, CTIA urges the Commission to be forward-looking in its approach and encourage industry standards bodies to consider these issues. As the Commission notes in the *NPRM*, emerging wireless technologies, such as LTE, may provide the capabilities and opportunities to prioritize emergency communications traffic.³¹ Rather than imposing resource-intensive technological requirements to support 9-1-1 call prioritization on legacy services, the Commission will best serve its public interest objectives by focusing on the ways emerging wireless technologies can address 9-1-1 emergency communications policies, such as prioritization.

²⁹ See, e.g., Michael Felderbaum, “Rattled residents call 911 about Va earthquake,” Associated Press (Aug. 25, 2011), available at <http://www.wtop.com/?nid=41&sid=2513639> (“Of the hundreds of calls that came into one Virginia county's 911 call center after Tuesday's earthquake, not one of them was an emergency. Instead, rattled residents called simply to tell dispatchers that they felt the Earth move under their feet.”).

³⁰ CTIA notes that the Commission has acknowledged PSAPs’ authority to “administer their own operations and decide how to manage incoming calls” even in the face of a requirement that all calls be forwarded to a PSAP. *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, at ¶ 37 (1997) (“We are also not convinced that requiring wireless carriers to forward all 911 calls precludes PSAP efforts to implement call back and guard against fraudulent 911 calls. Our rules apply to wireless carriers, not PSAPs, which can administer their own operations and decide how to manage incoming calls.”). Therefore, a wireless 911 call theoretically could be prioritized by a carrier while simultaneously throttled by a PSAP.

³¹ *NPRM* at ¶ 64.

IV. THE COMMISSION SHOULD UNDERTAKE A COMPREHENSIVE, STATE-LEVEL APPROACH TO ASSESSING PSAP READINESS

In the *NPRM*, the Commission properly highlighted the challenges for both wireless service providers and wireless users when PSAPs demonstrate varying degrees of readiness to implement particular 9-1-1 solutions. As the Commission correctly noted, “[i]n the NG911 environment, PSAPs will need certain equipment and operational procedures to receive text and other media types from wireless providers.”³² Indeed, the record developed in response to the NG911 Notice of Inquiry demonstrated widespread concern that significant work would need to be done within PSAPs to prepare for a new NG911 paradigm. Motorola Solutions stated that “[w]ithout sufficient training and confidence, PSAP workers will, at best, fail to take full advantage of the new functionalities. At worst, complex new systems on which 911 workers have not been properly trained could lead to mismanagement of NG911 calls, with tragic results.”³³ And APCO observed that “[s]ignificant training will also be required for PSAPs to ensure that telecommunicators are able to effectively interpret, manage and utilize the information being received via new methods of communication.”³⁴ For this reason, many have argued that “the Commission should not require wireless providers to make investment in their networks to provide NG911 solutions until PSAPs are able to receive texts and other media.”³⁵

³² *NPRM* at ¶ 90.

³³ Motorola Solutions NG911 NOI Comments at 15.

³⁴ Comments of APCO, PS Docket No. 10-255, at 2-3 (Feb. 28, 2011) (“APCO NG911 NOI Comments”).

³⁵ *NPRM* at ¶ 90 (citing Comments and Reply Comments from T-Mobile, Sprint Nextel, and Verizon and Verizon Wireless); *see also* Comments of AT&T Inc., PS Docket No. 10-255, at 6 (Feb. 28, 2011) (detailing the significant training efforts that PSAPS will have to undertake in order to competently execute a messaging to 911 solution).

In the *NPRM*, the Commission seeks comment on whether it should require PSAPs to demonstrate a specified level of technical NG911 capability at the statewide or regional level as a precondition to providers being subject to any Commission requirement to deliver text or other media to PSAPs in the state or region.³⁶ Consistent with the Commission’s approach to E-911 requirements and deployments,³⁷ CTIA believes that PSAPs should be required to demonstrate that they have the actual capability to receive and utilize NG911 services prior to a wireless service provider’s obligation to provide such service to a requesting PSAP. PSAPs must develop and implement consistent operating procedures, best practices, and training programs to ensure that they are able to utilize NG911 functionalities, in parallel with the substantial investments made by wireless service providers.

CTIA believes that the implementation of NG911 should be coordinated at the state level, and that a statewide certification process should be employed to demonstrate a PSAP’s actual readiness to receive and utilize NG911 services. Indeed, NENA has recommended that each state needs to have an organization, with appropriate authority, responsible for planning, coordinating and implementing a NG911 system.³⁸ As NENA notes, the principle of state-level coordination for 9-1-1, and of overall emergency communications, has been encouraged by Congress since the Wireless Communications and Public Safety Act of 1999.³⁹ Consistent with

³⁶ *Id.* at ¶ 95.

³⁷ 47 C.F.R. § 20.18(j).

³⁸ NENA Next Generation Partner Program, *A Policy Maker Blueprint for Transitioning to the Next Generation 9-1-1 System* at 4-5 (Sept. 2008), available at http://www.nena.org/resource/collection/B6781C63-012C-4E90-939B-001733976BBC/Policy_Maker_Blueprint_for_Transition_to_NG9-1-1.pdf

³⁹ Wireless Communications and Public Safety Act of 1999, P.L.106–81 (“the 9-1-1 Act”); *see also*, Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, P.L. 108-494

the approach recognized by Congress and NENA, CTIA believes that the state level is the appropriate place to coordinate NG911 implementation and certification of a PSAP's NG911 capabilities.

A statewide PSAP certification process should include an assessment of the operational, technical, and financial readiness of the requesting PSAP to implement NG911. CTIA recognizes that a potential drawback of a statewide approach is that not all PSAPs in a state may have the technical and financial resources to deploy NG911 capabilities at the same time. For example, PSAPs may be located in areas with varying degrees of financial and operational resources to deploy and support NG911 capabilities. The public confusion that could arise from piecemeal availability of NG911 services, however, suggests that a statewide model will better serve the public interest and Public Safety. A statewide approach to NG911 deployment will encourage state and local governments to work with wireless service providers in a coordinated manner to ensure that all citizens have access to NG911 capabilities in a reasonable timeframe.

CTIA also agrees with the Commission that “while there is significant benefit to having providers provide text-to-911 to individual PSAPs that are capable of receiving it, implementing this approach at the individual PSAP level could impose inefficiencies and burdensome costs on providers.”⁴⁰ A statewide approach to NG911 deployment will encourage wireless service providers and PSAPs to coordinate their efforts to deploy requested services in a reasonable and efficient manner and mitigate public confusion regarding the capabilities available to a local PSAP. CTIA supports the Commissions' efforts to ensure that all residents in a state have access to the same level of NG911 services.

(“ENHANCE 911 Act of 2004”) (conditioning federal grants for Phase II E911 service implementation on coordination at the state level).

⁴⁰ *NPRM* at ¶ 92.

V. A SUCCESSFUL IMPLEMENTATION OF TEXT-TO-911 AND OTHER NG911 MECHANISMS WILL REQUIRE PUBLIC EDUCATION

As noted above, CTIA and our member companies are ready to collaborate with the Commission, other federal and state agencies, and the Public Safety community to promote public awareness and education regarding the new capabilities and limitations of NG911 services. NG911 services have the promise of dramatically expanding the means of connecting with emergency services, as well as the information that may be conveyed. The mechanisms discussed by the Commission in the *NPRM* will require considerable effort by PSAPs to upgrade technologies where needed, to train personnel, and to develop new operating procedures. As CTIA noted in response to the Commission’s NG911 Notice of Inquiry, the NG911 transition is likely to be a staggered and gradual deployment of an evolving set of advanced communications features, rather than a “flash-cut” to an entirely new technological platform.⁴¹ For this reason, it is critical that there be clear communication of the capabilities of NG911, and that the public understands the extent of capabilities supported by their local PSAP.

The record developed in response to the Commission’s NG911 Notice of Inquiry emphasizes the importance of public education in connection with the deployment of NG911. APCO stated that “[i]magery and video will increase the potential for PSAPs to better assess the status of an incident” but only if “implemented in conjunction with a public education campaign that carefully sets consumer expectations.”⁴² Motorola Solutions cited consumer education as key to helping civilians understand the capabilities and limitations of the NG911 system, and that “[t]his education will have to be ongoing and keyed to the actual deployment of new services so

⁴¹ Comments of CTIA – The Wireless Association®, PS Docket No. 10-255, at 17 (Feb. 28, 2011).

⁴² APCO NG911 NOI Comments at 2.

that people know what functionalities will be available in their regions, and on what schedule they will be deployed.”⁴³ CTIA agrees with the numerous commenters who highlighted the importance of public education regarding the scope of available emergency communications services.⁴⁴

While the wireless industry is committed to public education regarding the capabilities and limitations of NG911 services, CTIA urges the Commission to make clear that the technologies proposed in the *NPRM* are not currently an option nationwide. As the promise of NG911 technologies continues to make headlines, it is critical that the Commission clarify to the public the availability (or lack thereof) of NG911 services. If the Commission chooses to move forward on *NPRM*’s proposals, disregard the concerns and suggestions of CTIA and others, and require advanced 9-1-1 services to be made available on an “optional” basis, the Commission must be responsible for ensuring that consumers understand that the availability of advanced 9-1-1 services in a given locality or region may not mean that all consumers will be able to take advantage of such services, and that consumers should continue to make voice calls to 9-1-1 until the PSAP certification process and NG911 rollout is complete in their state.

One means of consumer outreach raised by the Commission in the *NPRM* is a database or map of PSAPs and their varying capabilities.⁴⁵ The Commission correctly acknowledged that the cost of developing and updating such resources is an issue that should be considered in

⁴³ Motorola Solutions NG911 NOI Comments at 14.

⁴⁴ See, e.g., AT&T NG911 NOI Comments at 16 (“Additional public education is necessary regarding the limitations of SMS for emergency communications and the capabilities of NG911 systems.”); Sprint NG911 NOI Comments at 5 (“Sprint would, therefore, be supportive of programs that could be developed to educate consumers about the current limitations of texting to 911.”).

⁴⁵ *NPRM* at ¶ 109.

developing a map or similar consumer education campaign.⁴⁶ While CTIA believes that the idea of a map or database holds promise, it emphasizes that states, rather than wireless service providers, should bear the burden of disclosing and updating this information. As PSAPs have the underlying data needed to construct such a map, states are best positioned to implement it. Given this, CTIA encourages a partnership between federal and state Public Safety entities to ease the burden on all parties involved and to further ensure the accuracy of this solution.

VI. THE COMMISSION’S LEGAL AUTHORITY TO REGULATE IN THIS AREA IS UNCERTAIN

While the wireless industry is committed to working closely with interested stakeholders to evaluate the deployment of viable solutions for text based communications to 9-1-1, CTIA questions the Commission’s legal authority to mandate wireless service providers to support this service. As an initial legal matter, the Commission’s jurisdiction to regulate wireless broadband Internet access is currently being challenged. Practically, CTIA has noted that interim text-to-911 and IP based emergency communications solutions will likely come to PSAPs from end-user devices that utilize both licensed and unlicensed spectrum. Thus, CTIA does not agree with the Commission’s assertion that it has “well-established legal authority” to take the various measures proposed for users of spectrum.⁴⁷

Further, the theories of authority articulated by the Commission in the *NPRM* are incomplete. In the *NPRM*, the Commission points to its authority under Title III to regulate licensed CMRS providers, the CVAA’s statutory goal of achieving equal access to emergency services for persons with disabilities, and the Commission’s ancillary authority under Section 4(i) of the Act as conferring the necessary legal authority to implement the proposals in the

⁴⁶ *Id.*

⁴⁷ *Id.* at ¶ 117.

NPRM. CTIA believes that the Commission’s assertion of authority under any of these three statutory provisions is premature.

Title III. The Commission states that its authority under Title III of the Act includes “the power and obligation to condition its licensing actions on compliance with requirements that the Commission deems consistent with the public interest, convenience, and necessity.”⁴⁸ However, the Commission does not tie its assertion of Title III authority to any specific substantive grant of power.⁴⁹ The Commission points to various statutory provisions that provide the Commission with the authority to issue and modify licenses, but these provisions do not speak to the substantive power the FCC has over those licenses.⁵⁰ Moreover, Title III authority must be exercised consistently with the rest of the Act. That determination cannot be made until the Commission advances concrete proposals regarding the implementation of NG911.

CVAA. The Commission states its belief that “the CVAA confers authority with respect to implementation of text-to-911 and other NG911 features to the extent that such implementation serves the statutory goal of ‘achieving equal access to emergency services for people with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network.’”⁵¹ But the Commission’s authority under the CVAA to ensure access of

⁴⁸ *NPRM* at ¶ 117.

⁴⁹ *See NBC v. FCC*, 319 U.S. 190, 216 (1943) (stating that the FCC’s authority to act in the public interest under Title III is “not to be interpreted as setting up a standard so indefinite as to confer an unlimited power.”); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940) (“[T]he Act does not essay to regulate the business of the licensee.”).

⁵⁰ The Commission points to Sections 301 (authorizing the FCC to issue licenses), 303(r) (authorizing the FCC to act as necessary to “carry out the provisions of the Act”), 307(a) (authorizing the FCC to grant licenses), 309(j)(3) (requiring the FCC to design and conduct competitive bidding systems for issuance of licenses), 316(a)(1) (authorizing the FCC to modify licenses). *NPRM* at n. 214.

⁵¹ *NPRM* at ¶ 118.

persons with disabilities to IP-enabled emergency services is limited and specifically governed by Section 615c. That provision does not grant the Commission plenary authority over electronic messaging, but rather requires the Chairman to establish the EAAC and then grants the Commission the power to implement the recommendations of the Committee.⁵² While the EAAC's recommendations recently were submitted to the Commission, serious questions exist as to whether some of the EAAC's recommendations exceed its own mandate or the Commission's jurisdiction under the Communications Act. Before any action is taken on the EAAC's recommendations, the Commission must undertake the appropriate regulatory processes to allow interested parties to review and consider those recommendations.

Ancillary Authority. As the Commission is well-aware, any assertion of ancillary authority must be tied to statutorily mandated responsibilities and justified case-by-case with record evidence.⁵³ Again, however, because the *NPRM* does not raise concrete proposals, the Commission's legal authority is unclear. Until the Commission advances concrete, specific rules, it cannot be determined whether such rules and regulations are permissible and whether an assertion of ancillary authority is appropriate.

CTIA and its member companies welcome the opportunity to work with the Commission on these important matters, but many questions remain to be answered. CTIA expects this to be an iterative process and looks forward to opportunities to comment further when the Commission sets forth concrete proposed rules and regulations.

⁵² See 47 U.S.C. § 615c(g).

⁵³ *Comcast v. FCC*, 600 F.3d 642, 650-51 (D.C. Cir. 2010) (stating that “the permissibility of each new exercise of ancillary authority must be evaluated on its own terms” and that “the Commission must defend its exercise of ancillary authority on a case-by-case basis”).

VII. CONCLUSION

At this stage, it is clear from the *NPRM* that the questions surrounding text-to-911 and NG911 deployment outnumber the answers. CTIA is encouraged that the Commission is taking a forward-looking approach to these issues and asking appropriate questions. Further, CTIA notes that both PSAP preparedness and public education regarding the supported capabilities will be critical components of a successful implementation of NG911. The NG911 development process has thus far been broadly constructive and collaborative, and CTIA and its member companies look forward to further participation in this process.

Respectfully submitted,

By: /s/ Brian M. Josef

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Matthew Gerst
Counsel, External & State Affairs

CTIA – The Wireless Association®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
(202) 785-0081

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