

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Framework for Next Generation 911
Deployment

PS Docket No. 10-255

Facilitating the Deployment of Text-to-911 and
Other Next Generation 911 Applications

PS Docket No. 11-153

Comment on the Legal and Statutory
Framework for NG911 Services Pursuant to the
Next Generation 9-1-1 Advancement Act of
2012

PS Docket No. 12-333

COMMENTS OF AT&T INC.

In the Middle Class Tax Relief and Job Creation Act of 2012, Congress directed the Commission to report on recommendations for the legal and statutory framework for Next Generation 9-1-1 (NG911) services.¹ On November 13, 2012, the Public Safety and Homeland Security Bureau (Bureau) issued a Public Notice (Notice) seeking input from the public on those matters.² In response, AT&T Inc. (AT&T) files these comments on behalf of itself and its affiliates.

Over the past two years, the Commission has been soliciting and receiving comments on all aspects of NG911 services, including those pertaining to its legal and statutory framework. AT&T recommends that the Bureau review these comments as part of its effort to develop the statutorily required report. As part of that process, AT&T submitted comments and includes them here by reference.³ Broadly, AT&T has insisted that successful deployment of NG911

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012), Title VI, Subtitle E (Next Generation 9-1-1 Advancement Act or Act).

² Public Notice: Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012, DA 12-1831 (rel. Nov. 13, 2012)(Notice).

³ See Comments of AT&T Inc., PS Docket No. 10-255 (filed Feb. 28, 2011); Reply Comments of AT&T Inc., PS Docket No. 10-255 (filed March 14, 2011); Comments of AT&T Inc., PS Dockets 10-255, 11-153 (filed Dec. 12, 2011).

services will depend on the creation of a standardized, basic NG911 infrastructure, without which the public safety community and service providers will incur needless delay and expense, the general public will suffer confusion over the nature and availability of NG911 services, and all concerned may experience frustrations and, very likely, jeopardize the quality of emergency responses. AT&T has also cautioned against rolling out “advanced services” as emergency communications before they are built to mission-critical standards, which (of course) involves development of multimedia emergency services (MMES) standards through both the 3rd Generation Partnership Project (3GPP) and Alliance for Telecommunications Industry Solutions (ATIS) processes,⁴ but also effective end-to-end testing capability for each supported feature at all levels and a concerted public education program. But most importantly NG911 services will require fresh thinking at all levels, and the Commission’s report to Congress should reflect this attitude.

At a minimum, this fresh thinking should embrace revisiting and strengthening limitation-of-liability protection for all parties in the provisioning chain—not just service and network providers, but manufacturers and vendors, as well, regardless of network or technology. The existing limitation-of-liability protection is inadequate to the task because it is not consistent nationwide and leaves parties uncertain as to the extent that protection is provided (if at all). Limitation-of-liability protection for all in the 9-1-1 provisioning chain should be clear and unambiguous, comprehensive, standardized, nationwide, and applicable to all equally—regardless of technology involved. Congress needs to address this issue immediately to encourage across-the-board participation at all levels in introducing advanced services into the NG911 service space.

Additionally, NG911 services require re-imagining the way the public safety community organizes itself. Perpetuating the legacy POTS service model may in all likelihood delay rollout

⁴ MMES as defined in Section 10 of 3GPP TS 22.101 V11.3.0 (2011-09), 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Service Aspects; Service Principles (Release 11).

of new and advanced services built to mission-critical standards due to cost constraints and may leave the public confused as to when and where such services are available. How the public safety community is organized to receive and process NG911 information will drive the costs imposed on states and localities, as well as determine how quickly they can be brought online. The present organization, which relies on over 6,800 individual PSAPs operating autonomously, may very well prove inadequate or counterproductive to the task of NG911 service deployment. Congress and the Commission have a role to play in assisting states or regions of states to reorganize their emergency service structures to provide more efficient and cost effective mechanisms to take advantage of the benefits of NG911 services.

In a similar vein, the POTS model of funding for 911 services—assessing a 911 fee on the telephone bill—is also outdated and needs revamping. Imposing fees and surcharges on just the network providers’ customer base—especially the wireline and wireless carrier customer base—fails to recognize the extent to which the community as a whole is benefited by the widespread availability of 911 access, including future NG911 services. Additional revenues will be required to expand emergency service access beyond the limits of POTS voice service. Likewise, funding for 9-1-1, including NG911, should be broader and more inclusive than simply imposing fees and surcharges on just one segment of the public, namely the customers of network providers. AT&T believes that these public safety expenses should be funded through general revenues and that the burden of making 911 service access available to everyone should be borne equally. The Commission should recommend to Congress that it explore ways of addressing this funding issue.

I. DISCUSSION

A. The Commission Should Propose that Congress Enact Clear, Comprehensive, Standardized, Nationwide Limitation-of-Liability Protection for All Entities Participating in any Aspects of Emergency Services Access, Including NG911 Service.

There is near universal acceptance of the need to provide limitation-of-liability protection to persons and entities involved in providing access to emergency services. Without it, access

providers and others would be reluctant, or would refuse entirely, to participate in the system that makes emergency services possible or the costs of providing such access would rise and become prohibitive because everyone in the chain of production would have to adjust rates and prices to cover potential claims and losses. The model for limitation-of-liability protection is based on the legacy POTS model—*i.e.*, where the local exchange service provider was the central actor and limitations-of-liability protection was provided to it largely through state filed tariffs. This model no longer makes sense as we move away from legacy POTS service to a world of IP-enabled services, including NG911.

Congress has previously attempted to address the changes in the voice communications market by expanding limitation-of-liability protection to both wireless and interconnected voice over Internet Protocol (VoIP) service providers. In the “New and Emerging Technologies 911 Improvement Act of 2008,” Congress attempted to put wireless providers, VoIP providers and “other emergency communications service providers” in limitation-of-liability protection parity with the “local exchange company.”⁵ Congress did this by statutorily extending to these other providers the same “immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise).”⁶ The upshot of this, however, has been to leave many new providers perplexed as to the extent to which they are actually immune from liability associated with 9-1-1 access because immunity afforded the local exchange companies is often based on telephone company tariffs, which can vary from jurisdiction to jurisdiction or which are being eliminated or replaced or which are tied to a specific time-division multiplexed (TDM)-based technology. State statutory protections and judicial decisions aren’t much better as they depend on the state’s largesse of the moment and require interpretation of how such protections might be translated to

⁵ New and Emerging Technologies 911 Improvement Act of 2008, *110 P.L. 283; 122 Stat. 2620* (2008), codified at 47 U.S.C. §§ 615a *et seq.*

⁶ 47 U.S.C. § 615a(a).

providers of 9-1-1 access in the IP-enabled world. A simpler and more straightforward means of extending limitation-of-liability protection is called for.

Limitation-of-liability protection for all persons and entities in the provisioning chain for access to 9-1-1 emergency services, regardless of technology, should be a national concern and should be articulated at the national level. That protection should be clear and unambiguous, comprehensive, standardized, nationwide, and applicable to all equally—regardless of technology involved. Congress’s previous attempt to address this issue has fallen short because, while well intended, it has caused confusion and doubt by tying that protection to a myriad of sources—statutes, judicial decisions, tariffs, *etc.*—some of which are obscure or present interpretation issues or are insufficient. The creation of a modern NG911 system impacts interstate commerce—network providers, software developers, equipment manufacturers, and associated vendors—and Congress needs to recognize its obligation to make limitation-of-liability protection for these entities a *national* concern. Settling this issue will go a long way in freeing the market to create the NG911 equipment and services needed to bring the provisioning of emergency services into the 21st Century and in answering the Commission’s call “to achieve a comprehensive vision for enhancing the safety and security of the American people” by “allow[ing] first responders anywhere in the nation to send and receive critical voice, video, and data to save lives, reduce injuries and prevent acts of crime and terror.”⁷

B. The Commission Should Advise Congress to Assist States or Regions of States to Reorganize Their Emergency Service Organizations to be More Efficient and Cost Effective and to Allow Them to Meet the Challenges of NG911 Services.

The present legal structure for and configuration of 9-1-1 emergency services in the United States, which includes over 6,800 PSAPs, was created for and during the era of monopoly, TDM-based, local telephone service. Today, all of that has changed and is changing still. In 1996, Congress enacted laws that abolished monopolies in the provisioning of local

⁷ CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, Chp. 16: Public Safety, p. 313.

telephone exchange and exchange access service.⁸ Since then, the tide of technological change has both eroded the dominance of TDM-based networks and, in the minds of consumers, blurred the lines between “local” and “long distance” services. In light of these legal and technological changes, the advent of NG911 service should be the opportunity to rethink the basic structure of providing emergency services.

In addition to the changes described briefly above, NG911 will require the acquisition of new equipment, the reconfiguration of 9-1-1 traffic, and the re-education of both emergency responders and the general public. This change will involve significant expense and may engender some level of public confusion or uncertainty. AT&T believes that the quickest and the most cost-effective and efficient method of getting to the future of 9-1-1 services is to re-imagine the present organization of provisioning emergency services.⁹

In prior comments, AT&T noted that the rational deployment of NG911 may require a shift away from the “legacy model of Balkanized PSAP operations to a next generation regional or state-wide or even multi-state system.”¹⁰ AT&T envisioned that the Commission could *encourage* the development of such systems, including Advanced 911 Centers, “which would help to expedite deployment by making it easier on and less expensive for providers to quickly and logically provision and ultimately route next generation text and multimedia emergency communications in a manner required by local authorities and make sure that consumers aren’t put in peril and left wondering whether their communications made it to the correct emergency service provider.”¹¹ In addition to encouraging state and local authorities, the Commission should recommend that Congress hold hearings on re-imagining the organization of emergency service providers. There are good reasons for it to do so.

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*

⁹ As AT&T has previously been quick to note, it is not arguing for the elimination of the 6,800 or more PSAPs. Without pre-judging the issue, AT&T at least initially envisioned a structure that would build on the present system. Nevertheless, in order to truly re-imagine the emergency-system organization for NG911 services, all parties should be open to discussing all its aspects and possibilities.

¹⁰ Dec. 12, 2011 Comments of AT&T Inc., PS Dockets Nos. 11-153, 10-255, p. 17.

¹¹ *Id.* pp. 17-18.

First, while most emergency communications involve purely local matters, some will also involve wider areas—*e.g.*, natural disasters, like hurricanes and earthquakes; and man-made events, like terrorism—and consequently involve an interstate and, maybe, a national response. A reorganization of emergency service providers would facilitate federal and multi-state responses and coordination after any such event. The provisioning of emergency response services, while largely local on a day-to-day basis, has from time-to-time interstate and national implications.

Second, states and localities will in all likelihood require federal assistance to fund NG911 services. It will be in the interests of all concerned that these funds are spent wisely with an eye on getting the best return on investment. Holding Congressional hearings on this topic may be the best way to agree on an efficient and cost-effective way to implement NG911 services. The idea is not to institute a wholesale federal takeover of emergency service operations, but rather to work cooperatively with the states and local authorities to ensure that they aren't trapped in legacy structures, including funding mechanisms, that will have the unwanted effect of delaying implementation of NG911 services and imposing unnecessary costs on the public. The time for any re-examination of these structures is *before* NG911 reaches mission-critical status.

In its report to Congress, the Commission should recommend that Congress undertake a study of the existing structure of emergency service in America for the purpose of recommending and encouraging a re-imagined 9-1-1 organization that will facilitate deployment of NG911 services in an efficient and cost-effective manner.

C. The Commission Should Encourage Congress to Analyze Funding for 9-1-1 Service and Discontinue the Present Funding Mechanism that Relies on Fees and Surcharges on Communications Network Providers' Customers.

Wide-spread deployment of NG911 service will require acquisition of new equipment and reconfiguration of networks and terminating facilities. This will require money. To encourage prompt and wide-spread deployment of NG911, Congress passed the Enhance 911

Act of 2004 to, among other things, fund acquisition of hardware, software, training, and consulting services through the distribution of federal grants with the aim of upgrading PSAP operations for NG911 technologies.¹² Presumably Congress is providing oversight of this federal grant program and can conduct further hearings on its efficacy and on whether expansion or other improvements are warranted. As part of Congress's continuing oversight responsibilities, as well as in support of possible enhancements to the existing grant program, Congress should explore the mechanism by which states and local authorities presently fund their emergency communications systems.

Today, 9-1-1 service is generally funded by assessing a line item fee or surcharge on the network carrier's customer's bill. This legacy POTS model worked well in the early days of 9-1-1 service. Now, however, emergency communications services involve multiple service providers and are no longer limited to simple legacy common carrier telecommunications service providers. As Congress's and the Commission's work on NG911 unfolds, we expect non-network provider entities to be included in this mix of service providers whose services are part of the emergency communications options available to end users and PSAPs. For example, as part of the discussion surrounding the development of a reliable, mission-critical Text-to-911 solution, we expect the Commission to address the role of third-party texting services provided by so-called "over-the-top" applications (*e.g.*, TextNow + Voice, textPlus Free Text + Calls) and texting services offered by device manufacturers (*e.g.*, Apple's iMessage). But inclusion of non-network provided communications services may very well include other entities whose offerings are web-based. In short, in the monopoly, TDM-based telecommunications world of the 20th Century, the line item fee model for funding was adequate but that model is not appropriate for the IP-enabled NG911 services of the 21st Century. Network providers and their customers should not bear the sole burden for funding this expanding and evolving 9-1-1 universe.

¹² 47 U.S.C. § 942.

To remedy this funding imbalance, the Commission should encourage Congress to use its NG911 grant program and federal funding efforts to nudge states to adopt alternative funding mechanisms. Ideally, funding for NG911 would be derived from general revenues. But regardless, time is well past for discarding the legacy POTS model of funding and eliminating the line item fee assessed on network provider bills and for recognizing that access to emergency services, however achieved, benefits the community at large and not simply those who buy network provider services.

II. CONCLUSION

For its report to Congress, AT&T recommends these comments, and previously filed comments, for the Commission's consideration. As we move away from the legacy TDM-based network and its legacy services to a richer and more dynamic IP-enabled world, now is the time to re-envision the way in which the nation as a whole provides emergency services in the 21st Century.

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