

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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
)	
Legal Framework for Next Generation 911)	PS Docket No. 12-333

**INITIAL COMMENTS OF THE TEXAS 9-1-1 ENTITIES
TO THE PUBLIC NOTICE**

December 13, 2012

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**COMMENTS OF THE TEXAS 9-1-1 ALLIANCE, THE TEXAS COMMISSION
ON STATE EMERGENCY COMMUNICATIONS, AND THE MUNICIPAL
EMERGENCY COMMUNICATION DISTRICTS ASSOCIATION
TO THE PUBLIC NOTICE**

The Texas 9-1-1 Alliance,¹ the Texas Commission on State Emergency Communications,² and the Municipal Emergency Communication Districts Association³ (collectively, “the Texas 9-1-1 Entities”) respectfully submit the following initial comments to the Federal Communications Commission (the “Commission”) Public Notice seeking comments

¹ The Texas 9-1-1 Alliance is an interlocal cooperation entity composed of 24 Texas Emergency Communication Districts with E9-1-1 service and public safety responsibility for approximately 53% of the population of Texas. These emergency communication districts were created pursuant to Texas Health and Safety Code Chapter 772 and are defined under Texas Health and Safety Code § 771.001(3)(B).

² The Texas Commission on State Emergency Communications (“CSEC”) is a state agency created pursuant to Texas Health and Safety Code Chapter 771, and is the State of Texas’ authority on emergency communications. CSEC administers the Texas state 9-1-1 program under which 9-1-1 service is provided through the state’s 24 regional planning commissions to approximately two-thirds of the geography and one-third of the population of Texas.

³ The Municipal Emergency Communication Districts Association is an association of 26 municipal emergency communication districts, as defined under Texas Health and Safety Code § 771.001(3)(A), that are located primarily in the Dallas-Fort Worth area.

for the coordinated report to Congress on the legal and statutory framework for Next Generation (“NG9-1-1”).⁴

I. Executive Summary

The overarching and threshold issue for both Congress and the Commission is the establishment of a clear jurisdictional and regulatory authority policy over IP 9-1-1 and NG9-1-1. Absent the establishment of a clear policy regarding IP 9-1-1 and NG9-1-1, it is virtually impossible to determine whether actions by state and local 9-1-1 governmental authorities are aiding or hindering the deployment of NG9-1-1 now or in the future.

The need for more clearly defined roles regarding the states’ ability to implement and administer NG9-1-1 service is even greater now that a growing number of states have promulgated statutes limiting some aspects of their authority over IP. 9-1-1 authorities need a clear workable jurisdictional and regulatory framework to address IP 9-1-1 and NG9-1-1 in order to meet the public’s ever-increasing expectation of obtaining emergency assistance via all types of communications services. The issues to address include, but are not limited to, clearly defining the instances in which voice, text, and other communications services must afford the user the ability to contact emergency services via 9-1-1, interconnection to NG9-1-1 via IP, state PUC certification in the context of NG9-1-1 via IP, and arbitration dispute resolution for NG9-1-1 via IP.

Many states, including Texas, are making reasonable progress on addressing NG9-1-1 coordination issues on a statewide and/or regional basis within the bounds of current funding and technology and existing regulatory environment uncertainties. Notwithstanding the ability of the

⁴ *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 911 Advancement Act of 2012* (“Public Notice”), DA 12-1831, PS Docket No. 10-255; PS Docket No. 11-153; PS Docket Nos. 10-255 (rel. Nov. 13, 2012).

federal government to assist in addressing new issues or special problem areas, there is no reason to assume that state and local 9-1-1 authorities cannot address these issues appropriately and cooperatively given the individual specifics of an integrated NG9-1-1 and emergency response system. The Commission should take the positive step to empower 9-1-1 authorities in this effort.

There are additional non-regulatory national issues that Congress, the Commission, and other federal agencies need to address regarding nationwide NG9-1-1 service and related interoperability. These include, but are not limited to, the development of national standards, best practices, and operational policies. Only through coordinated national standards will we be able to meet the public's growing expectations regarding 9-1-1; expectations that in many instances currently exceed 9-1-1's ability to meet. These types of issues should be supported via federal grants and incentives, and other national level efforts. Additionally, while ubiquitous national level functional and operational initiatives are not absolutely required to implement nationwide NG9-1-1, such efforts could significantly reduce the complexity of NG9-1-1, and on some of these issues, there may be material efforts underway by other federal or national initiatives that may facilitate NG9-1-1, interoperability, and security issues.⁵

Finally, concerns associated with ensuring the ongoing broad application of long-standing liability protection principles to IP 9-1-1 and NG9-1-1-related activities in the context of 9-1-1 statutes continue to be expressed. These concerns may stem from what is occurring in non-9-1-1 contexts and arguments over the inclusion of IP within the term "telecommunications" in 9-1-1-related state statutes and definitions. As such, it is important to confirm that IP

⁵ See, "Technical Considerations for Next-Generation 911," Comments in the matter of Framework for Next Generation 911 Deployment, PS Docket, No. 10-255, Richard Barnes, Alissa Cooper, Hannes Tschofenig.

technologies are covered by these state 9-1-1 liability protection statutes by the Commission, Congress, and/or state legislatures. Therefore, it is reasonable and appropriate for the Commission to point out in the report that Congress and state legislatures should do whatever may be needed at the federal and state-levels via legislation to ensure that liability-related matters are resolved with a high degree of certainty and technological parity.

II. Legal and Regulatory Framework for the Development of NG9-1-1 Services and Transition from Legacy 9-1-1 Networks to NG9-1-1

A. State and regional governments can effectively coordinate the transition to NG9-1-1.

Regarding Public Notice questions related to facilitating coordination of, and working together on, the transition to NG9-1-1, coordination may be needed among the different levels of federal, state, regional, and local governmental entities, primarily in those areas where material progress towards NG9-1-1 has not occurred. However, within the bounds of current funding and technology and regulatory environment uncertainties, many states and regions,⁶ including Texas, are making reasonable progress on addressing such coordination issues.⁷

⁶ For purposes of these comments, the term “region” is intended to include local 9-1-1 authorities.

⁷ For example, on coordination, the Texas Legislature enacted the following in 2011:
Sec. 771.0511. EMERGENCY SERVICES INTERNET PROTOCOL NETWORK; EMERGENCY COMMUNICATIONS ADVISORY COMMITTEE.

(a) In this section:

(1) "Advisory committee" means the Emergency Communications Advisory Committee.

(2) "State-level emergency services Internet Protocol network" means a private Internet Protocol network or Virtual Private Network that:

(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and

(B) will be a part of the Texas Next Generation Emergency Communications System.

(b) The commission, with the assistance of an advisory committee, may coordinate the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network.

(c) If the commission acts under Subsection (b), the commission shall establish policy and oversee agency involvement in the development and implementation of the interconnected, state-level emergency services Internet Protocol network.

For example, in the central Texas region, including the cities of Austin and San Antonio, an ESInet will be deployed covering the 9-1-1 regions of the Capital Area Council of Governments (“CAPCOG”) and the Bexar Metro 9-1-1 Network District.⁸ The ESInet will interface with two different legacy Automatic Location Information (“ALI”) systems, include four points of Legacy Network Gateway (“LNG”) interconnection with the option to use any two points for redundancy, and provide for direct-IP interconnection to the ESInet. Regional and statewide options for Location Validation Function (“LVF”) information are also being considered – along with ongoing efforts on NG9-1-1 transition for Graphic Information Systems (“GIS”).⁹

While there is always room for federal incentives and coordination to help address new issues or special problem areas, there is no reason to assume that state and regional 9-1-1 authorities cannot address these issues appropriately and cooperatively given the individual

⁸ See, AT&T Network Disclosure Number ATT20120820L.1 (available at <https://ebiznet.att.com/networkreg/>) (“AT&T announces direct interconnection with the deployment of Next Generation 9-1-1 (NG9-1-1) service for Bexar Metro 9-1-1 and CAPCOG, in Texas. This new NG9-1-1 service and associated network elements provide NENA i3 based Internet Protocol connectivity to all of the Public Safety Answering Points (PSAPs) in these areas of Texas (see PSAP & Rate Center list below). ... Carriers should provision new SS7/ISUP signaling controlled facilities to a minimum of two of the four AT&T ESInet ingress points for the aforementioned areas as indicated in the LNG list below. Trunks installed for this purpose should be diversified between the chosen facilities. ... All originating wireless service providers (and VoIP i2 type solutions⁸) will be required to route all of their 9-1-1 emergency calls FOR Bexar Metro 9-1-1 & CAPCOG PSAPs to a new network element called a Legacy Network Gateway (LNG)⁸, per the LNG list below. The LNG is the Point Of Interface to the AT&T ESInet. ... **The window for this transition will begin 2Q2013, and ALL service providers need to complete their transition by December 1, 2013.**”) (emphasis added).

⁹ Cf., http://www.h-gac.com/rds/GIS_Data/starmap/Status-Report.aspx (“The latest version of STAR*Map contains ESRI Shapefile of Road (Street Centerlines) and ESRI Shapefile of Address Points. Address points provides a detailed and accurate addresses for STARMap. There are 2 million address point records. HGAC zipcode data is included in this STARMap release. ... Updates were received from CenterPoint Energy, Fort Bend Engineers Office, GHC 911, City of Houston, Colorado County 911, Matagorda County 911, Walker County 911, Alterra Technology, Waller County 911, Montgomery County 911, Wharton County 911, Galveston CAD, Liberty County 911, Austin County 911 and Chambers County 911.”).

specifics of an integrated NG9-1-1 and emergency response system. Similarly, while 9-1-1 authorities may not be able to compel federal military facilities to participate in the state or regional efforts being undertaken, these types of issues in the context of 9-1-1 emergency governmental service are not new, and the various 9-1-1 authorities should be able to address them via intergovernmental, inter-local or mutual aid agreements or arrangements as may be reasonable and appropriate given the strong cooperative background inherent in 9-1-1 and emergency communications.¹⁰

On issues such as joint and cooperative purchasing, many states (including Texas) have statutory authority to undertake such activities, whether on a statewide, regional or local basis.¹¹ Sometimes it may be beneficial to do cooperative and joint purchasing, while other times it may not be beneficial. In addition, in many cases some governments routinely use “most favored nations” clauses that may help separate purchases and deployments achieve some of the benefits of cooperative and joint purchasing efforts.¹² Accordingly, absent compelling demonstrated evidence that these 9-1-1 authorities cannot cooperate on IP 9-1-1 and NG9-1-1 deployment

¹⁰ For example, since the late 1980s, such cooperation has been provided for in Texas: Sec. 771.052. AGENCY COOPERATION. Each public agency and regional planning commission shall cooperate with the commission to the fullest extent possible.

¹¹ Sec. 771.051. POWERS AND DUTIES OF COMMISSION. (a) The commission is the state's authority on emergency communications. The commission shall:...(9) coordinate emergency communications services and providers; (10) make reasonable efforts to gain voluntary cooperation in the commission's activities of emergency communications authorities and providers outside the commission's jurisdiction, including: (A) making joint communications to state and federal regulators; and (B) arranging cooperative purchases of equipment or services....

¹² See, e.g., 1 TEX. ADMIN. CODE 251.2, Guidelines for Changing or Extending 9-1-1 Service Arrangements (“(d) Vendor requirements. (1) Changes or extensions of 9-1-1 service arrangements must include the following: (A) The service provider making the proposal to the RPC verifies in writing, as part of the proposed agreement, that: ... (xiv) A most favored nation provision (i.e., a provision that requires the best price provided to any other similarly situated entity in Texas for comparable service) is included in the agreement and the service provider will automatically reduce the rates and charges in the agreement if comparable service is offered in Texas at a lower rate or charge by that service provider to any similarly situated other PSAP or 9-1-1 entity”).

issues, the Commission should determine that principles of intergovernmental comity and sovereignty strongly caution against any federal action by Congress that could be counterproductive to the efforts that are taking place.

B. The Commission must have clear authority to address IP 9-1-1 and NG9-1-1 regulatory issues.

All providers of communications services, both public and private, have to address the issue of emergency communications in some manner. For traditional communications services such as local exchange service and cellular, service providers are subject to existing 9-1-1 service obligation requirements in federal and/or state laws and regulations related to caller number and location information.¹³ Even in the case of interconnected Voice over Internet Protocol ("VoIP"), 9-1-1 service obligations exist¹⁴ albeit to a different degree of accuracy levels and with *de facto* exclusions from the obligations or exemptions from 9-1-1 service fees (*e.g.*, Skype (In/Out) or MagicJack, respectively).

In contrast, other newer communications services and service providers may not fit perfectly into such traditional categories, may be voluntary on a case-by-case basis, or may yet to be established and/or subject to differing views, opinions, and interpretations.¹⁵ And where such communications services do not purport to provide access to emergency services, or do not

¹³ *Cf.*, P.U.C. SUBST. R. 26.433, Roles and Responsibilities of 9-1-1 Service Providers. (a) Purpose. The provisions of this section are intended to assure the integrity of the state's emergency 9-1-1 system in the context of a competitive and technologically evolving telecommunications market. In particular this section establishes specific reporting and notification requirements and mandates certain minimum network interoperability, service quality standards, and database integrity standards. The requirements in this section are in addition to the applicable interconnection requirements required by §26.272 of this title (relating to Interconnection). *See*, also 47 C.F.R. 20.18 for wireless E9-1-1.

¹⁴ 47 C.F.R. § 9.5.

¹⁵ Examples of these situations may include MagicJack, hosted or non-hosted VoIP Multi-Line Telephone Systems ("MLTS"), Skype, cellular at home services that use either the cellular or broadband network, third-party services such as Telematics, Video and IP Relay, and SMS and other texting services.

provide 9-1-1 service at a level commensurate with traditional or cellular 9-1-1, there are likely to be contractual disclaimers of liability and a recommendation to the end user to retain access to traditional communications services, notwithstanding the user's reasonable expectations to the contrary. Therefore, requests for emergency assistance are a relevant issue for consideration for any communications service – whether traditional, not yet traditional, or emerging IP communications services.

Given that all communications providers at some point may be required or voluntarily seek to interface with 9-1-1 systems, issues similar to those that have occurred in the context of local exchange competitors connecting to 9-1-1 systems under the Federal Telecommunications Act of 1996 (“FTA96”) or for Interconnected VoIP providers under the NET 9-1-1 Act will likely arise in the context of current and future IP communications services.¹⁶ In addition, the Commission will likely be called upon to address costing and demarcation issues in the context of IP 9-1-1 and NG9-1-1, much as it did in the context of the wireline E9-1-1 network and wireless E9-1-1 in the King County Letter and the King County Reconsideration Order.¹⁷ There is no reasonable or sound basis to assume that in a world where IP exists alongside or replaces the Public Switch Telephone Network (“PSTN”) that there will never be any of these types of

¹⁶ Examples of such issues, include, but are not limited to, reasonable and non-discriminatory access to the authoritative governmental address sources; reasonable and non-discriminatory points and terms of connection; reasonable and non-discriminatory technological compatibility and interoperability; and mediation, arbitration, and dispute resolution of these types of issues.

¹⁷ *See, e.g.*, Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington, CC Docket No. 94-102 at 3 (May 7, 2001) (“King County Letter”), *pet. recon. denied*, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request of King County, Washington, CC Docket No. 94-102, Order on Reconsideration, 17 FCC Rcd 14789, 14790, para. 3 (2002) (“King County Reconsideration Order”).

regulatory costing and demarcation issues in the context of IP 9-1-1 and NG9-1-1 in the future.¹⁸ Furthermore, as has occurred with cellular and VoIP, when the public's use and expectations associated with a communications service change over time, the issue of when 9-1-1 service must become a requirement or when warning disclaimers or bounce back messages are required will become issues for the protection of the public.

In the context of IP 9-1-1 and NG9-1-1, the Commission and 9-1-1 authorities must in some manner have the necessary and workable authority to address any and all of these possible IP 9-1-1 and NG9-1-1 issues currently and in the future. If the Commission determines that it lacks the needed federal regulatory authority in such potential areas, the report to Congress should include a request to clarify any uncertainties related to the Commission's authority to protect the public.¹⁹

C. The Commission and other federal agencies should address non-regulatory 9-1-1 and other national issues related to nationwide NG9-1-1 and interoperability.

There are also non-regulatory issues that require the attention of the Commission and other federal agencies in order to address nationwide NG9-1-1 and related interoperability. These include, but are not limited to, the development of national standards, best practices, and

¹⁸ Moreover, the need for mediation, arbitration, and dispute resolution of these types of IP 9-1-1 and NG9-1-1 regulatory costing or demarcation issues have been expressly pointed by NHTSA:

Depending on existing State structures, legal authorities, and contracts, the State 9-1-1 office may have a role in vendor contract mediation or arbitration proceedings, and/or may initiate actions on contested matters before applicable Federal and/or State regulatory authorities and courts. In other cases, existing State agencies may have the authority to mediate, arbitrate, and settle State 9-1-1 office disputed actions.

"Guidelines for State NG911 Legislation" at p. 31 (available at www.911.gov).

¹⁹ However, as discussed in more detail herein, until the Commission makes clear the extent of its current regulatory authority and jurisdiction in the context of IP 9-1-1 issues (separate and apart from how any non-9-1-1 IP issues may be resolved down the road), there are considerable uncertainties, risks, and impediments on all sides. From a practical standpoint there is virtually no way for any state regulatory agency to know with any degree of confidence or certainty whether they, the Commission, the courts, or somewhere else is the appropriate venue for the types of regulatory IP 9-1-1 jurisdictional issues that currently or may exist in the future.

operational policies. These types of nationwide issues should be supported via federal grants and incentives, and other national level efforts. While national efforts on issues such as LST, PKI, and forest guides may not be absolutely required, such national efforts could significantly reduce complexity of NG9-1-1 transitions:

4.7 PSAP Functions in an NG911 Environment (Section IV.B.4)

Technologies for distributed PSAPs are already in place, and are in full production use in several emergency calling deployments in Europe. For example, in 2004, the Niederosterreich province of Austria united 84 previously disconnected areas into a single virtual PSAP. In this implementation and others like it, the virtual PSAP receives calls from the PSTN, translates them to SIP, and distributes them to a human call taker station over IP. In an NG911 context, the only major change to this emergency services network would be to remove the translation step and allow calls to arrive directly over SIP. (Of course, on the caller-facing side, there is still a need to provide geolocation and call-routing information to calling applications.)

While none of the three infrastructure components proposed in Paragraph 57 (a LoST “forest guide”, public-key cryptography certificates, and a national emergency network) are technically necessary, they could significantly reduce the complexity of implementation and transition of NG911. Without a national forest guide (1), there would be a need for state or regional forest guides and for these entities to share information with each other in order to facilitate national roaming. Without a national certification authority (2), there would be a need for PSAPs and holders of sensitive information to negotiate trust relationships more locally, adding complexity and increasing the risk of unintended authentication failures. A national emergency network (3) would be of the least technical utility, since all IP networks will carry call-related traffic in more or less the same way. A dedicated network, though, could help reduce latency between PSAPs. If connectivity to this network were properly controlled, it could act as a secure enclave for emergency-related services, allowing easier data sharing among emergency response entities.²⁰

National NG9-1-1 Security Infrastructure Needed
Ahead of Widespread NG9-1-1 Deployment ...
– NENA i3 Requires Authorized PCA (PSAP Credentialing Agency)

²⁰ Technical Considerations for Next-Generation 911 Comments in the matter of Framework for Next Generation 911 Deployment, PS Docket No. 10-255 (by Richard Barnes, Alissa Cooper, Hannes Tschofenig), at pp. 17-18.

- Comprises Root Certificate Authority (CA) at a national level to issue and revoke security credentials (in the form of an X.509 PKI Certificate) for authorized systems services and 9-1-1 agencies
- Allows multi-tier PCA/CA Infrastructure for State, Country, and Jurisdiction level
- Establishes and Follows Policy & Practice Statements CP/CPS for Certificate Allocation and individual PSAP vetting
- Creates, Signs, and Distributes X.509 Digital Certificates to 9-1-1 Authorities and i3 ESInet system service provider entities

NG9-1-1 Security – Justification and Related Risks

- NENA i3 08-003 Specification Requires Security
- NG9-1-1 Deployments will be slowed without National CA Infrastructure
- Interoperability between NG9-1-1 PSAPs across jurisdictions is limited without use of mutual certificate based trust mechanisms
- External & Internal Threats: NENA i3 security requirements establish a basic security framework to protect NG9-1-1 systems and networks, data and processes from external and internal attacks, threats, and failures²¹

Regarding some of the foregoing issues, there appear to be material efforts underway by other federal or national initiatives that may be able to assist or facilitate these issues in the context of IP 9-1-1 and NG9-1-1.²² In fact, in the minimum technical requirements that the Commission approved in their entirety and without revision for transmittal to FirstNet (which went to the National Telecommunications and Information Administration [“NTIA”] because FirstNet had

²¹ Presentation attached to November 7, 2012, Ex Parte filing by TeleCommuntions Systems, Inc. in PS Dockets Nos. 11-153 and 10-255 at pp. 11-12.

²² Cf., *The State Identity Credential and Access Management Guidance and Roadmap (SICAM)*, September 2012 (“The State Identity and Credential Access Management (SICAM) Guidance and Roadmap outline a strategic vision for state-based identity, credential, and access management efforts, and emphasizes the importance of implementing the SICAM architecture and services in support of the challenges associated with trust, interoperability, security, and process improvement. States can, and should, provide a secure, auditable environment for the processing and exchange of information across the entire spectrum of state business. This guidance promotes an enterprise approach and it is essential that state governments take the initiative to ensure the integrity of the data entrusted to them and provide a high level of security and privacy to citizens, customers, and partners.”) (available at <http://www.nascio.org/publications/documents/SICAM.pdf>); *The Identity Ecosystem Steering Group* (“The Mission of the Steering Group shall be to govern and administer the Identity Ecosystem Framework in a manner that stimulates the development and sustainability of the Identity Ecosystem.”) (available at <http://www.idecosystem.org/page/mission-and-objectives>).

not yet been formed),²³ at least one of these issues may closely overlap needs for nationwide

NG9-1-1:

(52) FirstNet SHOULD consider supporting implementation of a national framework for user identity management.

(53) FirstNet SHOULD consider supporting implementation of a national framework for user identity federation to enable user interoperability across administrative domains within the NPSBN, where authorized.

(54) Implementation of the national framework for user identity management and federation SHOULD include a set of guidelines and rules for applications to participate in the national identity management framework.

(55) The agency, organization or entity that utilizes the NPSBN Identity Management framework SHOULD be responsible for enforcing authorization constraints on access to information as per their own security policy.²⁴

Moreover, as pointed out by Intrado, Inc., in its comments to NTIA's recent Notice of Inquiry, interoperability with NG9-1-1 is an issue for consideration in addition to any similar security needs:

Intrado supports the architectural concepts proposed by the First Responder Network Authority (FirstNet) for the Nationwide Interoperable Public Safety Broadband Network (NPSBN) and a National Applications Store (NAS)—and is committed to the success of both. Intrado's comments are intended to provide information about and suggested focus on the existence of NG9-1-1 products and solutions in the 9-1-1 ecosystem and the need for interoperability of those products and services with the NPSBN. Interoperability will require consideration of PSAPs and the NG9-1-1 products and services they employ in all phases and aspects of development of the network and associated applications. In addition, Intrado urges FirstNet to foster an open and multi-vendor network environment and to ensure that safe, trustworthy and cost-effective devices and applications are used on the NPSBN.²⁵

²³ See, FCC Approves for Transmittal the Recommended Minimum Technical Requirements submitted by the Technical Advisory Board for First Responder Interoperability, June 21, 2012 by Order (FCC-12-68) (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0621/DOC-314785A1.pdf).

²⁴ "Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network," Prepared by Technical Advisory Board for First Responder Interoperability, Final Report, May 22, 2012 (available at <http://www.fcc.gov/document/recommendations-interoperability-board>).

²⁵ Comments of Intrado, Inc., Development of the Nationwide Interoperable Public Safety Broadband Network, Docket No. 120928505-2505-01 at pp. 2-3 (Nov. 2, 2012) (available at http://www.ntia.doc.gov/files/ntia/intrado_response_to_ntia_noi_11-2-12.pdf).

To the extent that the Commission, other federal agencies, states, or regions need additional authority, assistance, or funding support to facilitate national NG9-1-1 issues and interoperability, the Commission should point out to Congress that it may not only be material and necessary for achieving NG9-1-1 but it may also be consistent with other important national initiatives.

D. Liability Protection

Some commenters to the Commission in the past have raised concerns about the need to ensure ongoing liability protection in the deployment of NG9-1-1 services. These concerns may stem from what is occurring in non-9-1-1 contexts and arguments over when IP is not “telecommunications” given that the term “telecommunications” is commonly used in state statutes to define “9-1-1 service.” At least one state, California, has removed whatever doubt reasonably existed on this issue by specifically amending their statute to have the following additional wording:

(2) “9-1-1 service” means a telecommunications service, *or other wireline or wireless service*, that provides to the user of the public telephone system the ability to reach a public safety agency by utilizing the digits 9-1-1 *or otherwise facilitates the provision of emergency services* pursuant to the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code). *“9-1-1 service” includes a 9-1-1 service that utilizes in whole or in part an Internet Protocol.* (Emphasis added)²⁶

While it is reasonable to assume that every IP call to a Public Safety Answering Point (“PSAP”) should be considered “telecommunications” for 9-1-1 liability purposes, in a non-9-1-1 context, differences between IP and telecommunications may impact interconnection

²⁶ AB-1074 Personal liability immunity: telecommunications service providers.(2011-2012) (available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1074).

issues or whether an issue falls under federal or state regulatory jurisdiction. As such, it may be reasonable to ask whether IP technologies may have been unintentionally carved out of these state 9-1-1 liability statutes by the Commission, Congress, and/or state legislatures. Similarly, the issue of confidentiality of 9-1-1 information may be impacted by the same arguments.

Therefore, to the extent necessary, these issues must be further addressed in federal statutes, and the Commission and Congress should seek to encourage state law changes if use of the term “telecommunications” fails to cover services or providers sending requests for assistance via IP 9-1-1 or NG9-1-1. Because tort law may arguably be a product of state laws, in addition to any federal law changes addressing 9-1-1 liability, it is also reasonable to address liability protection issues at the state law level as needed if there are uncertainties in the context of 9-1-1 emergency governmental services and IP technologies.

E. NG9-1-1 Funding

A great deal has been written about funding 9-1-1, and the funding challenges specifically associated with NG9-1-1. For example, the current Communications Security, Reliability and Interoperability Council (CSRIC) observed in its Work Group 4B report that

New methods for funding the next generation of 9-1-1 are necessary for our national communications systems to transition from legacy systems to a next generation network environment that is capable of handling today’s emergency calling needs and provides the kind of communications security Public Safety requires to ensure reliability and interoperability.²⁷

We support the recommendation contained in CSRIC’s Work Group 4B report that a Blue Ribbon Panel be convened as soon as possible to “address 9-1-1 funding issues and make

²⁷ CSRIC, Work Group 4B, “Transition to Next Generation 9-1-1,” March 2011, p. 42.

recommendations for funding construction and maintenance of NG9-1-1 systems,”²⁸ and note that the National 9-1-1 Office located in the USDOT is currently moving in that direction.

III. Legal Mechanisms for Transmission of Caller Information

In a mobile society, the promises of NG9-1-1 are predicated on timely and accurate information. The promises and benefits of NG9-1-1 necessitate a considerable degree of accuracy in caller information, and such information is not limited to call back number, validated address, or x/y coordinates. Many of today’s smart devices, and the underlying technology and services supporting such devices, can direct a user to the nearest vegan sushi restaurant with greater accuracy than if the caller were to seek emergency services via 9-1-1. Our 9-1-1 system should mirror these capabilities.

IV. Jurisdictional Barriers and Inconsistent Legacy Regulations

The overarching and threshold issue is for Congress and the Commission to establish a clear jurisdictional regulatory authority policy over IP 9-1-1 and NG9-1-1. This is especially needed as a growing number of states expressly limit their authority over IP. Absent being able to understand or determine the Commission’s existing regulatory scheme for IP 9-1-1 and NG9-1-1, from a practical standpoint it is virtually impossible to determine whether State regulatory action may have aided the deployment of NG9-1-1 or have acted as a roadblock to NG9-1-1 now or in the future, or whether such can be helpful or burdensome in any manner. In order for Congress to know what may need to be enacted in future federal legislation, it is a crucial prerequisite for the Commission to recognize that IP 9-1-1 and NG9-1-1 public safety and governmental police power matters must be completely distinguishable by absolute necessity and severable from any and all other IP jurisdictional regulation issues questions between the

²⁸ *Id.* at 44.

Commission and state PUCs, and that NG9-1-1 must have a coherent regulation framework, and it must have it now. This is especially the case if, as pointed out in a recent Ex Parte filing by the Voice on the Net Coalition (“VON”), more than half of state regulatory agencies may have had their regulatory authority over IP withdrawn or limited by state legislation and given the ongoing uncertainties associated with the issue in the context of IP 9-1-1 and NG9-1-1:

During the meeting, VON recommended that the FCC classify VoIP and other IP enabled services as interstate, information services. VON noted that 26 states now prohibit state regulation of VoIP or other IP-enabled services but that uncertainty remains in other states.²⁹

In Texas, the unbundling of legacy 9-1-1 tariffs has long ago been addressed via state PUC rulemaking.³⁰ But in states where such has not yet occurred, unbundling of state 9-1-1 tariffs may be a needed measure. In Texas, the state PUC long ago ruled that location and routing data must be provided to 9-1-1 governmental entities.³¹ But in states where that has not yet occurred, then addressing that issue may be a needed measure. Rather than Texas regulations or action on such issues be considered for preemption as inconsistent with the deployment of

²⁹ VON Ex Parte filing in CC Docket Nos. 96-45, 99-200, 01-92, WC Docket Nos. 04-36, 05-196, 05-337, 06-122, 10-90, 03-109, 07-135, PS Docket Nos. 07-114, and GN Docket No. 09-51 (Nov. 20, 2012) (available at <http://apps.fcc.gov/ecfs/document/view?id=7022061876>).

³⁰ P.U.C. SUBST. R. 26.433(h) (“Unbundling. A dominant CTU that is a 9-1-1 network services provider and a 9-1-1 database management services provider, if it has not already done so prior to the effective date of this section, must file within 90 days from the effective date of this section an alternative 9-1-1 tariff that provides 9-1-1 administrative entities the option to purchase any separately offered and priced 9-1-1 service.”) (available at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/telecom/26.433/26.433.pdf>).

³¹ PUC Docket No. 25717, *Petition of Southwestern Bell Telephone Company for Rulemaking Regarding Release of Subscriber List Information to 9-1-1 Administrative Entities*, Ordering Paragraph (“The Commission DENIES the petition for rulemaking and finds that P.U.C. Subst. R. 26.272 authorizes CTUs, including any CTU designated to maintain the 9-1-1 database to release SLI [Subscriber Line Information] customer information to the requesting 9-1-1 entity in order to ensure accurate and complete database information for the provision of emergency services.”) (available at http://interchange.puc.texas.gov/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=25717&TXT_ITEM_NO=12).

NG9-1-1, the Commission should recognize that this prior PUC action on unbundling 9-1-1 tariffs and access to routing and location database management information furthers the deployment of NG9-1-1 to the extent that such may also be applicable to IP 9-1-1 and NG9-1-1 services.

In Texas, the state PUC process for certification is not burdensome for 9-1-1 network and database management service providers, and is typically completed administratively in less than 60 days.³² Regarding certification and 9-1-1 Database Management Services and 9-1-1 Selective Routing and NG9-1-1 migration issues, P.U.C. SUBST. R. 26.433(c) & (i) provide, in relevant parts:

(c) 9-1-1 service provider certification requirements.

(1) Only a CTU may be a 9-1-1 database management services provider.

(2) Only a CTU may be a 9-1-1 network services provider.

(3) Unless acting as a 9-1-1 database management services provider or 9-1-1 network services provider, PSAPs and 9-1-1 administrative entities do not require certification by the commission.

...

(i) Migration of 9-1-1 Service. Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to impair a 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems and/or NG9-1-1 systems, or to require the removal of unnecessary direct 9-1-1 dedicated trunks, circuits, databases, or functions.

(1) For purposes of this subsection, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation

³² By law, the Texas PUC has 60 days to approve or deny a completed application from the day it is filed. Currently, the Texas PUC has authorized an administrative law judge to grant routine applications administratively. This administrative approval process allows the Policy Development Division to grant approvals on a reduced time line of about 45 to 50 days. There are no fees for filing COA or SPCOA applications or amendments to COA or SPCOA certifications at the PUC. See, Frequently Asked Questions Concerning CLEC Applications (available at <http://www.puc.texas.gov/industry/communications/forms/clec/clecfaq.pdf>).

from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(2) Paragraph (1) of this subsection is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Paragraph (1) of this subsection is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.³³

Whether and how current state PUC certification requirements for IP and NG9-1-1 network and database management service providers may apply in the context of NG9-1-1 ESInet functional network components and new data and location components are questions that may be ripe for inquiry and resolution if such services are available or offered by entities without a state certification. It may be reasonable for one to assume that since parties are hotly debating whether IP providers, such as Vonage, should be able to access telephone numbers without a state PUC certification,³⁴ there should be no question whatsoever that state PUC certification is a requirement for IP 9-1-1 and NG9-1-1 services associated with network and database management related to the most critical national telephone number – the 9-1-1 emergency number or its Session Initiation Protocol (“SIP”) invite equivalent. On the other hand, as pointed out by VON, it may be equally reasonable for one to assume that because of IP, the answer to this question is the threshold step for the Commission to address in its report to Congress.

³³ P.U.C. SUBST. R. 26.433(c) & (i) (available at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/telecom/26.433/26.433.pdf>).

³⁴ *In the Matter of Numbering Resource Optimization, Vonage Holding Corp. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200.

In the past when the Commission addressed local interconnection and numbering issues and the regulatory jurisdictional demarcation between it and state PUCs, there was a coherent and understandable regulatory framework established in a *Local Competition Order*.³⁵ This enabled the Commission and the states to each to do their needed parts and support their functional responsibilities. The same type of coherent and understandable regulatory framework is necessary for NG9-1-1 emergency communications. That NG9-1-1 will also be faced with these types of regulatory issues on technical interconnection matters was pointed out again in a recent report, which provides, in relevant part:

The Interconnection Network shown in the above figure needs to provide the following functions:

...

- Determine appropriate demarcation points within interconnected networks

...

Wireless operators must address a number of issues relating to the Interconnection Network:

- Who owns, operates, and maintains the network elements of the Interconnection Network?

...

- What changes are required in wireless service provider networks to connect with the Interconnection Network? (Emphasis added)³⁶

The NG9-1-1 regulatory framework must not be undermined by the type of underlying technology or its classification as arguably IP for other non-9-1-1 purposes.

³⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (Local Competition Order), aff'd in part and vacated in part sub nom.; *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (CompTel), aff'd in part and vacated in part sub nom.; *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (Iowa Utils. Bd.), aff'd in part and rev'd in part sub nom., *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

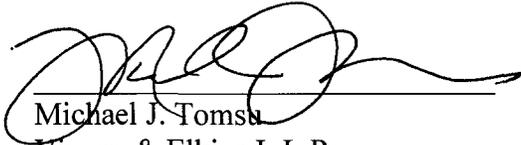
³⁶ 4G Americas Technical Report, Analysis of Transitioning to NG9-1-1 from a Wireless Service Provider Perspective (Dec. 2012) (available at http://www.4gamericas.org/documents/4G%20Americas%20Technical%20Report_Transitioning%20to%20NG911_December%202012.pdf).

The Commission and state and local 9-1-1 authorities must in some manner have the necessary and workable regulatory framework to address IP 9-1-1 and NG9-1-1 issues currently and in the future to protect the public's expectations for requests for emergency assistance via all types of communications. In the report to Congress, the threshold crucial step is for the Commission to set forth its view of the current regulatory authority over IP 9-1-1 and NG9-1-1 and how such may impact states where such authority may have been withdrawn or limited via state legislation. The Commission is respectfully requested to address this threshold crucial step in the report to Congress, and to additionally take such further Commission action in the pending Commission rulemaking as may be needed on regulatory IP 9-1-1 and NG9-1-1 issues.

V. Conclusion

The Texas 9-1-1 Entities appreciate the opportunity to provide these initial comments and respectfully request that the Commission take action consistent with these initial comments.

Respectfully submitted,



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