

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 VERIZON AND VERIZON WIRELESS**

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## SUMMARY

The Commission should encourage voluntary interim solutions that will most expeditiously bring about text-to-911 communications capabilities for individuals with disabilities, while enabling industry and state and local governments to maintain their current focus on deployment of a comprehensive, reliable Next Generation 911 (“NG911”) network compatible with IP-based wireline platforms and wireless LTE technology, without imposing costly new regulatory burdens. Service providers and public safety entities are already migrating toward NG911 capability. Service providers are already deploying IP-enabled networks (e.g. LTE) that will support IP-based text services, incorporating those features into their handset/product specifications, and LTE-equipped smartphones are increasingly widespread and affordable. Relevant industry technical standards that are compatible with the NENA-recommended i3 public safety architecture should be completed as early as year-end 2012 or early 2013, and commercial deployment/service for capable PSAPs could begin as early as 2015. PSAPs themselves have already begun to upgrade their own networks and examine the necessary changes to their funding mechanisms.

To ensure that its requirements do not detract from service providers’ and PSAPs’ NG911 deployment, the Commission should not impose SMS-based 911 requirements that would potentially compete (or even conflict) with IP-enabled NG911 deployment for PSAP and service provider resources. Any voluntary interim solutions should build upon existing platforms and standards so that NG911 stakeholders can focus resources on standards development and PSAP funding mechanisms necessary for IP-enabled NG911. Mandating SMS-based solutions that require new standards development and PSAP/service provider upgrades will delay the availability of a more desirable IP-enabled NG911 system. Moreover,

service providers should have flexibility to decide whether or not to deploy a relay-based or direct text-to-911 interim solution for individuals with disabilities, and to migrate customers to IP-enabled services and to discontinue legacy technologies.

Statewide PSAP NG911 capability is a necessary prerequisite to efficient NG911 deployment. Thus, NG911 deployment obligations in a state should be: contingent on statewide deployment of a standards-compliant NG911 network and the availability of liability protection; available to those PSAPs participating in the statewide system; and initially limited to primary means of communication such as VoIP and real-time text. This approach will provide appropriate incentives for states to consolidate PSAPs and utilize funding efficiently and mitigate legal uncertainty, thereby ensuring that service providers' and taxpayers' costs are kept down.

The Commission should engage all NG911 participants to develop effective consumer education methods without additional regulatory burdens. Federal and state/local government stakeholders should take the principal role in educating the public about the availability of NG911 services in their communities. Specific disclosures or consumer education requirements are unnecessary, as providers have incentive to caution subscribers and to use the most effective means of doing so. Requiring service providers to deliver an automatic error reply message where text-to-911 is not available is an appropriate issue for industry best practices, but Verizon's current approach is sufficient should the Commission find that a requirement is necessary.

Regarding 911 call prioritization, the Commission should await the CSRIC's recommendations and consider this issue in the context of broader efforts to address public safety priority access. While some wireless 911 call prioritization may be feasible on both CDMA and LTE wireless networks, it would require network and handset equipment upgrades yet still would

not ensure that a 911 caller reaches the PSAP. Moreover, prioritization protocols raise competing public policy issues concerning the public safety benefits of prioritizing 911 over non-911 calls in all circumstances. The Commission recognized this fact when first adopting wireless 911 rules back in 1996, and the same policy considerations apply now. The Commission should instead consider 911 call prioritization in the context of public safety priority network access more broadly. As a near term alternative, the Commission and stakeholders should take measures to improve customers' understanding of when dialing 911 is appropriate in the first place, and study whether a robust emergency alerting system might help to mitigate this problem, without a regulatory mandate.

Section 106 of the Communications and Video Accessibility Act (CVAA) establishes the statutory framework governing any new text-to-911 requirements and limits the Commission's authority to technically feasible and economically reasonable NG911 requirements for IP-enabled networks for individuals with disabilities. Technology solutions based on industry standards and stakeholder consensus are consistent with these statutory parameters. Finally, the Commission should separately provide for notice and comment on the Emergency Access Advisory Committee (EAAC) recommendations before promulgating any recommendations as rules. A policy framework that focuses on IP-based technologies, rather than legacy technologies, is consistent with the CVAA and the scope of the Commission's authority to implement the EAAC's recommendations.

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**COMMENTS OF VERIZON AND VERIZON WIRELESS**

Verizon and Verizon Wireless<sup>1</sup> support Commission policies that enable industry and public safety to remain focused on deploying IP-enabled service provider networks and devices and Next Generation 911 (“NG911”)-capable PSAP networks. Such an approach is consistent with the Commission’s statutory authority under the Communications and Video Accessibility Act of 2010 (CVAA) and the Commission’s public safety and accessibility objectives in this proceeding.<sup>2</sup> The Commission should afford wireless providers the flexibility to decide whether to offer either relay-based or direct text-to-911 services on an interim basis for individuals with disabilities, while it develops a regulatory framework for IP-enabled NG911. That framework would make service providers’ NG911 deployment obligations contingent on actual statewide PSAP readiness to ensure that NG911 is deployed on a cost-effective basis for PSAPs, service

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, Notice of Proposed Rulemaking, 26 FCC Rcd 13615, ¶ 1 (2011) (“NPRM”).

providers and taxpayers alike. Service providers should retain flexibility to inform their customers of NG911 service limitations according to industry best practices, and the Commission should engage all stakeholders in developing related NG911 consumer education efforts. Finally, the Commission should defer to the CSRIC's forthcoming 911 call prioritization recommendations, and account for related efforts to address public safety prioritization more broadly.

## DISCUSSION

### I. THE COMMISSION SHOULD NOT REQUIRE INTERIM SOLUTIONS BUT SHOULD FOCUS ON A COMPREHENSIVE NATIONAL NG911 SOLUTION

While the Commission has referred to “consumer expectations about the ability to text to 911,”<sup>3</sup> current industry and public safety practices do not warrant imposing a new, costly regulatory mandate on existing wireless networks. Consumer education efforts have consistently emphasized the need to dial 911 by voice in emergencies,<sup>4</sup> and current industry practices thus do not present a situation in which technology changes “damage the ability of states and localities to provide reliable and high-quality 911 service to all citizens.”<sup>5</sup> Verizon nevertheless agrees that text-to-911 capability may have important public safety benefits, principally for individuals with

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<sup>3</sup> *NPRM* ¶ 39.

<sup>4</sup> See FCC Consumer Facts, *Wireless 911 Services*, <http://transition.fcc.gov/cgb/consumerfacts/wireless911srvc.pdf> (“PSAPs currently lack the technical capability to receive texts, photos and videos”); APCO, CTIA Wireless Foundation and NENA Brochure, *Things Teens Need to Know*, [http://www.nena.org/resource/resmgr/911pubedresources/making\\_911\\_all\\_parts\\_1.pdf](http://www.nena.org/resource/resmgr/911pubedresources/making_911_all_parts_1.pdf) (“for now you will have to make an old fashioned phone call if you want to talk to 9-1-1”).

<sup>5</sup> See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 10 (2005), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

disabilities who already rely on TTY technology.<sup>6</sup> The right way to provide the public with state-of-the-art 911 capability is to focus on IP-enabled NG911 available through broadband services such as LTE, and not to deflect dollars toward an interim system that would soon be superseded and antiquated by NG911. The Commission should therefore (1) encourage voluntary interim solutions that will most expeditiously bring about text-to-911 communications capabilities for individuals with disabilities, while (2) enabling industry and state and local governments to stay focused on deployment of a comprehensive, reliable NG911 network compatible with IP-based wireline platforms and wireless LTE technology, without imposing costly new regulatory burdens.

**A. Service Providers and Public Safety Are Already Migrating Toward NG911 Capability Through Deployment of IP-Enabled Networks and Devices**

Burdensome new implementation requirements and deadlines are unnecessary in light of current industry and technology trends. Service providers are already migrating to platforms such as LTE that will enable wireless consumers to use IP-enabled text services to transmit text directly to NG911-capable PSAPs able to handle such services. By December 15<sup>th</sup>, Verizon will have deployed LTE to 190 markets covering over 190 million people – two-thirds of the U.S. population – with plans to cover its existing EV-DO footprint by the end of 2013. Other carriers have announced plans to expand or initiate LTE deployment as well.<sup>7</sup> Verizon currently expects

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<sup>6</sup> See *NPRM* ¶ 36.

<sup>7</sup> See, e.g., AT&T News Release, *First LTE Smartphones for AT&T Customers Available Nationwide Nov. 6*, Oct. 31, 2011 (AT&T “plans to reach 15 markets and 70 million Americans by year-end 2011”), [www.att.com](http://www.att.com) (follow “About AT&T” to “News”); Cellular South News Release, *Cellular South Expands Mobile Broadband Capacity for Voice and High Speed Data Services*, Aug. 19, 2011 (“continuing an unprecedented \$90 million network expansion as it readies plans to introduce 4G LTE”), <http://www.fiercewireless.com/press-releases/cellular-south-expands-mobile-broadband-capacity-voice-and-high-speed-data->; MetroPCS News Release, *MetroPCS Launches 4G LTE Service in the Florida Keys*, July 1, 2011, see

its LTE platform to be capable of handling real-time-text communications starting in 2013, and later releases will accommodate other non-voice communications to NG911-capable standards-compliant PSAPs. These services will also have automatic location information (ALI) capability for call routing and caller location determination purposes.

While the Commission inquires whether consumers' handset choices and smartphone pricing will have "consequences for people with disabilities who may not be able to afford smartphones that provide such capabilities,"<sup>8</sup> handset equipment prices are already affordable to the overwhelming majority of subscribers, and providers routinely offer promotions with various models at even lower prices (in some cases free).<sup>9</sup> Verizon expects that consumers will continue to enjoy affordable access to IP-enabled text services and handsets by the time PSAPs are able to handle those types of communications via their own NG911 networks.

In addition, industry technical standards development is well under way, and should be completed by year-end 2012 or early 2013. 3GPP is already developing international standards that will facilitate the provision of real-time text and other non-voice communications to PSAPs

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<http://www.metropcs.com/presscenter/> (follow "View All News Releases"); Sprint News Release, *Sprint Accelerates Deployment of Network Vision and Announces National Rollout of 4G LTE*, Oct. 7, 2011 ("Sprint plans to launch 4G LTE on its 1900MHz spectrum by midyear 2012 and complete the network build-out by the end of 2013"), see <http://newsroom.sprint.com/news/> (at 07 October 2011); US Cellular News Release, *U.S. Cellular Announces Readiness of 4G LTE Network*, Nov. 4, 2011, <http://www.uscellular.com/about/press-room/2011/USCELLULAR-ANNOUNCES-READINESS-OF-4G-LTE-NETWORK.html>.

<sup>8</sup> *NPRM* ¶ 71.

<sup>9</sup> Of the smartphones currently listed on Verizon Wireless's website, nearly half are priced at or below \$100.00, with many available free or well under \$50.00 with a two-year contract. See <http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewShopIndex> (follow "Smartphones") (last viewed Dec. 12, 2011).

over LTE networks.<sup>10</sup> This process began in early 2010 and is targeted for completion in March of 2012. ATIS, in turn, works closely with 3GPP and has already incorporated 3GPP's standards into its own United States-based industry standards development process.<sup>11</sup> ATIS is also developing United States specifications for IMS-based devices and networks to ensure compatibility with i3-compliant PSAP networks and, jointly with NENA, will be addressing a number of important issues that will enable the 3GPP IMS standard to apply to NG911 networks, including the routing of legacy wireless 911 calls to an i3-compliant NG911 network and determining the IP Network interface for SIP-based communications.<sup>12</sup> Verizon anticipates that a final, public standard will be completed by year-end 2012 or early 2013. The availability of standards could facilitate the development and commercial availability of NG911-capable devices and networks, and potentially enable the provision of IP-based text-to-911 services to NG911-capable PSAPs, beginning as early as 2015.

NG911-capable PSAPs will be every bit as important to an effective NG911 system as originating service providers, if not more so, particularly for solutions that will enable consumers to transmit text communications directly to PSAPs. Verizon is working with many PSAPs to begin upgrading their networks and equipment to IP-enabled platforms to handle existing 911 and E911 calls, including the Denco Area 911 District in Texas. These upgrades are a necessary first step toward the deployment of the more comprehensive NG911 system the Commission and

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<sup>10</sup> See 3GPP, *IP Multimedia Subsystem (IMS) Emergency Sessions*, Technical Specification 23.167, <http://www.3gpp.org/ftp/Specs/html-info/23167.htm>.

<sup>11</sup> See ATIS Emergency Services Interconnection Forum, Issue 74, *Applying 3GPP Common IMS to NG9-1-1 Networks*.

<sup>12</sup> See ATIS Emergency Services Interconnection Forum, Issue 72, *Comparison of SIP Profile for IP Network Interface for Emergency Services with SIP Profiles in Related NNI Specifications* and Issue 73, *Considerations When Routing Legacy CMRS Wireless Emergency Calls to an i3 ESInet*.

Congress have envisioned. Many state and local governments have also begun reconfiguring their funding mechanisms to facilitate NG911 deployment.<sup>13</sup> Finally, public safety stakeholders have made considerable progress in defining the required capabilities and processes for their networks, as reflected in NENA's recommended i3 solution for PSAP architecture. Industry, in turn, is working to ensure that its forthcoming standards are i3-compatible.

In short, both public safety and industry have already initiated many of the measures necessary for the deployment of a comprehensive NG911 system, although more work is still needed. Some additional standards development will be necessary to ensure end-to-end interoperability for IP-based text-to-911 services and systems. Once standards are finalized in late 2012-early 2013, a reasonable period will be required to develop and bring commercially available hardware and software to market for consumer devices and networks, and to incorporate those upgrades into devices, networks, and sales channels. In addition, many PSAPs will need to secure funding sources, all will need time to upgrade their own networks and facilities and train personnel, and all will need to educate consumers on where NG911 is available to them. Nevertheless, if current trends continue, IP-enabled text communications to NG911-capable PSAPs will be available to consumers within a reasonable period. To make this a reality, however, the Commission should avoid mandates for short-term solutions that would force NG911 to compete with SMS-based solutions for PSAP and service provider resources.

**B. The Commission Should Not Impose SMS-Based 911 Capabilities that Would Compete with IP-Enabled NG911 for PSAP and Service Provider Resources**

The SMS-to-911 trial in Durham, North Carolina in which Verizon Wireless is participating indicates that a direct-to-911 SMS-based 911 service may be technically feasible as

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<sup>13</sup> See, e.g., Fla. Stat. § 365.172(b) (2005) (permitting use of 911 fees for NG911 deployment).

a best efforts solution, and Verizon continues to evaluate SMS-based solutions that enable direct-to-PSAP communications. Service providers should have the flexibility to offer such service on an interim basis to capable PSAPs if they so choose. Any interim solution, however, should remain genuinely voluntary in nature and be able to build upon existing platforms and standards to minimize costs to PSAPs and providers, so that they can focus resources on the remaining standards development, network and equipment upgrades, and PSAP funding mechanisms that are necessary to make NG911 a reality.

Direct-to-911 SMS solutions do not build on existing platforms or standards. SMS is not supported in the 3GPP/ATIS standards currently under consideration due to the acknowledged shortcomings of SMS in an emergency calling context.<sup>14</sup> The ATIS Incubator convened in April 2011 to evaluate potential interim solutions determined that they would require PSAP facility and equipment upgrades and new connectivity and selective router arrangements between PSAPs, would not support a uniform national access number, and would provide only limited location information capability. Incorporating an SMS-based solution into a new standards development process, moreover, could not realistically be completed until 2014 at the earliest, with yet an additional period needed for service providers to upgrade their SMS architecture and platforms and for PSAPs to upgrade their networks and call center capabilities.

Moreover, any interim solution must be capable of immediate implementation (*i.e.* during 2012) and limited in duration to bring near-term benefit to individuals with disabilities and so service providers and PSAPs can use their resources for the greatest public interest benefit –

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<sup>14</sup>See 4G Americas, *Texting to 9-1-1: Examining the Design and Limitations of SMS*, October 2010, <http://www.4gamericas.org> (follow “White Papers” to “4G Americas White Papers”); see also NPRM ¶¶ 49-50 (describing concerns for SMS stated by industry and public safety commenters).

NG911 deployment. Widespread deployment of direct SMS solutions would undermine this policy given the required time and resources. The NG911 framework adopted in this proceeding should instead enable and incentivize consumers to migrate from SMS to NG911-compatible IP-enabled services. Service providers should also have sufficient flexibility to discontinue legacy services and technologies in order to commit more resources to their IP-enabled emergency services.

It is also critical that deployment of interim text-based services not undermine incentives for PSAPs (and the state and local governments and taxpayers supporting them) to deploy IP-enabled NG911 systems. PSAPs will need to upgrade their networks and hire new call-takers to handle IP-enabled non-voice communications, including text-based communications such as real-time-text and video and photo communications that require significant bandwidth. With respect to data speeds alone, for example, draft NENA guidance would recommend that a PSAP's system "be designed with sufficient bandwidth to support the predetermined limit of simultaneous calls using the type of transport technology supported that has the highest bandwidth requirement (e.g. calls may be voice, video, and/or text, with additional multimedia attached)."<sup>15</sup> Certain SMS-based solutions enabling direct communications with PSAPs could require significant PSAP upgrades as well, including network and equipment upgrades. The trial currently under way in Durham, for example, required the PSAP to upgrade its facilities to enable connectivity with Intrado's IP-enabled platform. Some but not all PSAPs will have resources to handle such communications in the near future.

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<sup>15</sup> See *NENA NG-9-1-1 System and PSAP Operational Features and Capabilities Requirements*, NENA 57-750M V1, [http://www.nena.org/resource/collection/2BEE3832-DD9B-4CD6-AB89-979F2CA8F789/NENA\\_57-750-v1\\_NG9-1-1\\_System\\_and\\_PSA\\_P\\_Operational\\_Features\\_and\\_Capabilities\\_Requirements.pdf](http://www.nena.org/resource/collection/2BEE3832-DD9B-4CD6-AB89-979F2CA8F789/NENA_57-750-v1_NG9-1-1_System_and_PSA_P_Operational_Features_and_Capabilities_Requirements.pdf) (dated June 14, 2011). Capabilities of up to 2 Mbps per call-taker position have been suggested.

NG911 systems should not have to compete with SMS-based solutions for state and local government funding and other resources. Some jurisdictions impose significant restrictions on use of 911-related fees or taxes by limiting the use of such monies for traditional local exchange and commercial mobile radio services, or imposing explicit restrictions on the types of equipment and services that may be purchased.<sup>16</sup> State and local jurisdictions that face funding constraints may, if given a choice between a costly SMS-based solution versus a more robust IP-enabled NG911 technology, opt for the former. In this circumstance, the direct SMS-based solution could effectively become the long term approach used in that jurisdiction, thus effectively precluding the benefits of NG911 deployment. Even if a particular jurisdiction is able to fund both direct SMS and NG911 solutions, such an outcome could result in even higher fees imposed on consumers with marginal additional public safety benefit. For these reasons as well, any interim solutions, including SMS-based solutions, should remain voluntary and be able to build upon existing platforms and standards.

**C. Service Providers Should Have Flexibility to Decide Whether to Deploy a Relay-Based or Direct Text-to-911 Solution for Individuals with Disabilities**

Verizon recognizes the importance of text-based communications for individuals with disabilities, and the need to enable them to communicate to 911 call centers. Verizon supported the CVAA in part for that reason. LTE-based text services, including real-time text, will enable consumers to communicate directly with NG911-capable PSAPs as Congress envisioned in

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<sup>16</sup> See The National E9-1-1 Implementation Coordination Office, NTIA, *A National Plan for Migrating to IP-Enabled 9-1-1 Systems*, [http://www.ntia.doc.gov/files/ntia/publications/nationalng911migrationplan\\_sept2009.pdf](http://www.ntia.doc.gov/files/ntia/publications/nationalng911migrationplan_sept2009.pdf), at 5-1 to 5-2 (Sept. 2009).

Section 106 of the CVAA and Section 102 of the NET 911 Act.<sup>17</sup> In the meantime, a relay-based IP messaging to 911 solution is an appropriate interim measure to ensure the accessibility of 911 services, and service providers should have flexibility to decide whether and how to provide interim text-based services on that basis without a Commission mandate.

In April 2011, shortly after the public comment cycle concluded on the *Notice of Inquiry* in this proceeding,<sup>18</sup> industry and public safety convened the Interim Non-Voice Emergency Services (INES) Incubator standards group, under the auspices of ATIS, to evaluate non-voice text-based solutions based on an enumerated list of requirements. Specifically, an optimal solution must be: capable of commercial availability on an end-to end basis by June 2012; have a minimum impact on networks, handsets, PSAPs and consumers; be capable of universal deployment nationwide; be consumer-friendly; be non-proprietary and platform independent; provide cell site/cell sector data directly or indirectly to the PSAP; use a single nationwide number (or dialing code); preserve the PSAP's ability to log and record calls; and ensure that communications with the PSAP are secure and private.

The INES Incubator analyzed a number of solutions utilizing these criteria. As described above, the transmission of 911 calls directly to the PSAP via the wireless service provider's SMS service did not meet these criteria. Over-the-top software applications discussed in the *NPRM*<sup>19</sup> were evaluated in the Incubator as well; those technologies are proprietary and not consistently

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<sup>17</sup> See Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751, 2762-64, § 106 (2010); New and Emerging Technologies Improvement Act of 2008, P.L. 110-283, 122 Stat. 2620 (2008) ("NET 911 Act"); see also *infra* Section V.B.

<sup>18</sup> *Framework for Next Generation 911 Deployment*, Notice of Inquiry, 25 FCC Rcd 17869 (2010).

<sup>19</sup> See *NPRM* ¶ 38.

available on handsets, network platforms or service providers, are not compatible with carriers' existing emergency communication platforms, and would require use of a third party platform.

Relay-based solutions, including IP relay, in contrast, would meet all or most of these criteria. IP relay is available to consumers with smartphones, and applications are available for mobile device operating systems; as it would not require stand-alone TTY equipment, no network and handset modifications would be needed; it would allow bidirectional text communications with the Communication Assistant in the relay center via a unique 5-digit short code; and would provide higher transmission quality than TTY. Establishment of a national SMS relay service that utilizes a third party vendor-hosted relay center, while more costly, would also meet most of these criteria and could be deployed by late 2012, but would still not overcome the inherent deficiencies of using SMS in emergency situations and is less optimal.

Providers should have the option to deploy a relay-based or a best efforts SMS direct-to-PSAP approach, to migrate customers to IP-enabled services and devices, and to discontinue legacy technologies. No regulatory mandate is warranted. The Commission should also not mandate particular connectivity arrangements, such as the dedicated SMS to 911 Signaling Control Point solution described in the *NPRM*, which would designate a single point of interconnection for text-based service and impose added cost and regulatory burdens on service providers.<sup>20</sup> Service providers and PSAPs should continue to have flexibility in determining connectivity arrangements, including for the near term migration of voice traffic to PSAPs' IP-based networks. Such arrangements, which are initial stepping stones for a PSAP's own NG911 readiness, should be based on mutual agreement to ensure that points of interconnection are a reasonable distance from the service provider's network, and that service providers have various

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<sup>20</sup> See *NPRM* ¶¶ 52, 55.

transport options, including transiting 911 calls over the ILEC's network for 911 call delivery to PSAPs.

## **II. STATEWIDE PSAP NG911 CAPABILITY IS A NECESSARY PREREQUISITE TO EFFICIENT NG911 DEPLOYMENT**

As with wireless E911, any NG911 obligations imposed on service providers should be contingent on PSAPs' "capability of receiving and utilizing the data elements associated with the service."<sup>21</sup> The Commission should not, however, apply NG911 obligations on service providers on a county- or city-level PSAP-by-PSAP basis as is done with wireless E911 because of (1) the substantially higher costs and technical complexities of NG911 deployment to service providers and PSAPs, and (2) the resulting impact on consumers and taxpayers. Any NG911 deployment obligations applicable to service providers' IP-enabled services in a particular state should be premised on demonstrated capability and statewide application. Specifically, at minimum, any service provider NG911 deployment obligations should be based on the following prerequisites:

- (1) *Contingent on the demonstrated deployment of a statewide (or multistate) standards-compliant Emergency Services IP Network ("ESInet") system.*<sup>22</sup> A demonstration of *actual*, not prospective capability is necessary to ensure that service providers can deploy NG911 capabilities efficiently and in a manner that best meets consumer expectations. It also will ensure that states and localities are incented to deploy NG911 expeditiously and to timely address critical issues such as funding by, for example, ensuring that fees are used solely for NG911 purposes.
- (2) *Applicable not earlier than 6 months after the state demonstrates to the Commission's satisfaction (after notice and comment) that this capability is in place.* The minimum 6-month period is necessary for the service provider to negotiate any final arrangements to establish connectivity, and for all stakeholders to conduct the needed testing and consumer education. The requirement of a Commission determination and notice and comment period ensures accountability and transparency by the state and local jurisdictions and provides certainty to all affected stakeholders. This approach is also consistent with President Obama's

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<sup>21</sup> See *NPRM* ¶ 90; 47 C.F.R. § 20.18(j).

<sup>22</sup> See *NPRM* ¶ 95.

commitment to public participation in the regulatory process.<sup>23</sup> (As with the wireless E911 rules, the PSAPs and service provider should be permitted to mutually agree to a later deadline.<sup>24</sup>)

- (3) *Limited to PSAPs participating in the statewide system.* This will help ensure that service providers do not deploy unnecessarily duplicative facilities and incur unnecessary costs, while giving individual state and local governments appropriate incentives to participate in NG911.
- (4) *Limited to enumerated standards-compliant emergency communications in the “primary media” category, i.e. interconnected VoIP and real-time text.* Consistent with the Commission’s statement in the *NPRM*, stakeholders’ initial focus should be on those media that will constitute the “primary communication between a caller and a PSAP.”<sup>25</sup> Any initial NG911 deployment obligations should focus on these primary media categories.
- (5) *Demonstration of adequate liability protection for service providers and PSAPs.* This will help ensure that states establish the legal certainty for service providers and PSAPs through liability protections needed to encourage NG911 deployment, as identified in the *NPRM* and recognized by public safety and industry stakeholders alike.

Statewide coordination of deployment and funding is necessary to ensure that NG911 is deployed efficiently for PSAPs, taxpayers, and service providers. Unlike wireless and wireline carriers’ legacy circuit-switched architecture, service providers’ IP-enabled architecture is typically regional or greater in scope, with centralized nodes serving a broad geographic area. The highly localized manner in which the Commission applies its “PSAP readiness” criteria to wireless and VoIP E911, if applied to NG911, would unnecessarily drive up compliance costs for service providers and PSAPs alike and, thus, their customers and taxpayers, respectively. Requiring service providers to establish IP-based connectivity arrangements with thousands of individual PSAPs would impose unnecessary costs on service providers and increase the number

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<sup>23</sup> See *infra* note 28 and accompanying text.

<sup>24</sup> See 47 C.F.R. § 20.18(j)(5).

<sup>25</sup> See *NPRM* ¶ 24.

of potential disputes between service providers and PSAPs – thus undermining stakeholders’ incentives to reach mutually-acceptable agreements on issues such as connection points.

Current trends and the Commission’s own analysis support this approach. Verizon Wireless’s recent efforts in various jurisdictions to accommodate PSAPs’ upgrades of their own basic 911 call routing to IP-enabled platforms, including the State of Washington, illustrate the efficiencies of statewide deployment by minimizing the number of interconnection points and the related transport and transactional costs. Many state governments are currently taking a statewide approach toward upgrading PSAP capabilities as well. The Commission’s own recently-released assessment of PSAPs’ NG911 costs affirms that PSAPs will realize substantial savings through the statewide or regional deployment of NG911 services.<sup>26</sup> These developments reflect an emerging consensus on the benefits of consolidated, coordinated action among state and local governments, and the Commission’s policies should spur these trends, not hinder them, as NG911 deployment begins in earnest.

Moreover, requiring service providers to deploy NG911 before PSAPs in a state are actually NG911 capable would immediately impose regulatory burdens on service providers with no guarantee of concurrent NG911 service availability to consumers in the state. Under the wireless E911 rules, service providers were effectively compelled to deploy trunking facilities on a county-by-county or city-by-city basis, even before the PSAP was actually capable of handling the E911 data elements.<sup>27</sup> This approach was not problematic in most cases, in large part

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<sup>26</sup> See *White Paper: A Next Generation 911 Cost Study: A Basis for Public Funding Essential to Bringing a Nationwide Next Generation 911 Network to America’s Communications Users and First Responders*, [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0922/DOC-309744A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0922/DOC-309744A1.pdf), at 7-9 (PSHSB rel. Sept. 22, 2011).

<sup>27</sup> See 47 C.F.R. § 20.18(j)(2); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, Order, 16 FCC

because PSAPs' own facilities and equipment costs were limited and reasonably well-defined. NG911 deployment, however, requires a largely "ground-up" deployment approach for most PSAPs, and many states are only now beginning to reassess their 911 system funding mechanisms. Thus, the potential for delays is considerable. Applying the current wireless approach to NG911 could not only result in stranded service provider costs, but would be unfair to those states that might have requested NG911 later in the queue but have achieved NG911 capability more expeditiously.

Such an approach is also more consistent with President Obama's admonition that agencies "use the best, most innovative, and least burdensome tools for achieving regulatory ends" based on "a reasoned determination that its benefits justify its costs" and "impos[ing] the least burden on society."<sup>28</sup> For this reason as well, the revised "PSAP readiness" approach described above for NG911 will give state and local governments the appropriate incentives to implement PSAPs' NG911 capabilities in an efficient manner – for the benefit of their PSAPs and taxpayers alike – and in a manner consistent with the President's objective.

Finally, the Commission seeks comment on any other "legal or regulatory barriers that may exist at the state or local level that could hinder the deployment of NG911," in particular the potential absence of sufficient liability protection for service providers and PSAPs in many states.<sup>29</sup> As Verizon explained in its comments on the *VoIP 911 NPRM*, the current Federal

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Rcd 18982, ¶¶ 28-29 (2001), *aff'd in relevant part on recon.*, Order on Reconsideration, 17 FCC Rcd 24282 (2002), *aff'd on recon.*, Second Order on Reconsideration, 18 FCC Rcd 26374 (2003).

<sup>28</sup> See President Barack Obama, Executive Order 13563, Jan. 18, 2011, 76 Fed. Reg. 3821 (2011), and President Barack Obama, Executive Order 13579, July 11, 2011, 76 Fed. Reg. 41857 (2011).

<sup>29</sup> *NPRM* ¶ 96.

statute and many state laws provide important liability protection, but the degree of immunity varies from state to state and remains subject to the vagaries of common law tort actions.<sup>30</sup> To the extent that a state does not have a 911 liability protection statute, or has a statute that does not clearly cover non-voice services, moreover, liability risks could potentially deter NG911 deployment or increase deployment costs in a particular state.<sup>31</sup> Verizon thus agrees with the proposal in the *NPRM* that enactment of liability protection should precede any service provider obligations in a state.<sup>32</sup> The Commission should also reiterate that state laws and regulations (including judicial decisions) that conflict with Federal rules and policy in this area will be subject to preemption, and encourage Federal and state legislative efforts to provide additional liability protection for NG911 stakeholders.<sup>33</sup>

### **III. THE COMMISSION SHOULD ENGAGE ALL NG911 PARTICIPANTS TO DEVELOP EFFECTIVE CONSUMER EDUCATION METHODS WITHOUT ADDITIONAL REGULATORY BURDENS**

Verizon agrees that “there are clear benefits to be gained from providing the public with accurate and up-to-date information about the availability or non-availability of NG911

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<sup>30</sup> See Comments of Verizon and Verizon Wireless, *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules*, GN Docket No. 11-117; *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, at 25 (Oct. 3, 2011) (“Verizon Location Accuracy Comments”).

<sup>31</sup> See NENA, *Next Generation 9-1-1 Transition Policy Implementation Handbook*, [http://www.tsag-its.org/docs/NG9-1-1\\_Transition\\_Policy\\_Handbook\\_Final\\_03-08-10.pdf](http://www.tsag-its.org/docs/NG9-1-1_Transition_Policy_Handbook_Final_03-08-10.pdf), at 21-22 (March 2010) (NG911 stakeholders “will likely more rapidly [transition to NG911 systems] with the legal certainty that their good faith efforts to improve 9-1-1 and emergency communications services will not expose them to further liability”).

<sup>32</sup> See *NPRM* ¶ 99.

<sup>33</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 18676, ¶ 105 (1996) (“*Wireless E911 First Report and Order*”) (“conclud[ing] that state actions that are incompatible with the policies and rules adopted in this Order are subject to preemption.”).

applications in their home communities and in other locations where they may travel.”<sup>34</sup> The Commission, jointly with States and other government stakeholders, should take the principal role in this regard, incorporating input from other consumer group and industry stakeholders. Even limited NG911 deployment within a particular geographic area would require a concerted effort to inform consumers of the geographic and technical scope of the available NG911 service(s). The various disclosures provided by the City of Durham, North Carolina, in conjunction with its limited six-month text-to-911 trial in which Verizon Wireless is participating, illustrate the types of disclosures that would be needed for even a very limited deployment of NG911 service.<sup>35</sup>

The Commission should not mandate disclosure or consumer education requirements on service providers, however, given the myriad ways in which service providers market to and interact with their customers. Service providers have ample incentive to caution their subscribers about the limitations of 911 service in their territories, and Commission regulation requiring such disclosure is unnecessary.<sup>36</sup> The various methods described in the *NPRM*, such as bill inserts, point-of-sale literature, and online information all have merit,<sup>37</sup> but each may be more effective for some service providers than others. The Commission should instead encourage the development of industry best practices to ensure that consumers are informed, yet not overwhelmed or confused, about the NG911 services available via their networks and in their

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<sup>34</sup> See *NPRM* ¶ 106.

<sup>35</sup> See News Release, *Durham 911 Center Launches Texting Trial for Emergency Help* (Aug. 3, 2011), available at <http://www.durhamnc.gov/news/NewsDisplay.cfm?vNewsID=2343> (describing limits of text-to-911 availability and service).

<sup>36</sup> See *NPRM* ¶ 108.

<sup>37</sup> See *id.* ¶ 107.

respective service areas. The CSRIC is already taking initial steps in this regard, which the Commission should monitor and encourage.<sup>38</sup>

After the industry and public safety standards development efforts have concluded, the Commission should separately engage all relevant stakeholders, including public safety associations, state and local governments, consumer groups and industry, to determine the most effective means by which they can help educate consumers about NG911 service limitations and capabilities.<sup>39</sup> The Commission's and other stakeholders' efforts to develop the Accessibility Clearinghouse could be a useful template for such a project.<sup>40</sup> Federal, state, and local government agencies should be principally responsible for in developing public consumer resources, including any "consumer-focused map" and website with specific geographic information, that consumers might use to determine the extent of NG911 availability in a particular area.<sup>41</sup>

Finally, the Commission seeks comment on whether to require a service provider to transmit "an automatic error message or similar disclosure" where text-to-911 is not available.<sup>42</sup> Verizon already provides the following message, without any overhanging regulatory obligation: "Please make a Voice Call to 911. There is no text service to 911 available at this time." Verizon expects that such disclosures would be standard industry practice once NG911 systems

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<sup>38</sup> CSRIC Working Group 1's tasks include developing "criteria that signify the technical and/or operational readiness of a regional/Statewide 9-1-1 system, to accept NG9-1-1 calls and data." See CSRIC Working Group #1 Presentation, Sept. 23, 2011, at 2, available at <http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii>.

<sup>39</sup> See *NPRM* ¶¶ 108-109.

<sup>40</sup> See <http://apps.fcc.gov/accessibilityclearinghouse/index.html>.

<sup>41</sup> See *NPRM* ¶ 109.

<sup>42</sup> See *id.* ¶ 110.

become operational, so regulations should be unnecessary. Should the Commission nevertheless find that a requirement is necessary, language like Verizon's would be sufficient and appropriate.

#### **IV. THE COMMISSION SHOULD AWAIT THE CSRIC'S RECOMMENDATIONS AND CONSIDER 911 CALL PRIORITIZATION IN THE CONTEXT OF BROADER EFFORTS TO ADDRESS PUBLIC SAFETY PRIORITY ACCESS**

When initially adopting its wireless E911 rules in 1996, the Commission declined to impose any call prioritization requirements.<sup>43</sup> While some degree of 911 call prioritization may be technically feasible, and rules might be configured consistent with various legal obligations,<sup>44</sup> the same considerations that weighed against the adoption of rules in 1996 remain as relevant today, including technical complexity and the fundamental policy issue of whether 911 calls should receive priority over all non-911 calls.<sup>45</sup> Implementation of 911 call prioritization would not be simple, as it would require technical standards and upgrades for network and end user equipment, and participation by manufacturers, service providers and the public safety community. The National Broadband Plan more recently posited that public safety users be afforded priority access to broadband networks, noting that NCS is already working with industry stakeholders on that issue.<sup>46</sup> Given these competing policy considerations, the Commission should allow the CSRIC to issue its recommendations and consider the need for 911

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<sup>43</sup> *Wireless E911 First Report and Order*, ¶ 117.

<sup>44</sup> *See NPRM* ¶¶ 65-66 (inquiring whether 911 call prioritization is consistent with 47 U.S.C. § 202(a) and the broadband nondiscrimination obligations of the *Open Internet Order*). For the reasons discussed at Section V below, however, imposing new E911 obligations on broadband providers is beyond the scope of the Commission's authority.

<sup>45</sup> *See Wireless E911 First Report and Order* ¶ 117.

<sup>46</sup> *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, <http://download.broadband.gov/plan/national-broadband-plan.pdf> (March 2010) ("*National Broadband Plan*").

call prioritization in broadband networks more comprehensively, including whether best practices could obviate the need for new regulatory mandates.

**A. 911 Call Prioritization Would Be Burdensome Yet Will Still Not Ensure Connectivity for All 911 Calls**

In Verizon's wireline network, 911 calls traverse dedicated trunk groups from the customer's serving end office to the 911 selective routers and from the selective routers to the PSAPs. Thus, 911 calls do not compete with regular PSTN traffic for network facilities, and prioritization is simply not an issue for Verizon's wireline network in the first instance. For the Verizon Wireless CDMA network and other wireless carriers' GSM networks, some degree of prioritization is technically feasible but would require both network and device upgrades. Verizon Wireless participates in the U.S. Department of Homeland Security/National Communications System (NCS) Wireless Priority Service (WPS) for non-911 CDMA calls to certain government users. Development and implementation of new network- and device-level upgrades similar to those industry has implemented for WPS communications would be required for 911 calls, which would impose costs and require coordination with manufacturers and PSAPs as well.

Even with those added burdens, though, prioritization of wireless 911 calls would not necessarily ensure that a 911 caller reaches the PSAP. A 911 call would need to reach the underlying wireless network in order to receive any degree of prioritization. In many high volume calling situations, customers may be unable to even find an available transmit channel for their handsets that would enable the call to connect to the cell site in the wireless network and notify the network that the customer is placing a 911 call. This is precisely what many 911 and non-911 callers experienced after the August 2011 East Coast earthquake. Such calls could not be prioritized unless networks could universally detect when the handset attempts a 911 call *and*

preempt non-911 calls in progress, which would require substantial development of handset and network technology. As discussed below, imposing such burdens on industry would not necessarily serve the public interest.

Some degree of 911 call prioritization in an IP-enabled NG911 environment may be technically feasible as well. The prioritization capability would need to reside in both the service provider and PSAP network. LTE and related 3GPP standards support the prioritization of various types of calls; Verizon Wireless intends to prioritize both non-911 and 911 voice calls over other data traffic, but to provide priority for 911 calls alone, all other voice traffic would require a lower priority. Thus, prioritizing 911 calls via LTE would require fundamental changes in network planning and design, as well as device upgrades. For the public safety network, Verizon understands that the NENA i3 specification would ensure that the ESInet is capable of identifying the priority levels of SIP calls within the ESInet.<sup>47</sup> Such a mechanism, however, would require further study, and existing technology may need further modification to enable prioritization for over-the-top providers. Additional standards development, followed by network- and device-level upgrades, would be needed to implement 911 call prioritization via LTE and the ESInet as well but, as discussed below, new regulatory requirements are unwarranted.

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<sup>47</sup> RFC 4412 defines the Resource Priority header and its ability to “influence the behavior of SIP user agents...and proxies” and provides a potential means by which originating network providers could differentiate the call set-up signaling of emergency calls from that of general calls. *See Detailed Functional and Interface Specification for NENA i3 Solution – Stage 3*, NENA 08-003 v1, June 14, 2011.

**B. The Commission Should Consider 911 Call Prioritization in the Context of Public Safety Priority Network Access More Broadly**

Even assuming that some degree of 911 call prioritization is feasible, Commission regulations would not necessarily serve the public interest. When the Commission last addressed the issue in 1996, it acknowledged “the difficulty of determining whether 911 calls should have priority over other non-emergency calls such as calls to a suicide hotline.”<sup>48</sup> These considerations are at least as difficult now. A single automobile accident can result in multiple “good Samaritan” wireless 911 calls by passers-by who are not in immediate danger. In a 911 call prioritization regime, however, those calls might take priority over a non-911 call from the victim of the same accident to a spouse or physician, or even another 911 call from one of the accident victims. Moreover, PSAPs typically have only a limited number of call takers; where the PSAP’s own facilities are congested, calls are typically sent to either an alternate 10-digit number or to a “fast busy” signal. 911 call prioritization would not address this problem.

Thus, call prioritization is not a simple question of “emergency” versus “non-emergency” calls, but requires a more complex balance of policy considerations – including the service provider’s fundamental need to manage traffic and capacity during periods of high volume – that are appropriate subjects for the CSRIC to consider. The *National Broadband Plan* also recommended that the Commission and NCS create a priority network access and routing system for broadband communications in order “to protect time-sensitive, safety-of-life information from loss or delay due to network congestion.”<sup>49</sup> These efforts are already under way in NCS and, in establishing its new Working Group 10 to address this matter, the CSRIC recognized the

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<sup>48</sup> See *Wireless E911 First Report and Order* ¶ 117.

<sup>49</sup> *National Broadband Plan*, Recommendation § 16.11, at 322.

need to ensure such a coordinated approach.<sup>50</sup> Any 911 call prioritization system must account for any protocols for public safety mobile broadband, and the Commission should not address these issues in piecemeal fashion.

In the near term, the Commission and other stakeholders should instead consider what measures might be used to improve customers' understanding of when dialing 911 is appropriate in the first place. There is overwhelming anecdotal evidence that many 911 calls made in the aftermath of the August 2011 East Coast earthquake – a primary impetus for the Commission's inquiry here – were non-emergency in nature.<sup>51</sup> The Commission should principally address this problem through consumer education. The recent joint Commission-FEMA consumer alert on 911 calling, for example, provides the type of information that consumers require to better understand when 911 dialing is appropriate, and NENA has published helpful age-appropriate guidance on the subject.<sup>52</sup> The forthcoming implementation of a robust commercial mobile alert system, as well as local emergency notification programs available through wireline and wireless

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<sup>50</sup> See CSRIC III Working Group Descriptions and Leadership, at 7 (updated Nov. 17, 2011) (“the WG may consider how to coordinate 911 priority with other priority calling arrangements, including [WPS]”) available at <http://transition.fcc.gov/pshs/advisory/csric3/wg-descriptions.pdf>.

<sup>51</sup> See, e.g., CBS Baltimore, *911 Calls Capture Panic As Quake Hits Maryland*, Aug. 24, 2011 available at <http://baltimore.cbslocal.com/2011/08/24/911-calls-capture-panic-as-quake-hits-maryland/> (last viewed Dec. 12, 2011) (Baltimore City 911 center stated that “more than 2,400 people called in about the earthquake.”); Michael Felberbaum, Associated Press, *Rattled Residents call 911 about Va earthquake*, Aug. 25, 2011, available at <http://www.wtop.com/index.php?nid=1035&sid=2513639> (last viewed Dec. 12, 2011) (“earthquake and its aftershocks ... prompted befuddled callers to inundate 911 call centers to report feeling or seeing something, or just to find out what happened, much to the chagrin of some emergency officials.”).

<sup>52</sup> See FCC & FEMA, *Tips For Communicating Before, During & After Disasters* (Sept. 22, 2011), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0921/DOC-309723A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0921/DOC-309723A1.pdf); NENA, 9-1-1 Education Month Brochures, *Making 9-1-1 Work for You*, available at [http://www.nena.org/resource/resmgr/911pubedresources/making\\_911\\_all\\_parts\\_1.pdf](http://www.nena.org/resource/resmgr/911pubedresources/making_911_all_parts_1.pdf).

services, might help to mitigate the problem as well by informing consumers of major disasters or events.<sup>53</sup> CSRIC Working Group 8 is investigating a number of potential PSAP best practices in this area for 911 service reliability, and new Working Group 10 will address 911 prioritization issues in particular. The Commission should support any resulting near term best practices without regulatory intervention.

**V. THE CVAA ESTABLISHES THE STATUTORY FRAMEWORK GOVERNING ANY NEW TEXT-TO-911 REQUIREMENTS**

**A. The CVAA Defines the Commission’s Authority to Implement Technically Feasible and Economically Reasonable NG911 Requirements for IP-Enabled Networks**

The Commission seeks comment on its statutory authority to adopt NG911 regulations.<sup>54</sup> The CVAA defines the scope of the Commission’s authority here. The CVAA reflects a careful balance of public interest objectives, requiring that the Commission’s rules both meaningfully improve the accessibility of advanced communications services for individuals with disabilities, while also preserving innovation in new IP-enabled services and products. Consistent with that balance, Section 106 of the CVAA reflects Congress’s intention that the Commission ensure that individuals with disabilities who rely on advanced communications services (ACS) such as “electronic messaging” enjoy “equal access to emergency services”<sup>55</sup> through (1) the deployment of IP-based NG911 networks and services, and (2) requirements that are achievable and technically feasible.

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<sup>53</sup> See CBS Baltimore, *911 Calls Capture Panic As Quake Hits Maryland*, *supra* (after Harford County, Maryland “utilized its emergency notification system to broadcast texts and emails about the quake to people who have signed up for them ... the [911] calls dramatically declined.”).

<sup>54</sup> *NPRM* ¶¶ 118-119.

<sup>55</sup> CVAA § 106(a); 47 U.S.C. §§ 153(1) and (19), 617(b).

Congress clearly intended that the Commission focus on IP-enabled networks and services, as Verizon recommends here. Section 106 of the CVAA required the Commission to establish an advisory committee to issue recommendations “[f]or the purpose of achieving equal access to emergency services by individuals with disabilities, as a part of the *migration to a national Internet protocol-enabled emergency network*.”<sup>56</sup> The CVAA’s only instructions to the advisory committee on recommendations for specific compliance deadlines relate to “providers of interconnected and non-interconnected VoIP services and manufacturers of equipment used for such services,” thus reflecting Congress’s intent that the Commission seek to achieve access to emergency services via the IP-enabled networks and services used by VoIP providers.<sup>57</sup> Section 106 further authorizes the Commission “to promulgate rules” to “ensure[] access by individuals with disabilities *to an Internet protocol-enabled emergency network* . . . .”<sup>58</sup> The Commission should therefore focus its NG911 regulatory efforts on IP-enabled services, such as LTE, to ensure that any regulations are consistent with its statutory authority.

Congress also set important substantive boundaries on the scope of any new NG911 rules. The advisory committee’s recommendations themselves must “take into account what is technically and economically feasible,” and any Commission rules, in turn, must be “achievable and technically feasible.”<sup>59</sup> The CVAA expressly defines the term “achievable” as “with reasonable effort or expense,” taking into account specific enumerated factors, including “the nature and cost of the steps necessary.”<sup>60</sup> Section 3 of the CVAA further prohibits the

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<sup>56</sup> CVAA § 106(a) (emphasis added).

<sup>57</sup> *Id.* § 106(c)(6).

<sup>58</sup> *Id.* § 106(g) (emphasis added).

<sup>59</sup> *Id.*

<sup>60</sup> 47 U.S.C. § 617(g).

Commission from “mandat[ing] the use or incorporation of proprietary technology,” which precludes the Commission from imposing any proprietary technology on service providers here.<sup>61</sup> Common solutions “that serve both the broad goals of NG911 and the NG911 accessibility goals of the CVAA”<sup>62</sup> and that are based on industry standards and stakeholder consensus, as described above,<sup>63</sup> are consistent with these statutory parameters and will best ensure that NG911 requirements remain consistent with the Commission’s statutory authority.

Because the Commission has explicit and well defined authority under the CVAA, there is no need to address questions relating to Commission authority under either Title III or the so-called ancillary authority doctrine. To the extent the *NPRM* suggests the Commission has authority under those alternative sources, however, it is mistaken.<sup>64</sup> Any such authority must derive from the CVAA, not from Title III or the penumbras of the Act. When it enacted the CVAA, Congress made a deliberate choice to grant the Commission authority only to impose accessibility regulations on five enumerated services: interconnected and non-interconnected VoIP; “electronic messaging service;” “interoperable video conferencing service;” and, to a lesser extent, mobile services using handsets with an Internet browser.<sup>65</sup> The CVAA therefore covers many communications services, including certain text-based electronic messaging services, that an NG911 network might support.

Congress did not, however, grant the Commission authority to broadly regulate the underlying provider of broadband Internet access service. On the contrary, Congress expressly

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<sup>61</sup> CVAA § 2.

<sup>62</sup> *See NPRM* ¶ 113.

<sup>63</sup> *See supra* Sections I.A-B.

<sup>64</sup> *See NPRM* ¶¶ 118-119.

<sup>65</sup> *See* 47 U.S.C. §§ 153(1)(A)-(D), 617(b), 619(a).

imposed network-level accessibility obligations on the “provider of advanced communications services,”<sup>66</sup> as those services are defined in the Act, and required a broadband mobile service provider to ensure that the *handset browser* is accessible, not the “Internet content, applications, or services” accessed via the browser.<sup>67</sup> Section 2(a) of the CVAA further prohibits the Commission from imposing liability for a violation of the CVAA’s requirements to the extent that an entity “merely transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of [ACS] by a third party.”<sup>68</sup> Congress thus intended that service providers with CVAA obligations would be responsible for *their own* compliance, and that their underlying broadband providers would not incur liability through the Commission’s implementation of the CVAA.

Finally, the only other federal statute that expressly authorized 911 regulation of an IP-enabled service – the NET 911 Act – contemplates that providers of text- or data-based emergency services, and their underlying service providers, could offer service on a *voluntary* basis, without a Commission mandate.<sup>69</sup> Tellingly, even as the NET 911 Act authorized E911 rules for one class of IP-enabled services (interconnected VoIP), its only provisions for NG911 required that NTIA issue a “national plan for migrating to a national IP-enabled emergency network” including mere “*recommendations* on any legislative changes.”<sup>70</sup>

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<sup>66</sup> *See id.* § 617(d).

<sup>67</sup> *See id.* § 619(a)(2) (emphasis added).

<sup>68</sup> *See* CVAA § 2(a).

<sup>69</sup> *See* 47 U.S.C. §§ 615a(a), 615b(8)-(9) (defining an “other emergency communications service provider” entitled to liability protection to include “an entity that voluntarily elects to provide other emergency communications services”); H.Rep. No. 110-442, at 17 (2007) (explaining that “[s]uch services could include the provision of data and video information that is designed to improve the ability of first responders to react to emergencies”).

<sup>70</sup> *See* NET 911 Act § 102(3) (codified at 47 U.S.C. § 942(d)) (emphasis added).

Thus, the “regulatory scheme expressly authorized by Congress”<sup>71</sup> does not extend to imposing broad new requirements on broadband providers. In any event, broadband providers’ own business incentives will facilitate commercial agreements between third party over-the-top messaging and other NG911 entities that use or connect to broadband providers’ networks, without the need for imposing a new regulatory obligation on broadband services.<sup>72</sup>

**B. The Commission Should Separately Seek Comment on the Emergency Access Advisory Committee Recommendations**

The recommendations of the EAAC are an important component of the CVAA’s overall framework. The Commission correctly explains that “[t]here is considerable overlap between the NG911 text and multimedia capabilities discussed in [the *NPRM*] and the NG911 accessibility issues” the EAAC considered.<sup>73</sup> Should the Commission incorporate the EAAC recommendations into its record, however, it must ensure that it has provided adequate notice and opportunity for public comment before promulgating any of the recommendations as rules. While some of the recommendations may directly relate to the Commission’s questions in the *NPRM*, there was considerable disagreement among EAAC members as to whether certain recommendations in the initial submission to the Commission on December 6<sup>th</sup> were outside of the scope of the EAAC’s responsibilities under the CVAA and, in some cases, the Commission’s jurisdiction more broadly.<sup>74</sup> The Commission should therefore seek separate comment on the EAAC’s recommendations before adopting any rules in this proceeding, and make it clear which of them it believes warrant consideration as rules.

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<sup>71</sup> See *Comcast Corp. v. FCC*, 600 F.3d 642, 656 (D.C. Cir. 2010).

<sup>72</sup> See *Verizon Location Accuracy Comments* at 14-16.

<sup>73</sup> See *NPRM* ¶ 113.

<sup>74</sup> Several industry EAAC members jointly voiced these concerns in a separate statement to the EAAC’s recommendations.

While the EAAC did not reach full agreement on “the most effective and efficient technologies and methods by which to enable access to emergency services by individuals with disabilities,”<sup>75</sup> many of its recommendations provide important insight for industry and the Commission alike on the service and equipment functionalities that could be most effective in ensuring the accessibility of NG911 services. Verizon agrees with the Commission that the development of common solutions “that serve both the broad goals of NG911 and the NG911 accessibility goals of the CVAA” is a preferable approach to “developing specialized technologies solely for use by people with disabilities ....”<sup>76</sup> Industry standards and a regulatory framework that focus on the NG911 capabilities in IP-based technologies and networks (such as LTE), and on migrating consumers from legacy technologies, as recommended above, will enable industry to incorporate accessibility into products and services at the design and initial deployment stage in a manner that most “effective[ly] and efficient[ly]” achieves this objective.<sup>77</sup> In contrast, imposing burdensome interim text-to-911 requirements for existing services such as SMS could detract from Congress’s clear objective of promoting investment in and deployment of IP-enabled NG911-capable service provider and PSAP networks.<sup>78</sup> Finally, and as discussed

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<sup>75</sup> See CVAA § 106(c).

<sup>76</sup> See NPRM ¶ 113.

<sup>77</sup> See CVAA § 106(c).

<sup>78</sup> See *id.* §§ 106(c)(1) (requiring EAAC to provide recommendations “with respect to what actions are necessary as part of the migration to a national Internet protocol-enabled network ....”), (c)(5) (recommendations “for procedures to be followed by IP-enabled network providers ....”), and (c)(6) (recommendations “for deadlines by which providers of *interconnected and non-interconnected VoIP services* and manufacturers of equipment used for such services” to take enumerated action “and for the possible phase out of the use of current-generation TTY technology ....”) (emphasis added); see also *supra* Section V.C (discussing Commission’s statutory authority under the CVAA).

above, such an approach is most consistent with the CVAA's balanced approach that promotes accessibility while preserving innovation.

### CONCLUSION

The Commission should exercise its authority under the CVAA to adopt a policy framework that enables industry and public safety to remain focused on the timely and efficient deployment of NG911-capable services as outlined above. The Commission should defer NG911 consumer education to industry best practices and 911 call prioritization issues to the CSRIC.

Respectfully submitted,

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