

**§Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Legal and Statutory Framework for Next Generation 9-1-1 Services	)	PS Docket No. 12-333
	)	
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
	)	

To: The Commission

**COMMENTS OF THE  
BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY**

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## Summary

The strongest argument against federal preemption, or extensive federal regulation, of 9-1-1 is the fact that the Commission continues to promote Next Generation 9-1-1 (“NG9-1-1”) “solutions” that will reduce the effectiveness of 9-1-1 Service and Emergency Response *and cost lives*.

The purpose of 9-1-1 Service and PSAP operations is for members of the public to communicate to the PSAP as quickly as possible the location and nature of an emergency, so that the PSAP can dispatch First Responders to the scene to render aid. Text messaging, video messaging, transmission of photographs and other data to the PSAP will in most cases delay the PSAP’s determination of the location and nature of the emergency so that First Responder can be dispatched, and delay the arrival of First Responders on the scene.

Text messaging to 9-1-1 will be a vital service for a very limited portion of the population: the speech and hearing impaired, people who will be placed in danger if they are heard placing a phone call (“silent call situations”) and people with a wireless connection sufficient only for sending text messages, not placing calls. The wholesale transmission of text messages or other message formats to 9-1-1 by the general public would delay response to emergencies, and require additional resources to process the additional message formats. Limited public budgets would require decreases in other public safety investments to fund such additional resources.

Local Authorities are thus in the best position to determine the compliment of 9-1-1 and other public safety services which will best serve their constituents.

States have an interest in assuring that 9-1-1 services providers are qualified to provide the services, the services are affordable, and that surcharges, fees or taxes to fund 9-1-1 services are remitted by service providers. Because the capital costs of providing 9-1-1 service are high relative to the costs of each additional unit of production, and there is only one customer for 9-1-1 service in any one area (jurisdiction), 9-1-1 service has the characteristics of a natural monopoly and economic regulation of 9-1-1 service providers is appropriate.

The most important step the Commission can take to foster deployment of NG9-1-1 is to clarify that it has not preempted state regulation of 9-1-1 Service regardless of the technology involved. Service provider claims that the Commission has preempted all regulation of IP networks is impeding deployment of NG9-1-1.

The federal government should play a primarily supportive role to state and local governments with respect to 9-1-1. To the extent Commission preemption of state regulation of service providers interferes with 9-1-1 Service, the Commission must adopt supportive regulations such as those requiring VoIP and Wireless Providers deliver 9-1-1 calls to the state-designated 9-1-1 System Service Provider. The Commission should mandate that wireless and VoIP providers provide manual and automated access through electronic gateways to system data such as the cell site to which a customer's device is connected for purposes of locating the caller or routing a text message to 9-1-1, customer data for purposes of locating disconnected callers, and Emergency Notification Service data for customers (which wireless and VoIP providers should also be required to collect).

The federal government should provide permanent funding to offset costs its mandates impose on state and local governments. The federal government should respect the states and local public safety professionals, and not take preemptive action in the area of 9-1-1.

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**COMMENTS OF THE  
BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY**

The Boulder Emergency Telephone Service Authority (“BRETSA”) is a Colorado 9-1-1 Authority which establishes, collects and distributes the Colorado Emergency Telephone Surcharge to fund 9-1-1 Service in Boulder County, Colorado.

**I. Introduction.**

Pursuant to Colorado Revised Statutes §29-11-100.5, *et seq.*, BRETSA is responsible for collecting and administering the Colorado Emergency Telephone Surcharge collected by service providers from their customers with billing or service addresses in Boulder County, Colorado, to fund 9-1-1 service in the County. BRETSA supports four PSAPs serving the City of Boulder (police and fire), the City of Longmont (police and fire), the University of Colorado Police Department for the Boulder Campus (police), and Boulder County (Boulder County Sheriff, 5

police departments serving other cities and towns in Boulder County, and 23 fire departments or districts). Fire departments in the cities and counties provide Emergency Medical Service (EMS) and jurisdictions contract for private ambulance services to transport individuals to hospitals.

The four PSAPs are served by a hosted IP telephone system provided by Intrado, Inc. from two hardened host sites, one of which is outside of Boulder County. In the event of an outage of the primary or redundant host sites, or of primary or redundant network facilities, 9-1-1 calls will be seamlessly routed to one of the other BRETSA-supported PSAPs. In the event of a PSAP outage or call-overflow at a PSAP, calls will also be seamlessly routed to one of the other BRETSA-supported PSAPs.

BRETSA has also just completed implementation of a new hosted Computer-Aided Dispatch (“CAD”) system/service and supporting fiber-optic networks (including network elements provided by public and educational entities and commercial providers). All four PSAPs, which are at different locations in the County, operate off of the same primary Tier I CAD System located within a hardened PSAP, with a back-up CAD system located at a separate disaster recovery site. (This CAD system replaced a less-capable CAD system which also served the four BRETSA PSAPs on a hosted-basis.)

The challenge in the deployment of the single hosted and shared CAD system was the development of a hierarchy which would meet the operational needs of the four PSAPs and the agencies they served. However the advantage of this hosted and shared configuration is that the call-takers and dispatchers in each PSAP have the ability to see the incidents to which the other PSAPs/jurisdictions are responding, the status of the First Responders dispatched by the other PSAPs, and even to dispatch First Responders for the other jurisdictions. This is useful in the case of incidents that originate in one jurisdiction and move into another jurisdiction, when

Sheriff's officers make a stop or respond to an incident in a city where police are dispatched by a separate PSAP, fire districts are operating under mutual aid agreements, as well as when a PSAP is handling overflow calls from another PSAP. If a PSAP suffered an outage, 9-1-1 calls would be forwarded to another PSAP which would handle the calls until the call-takers and dispatchers from the disabled PSAP logged into the CAD system via Citrix, or relocated to one of its sister PSAPs and logged into CAD using a standard CAD workstation. The CAD deployment includes Mobile CAD with AVL and dynamic dispatch.

The state 9-1-1 system also has a high level of redundancy. Each of the 9-1-1 Selective Routers in Colorado is already paired with a redundant 9-1-1 Selective Router, and all of the 9-1-1 Selective Routers are interconnected, providing a robust 9-1-1 network and the ability to transfer calls from one PSAP to another in the event a call is misrouted (as frequently occurs with wireless 9-1-1 calls originating in the areas of jurisdictional boundaries). If one of the host sites for the BRETSA hosted telephone system went down, or there was a failure in the state 9-1-1 system facilities to one of these host sites, 9-1-1 calls would be rerouted to the other BRETSA host site.

BRETSA thus already has experience with the most important benefits promised by Next Generation 9-1-1: (i) a diverse and redundant state 9-1-1 network, (ii) a diverse and redundant IP phone system, (iii) hosted IP phone and CAD systems, (iv) a redundant CAD system and network, and (v) deployment of the system so that even the PSAPs are redundant and calls can be routed to and CAD accessed from alternative PSAPs in a call-overflow or PSAP outage situation with minimal impact on First Responder operations.

BRETSA has also participated actively in state and federal NG9-1-1 initiatives. BRETSA has filed comments in FCC Docket No. 11-153.<sup>1</sup> BRETSA has filed a Motion for Declaratory Ruling requesting the Commission to confirm that it has not preempted state regulation of 9-1-1 and NG9-1-1, regardless of the technology used; and a Petition for Rulemaking requesting the Commission to require that wireless and VoIP providers provide electronic access to System and User information, including information necessary to (i) locate disconnected callers who do not answer call-backs, (ii) locate individuals sending text messages to 9-1-1, so that the text messages can be routed to the appropriate PSAP, (iii) populate Emergency Notification Service (“ENS”) databases for wireless and VoIP subscribers, and (v) verify and audit provider-remittance of 9-1-1 surcharges, taxes or fees.<sup>2</sup>

BRETSA actively cooperated with other Colorado 9-1-1 Authorities in opposing Colorado Senate Bill 12-157, promoted by commercial telecommunications service providers and which would have fully deregulated IP networks including ESInets and, thus, NG9-1-1 service. BRETSA participated in Colorado PUC Docket No. 11A-531T concerning the application of NextGen Communications, Inc., a subsidiary of Telecommunications Systems, Inc., for certification as a Basic Emergency Service Provider and accompanying requests for waiver of the Colorado PUC’s Rules pertaining to such service providers. BRETSA is actively participating in Colorado PUC Docket No. 12R-862T pertinent to high cost reform and deregulation of telephone service and competing services, insofar as that proceeding may impact 9-1-1 and NG9-1-1 Service and deregulate NG9-1-1 Service based upon the use of IP networking technology in ESInets.

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<sup>1</sup> See . Joint Comments of the Boulder Emergency Telephone Service Authority and The Colorado 9-1-1 Task Force filed December 12, 2011 in PS Docket No. 11-153, which BRETSA hereby incorporates by reference.

<sup>2</sup> See, BRETSA’s October 25, 2012 Petition for Declaratory Ruling, and November 21, 2012 Petition for Rulemaking, which BRETSA incorporates herein by reference.

BRETSA was an active participant in the planning of an NG9-1-1 Summit held in January 2012 for the purpose of bringing together the Colorado 9-1-1 Authorities and forming a consensus as to how NG9-1-1 should be provided, configured, deployed and funded in Colorado, and has subsequently been an active participant in the Colorado NG9-1-1 Steering Committee formed as a result of that Summit, and on the Steering Committee's BESP Subcommittee (service design or architecture), and its Governance and Funding, and Legislative Subcommittees.

BRETSA is accordingly well-positioned to comment upon the legal and statutory framework for NG9-1-1.

## **II. Principles For Deployment And Regulation of Next Generation 9-1-1.**

BRETSA has identified a number of principles for the effective implementation and use of NG9-1-1, and the regulation or oversight of 9-1-1 Service and NG9-1-1 Service at the local, state and federal level.

### **A. 9-1-1 and NG9-1-1 Service Principles.**

BRETSA has identified the following priorities for implementation of NG9-1-1 Service and related technologies:

- Public safety technologies, including NG9-1-1, must practically serve the operational procedures and practices of public safety agencies and their First Responder resources.
- The purposes of "PSAP technologies" including NG9-1-1, are in order of importance:
  - Dispatching First Responders to arrive at the scene of an incident as quickly as safely possible;
  - Advising lay individuals at the scene of an incident of actions to take pending the arrival of First Responders;

- Providing First Responders useful information regarding the incident to which they are responding (information which can improve the effectiveness of their response), and
- Automating incident reporting processes to maximize the time First Responders are available for emergency response.
- Public safety and PSAP technologies including NG9-1-1 must take the human element into consideration, including the skill sets, multitasking capabilities and abilities to handle stress of actual PSAP and First Responder personnel.
- In light of the limited financial resources available to any public safety agency, the cost-benefit analysis for implementation of NG9-1-1 and its various capabilities must be weighed against the cost-benefit analyses of other public safety investments, including investment in First Responders, First Responder training, and First Responder Equipment.

**B. The Role of Local Authorities in Deployment and Configuration of Next Generation 9-1-1.**

Based upon the priorities for implementation of technologies including NG9-1-1, BRETSA believes it is self-evident that local authorities must retain discretion regarding deployment and configuration of NG9-1-1 Service. Decisions as to whether specific services or features of NG9-1-1 will improve local emergency response, and whether the benefits will improve Emergency Response and public safety more than other investments of limited public funds, must be based upon local conditions and can only be made by local authorities.

- Local Authorities are in the best position to evaluate the public safety needs of their constituents and First Responders.
- Local Authorities are in the best position to weigh the costs and benefits of competing public safety investments.
- Distributed rather than centralized planning and decision-making will result in public safety systems, policies and practices which are more responsive to local conditions and thus most effective. Distributed decision-making is also more survivable, flexible and responsive in local and regional emergencies.
- In Home Rule states like Colorado, distributed or local decision-making is not just good policy but is mandated by the State Constitution.
- The federal and state governments must respect and rely upon the experience and judgment of local public safety professionals.

### **C. The Role of States in Deployment and Regulation of Next Generation 9-1-1.**

While BRETSA believes sound public safety and management principles mandate that local public safety authorities be accorded primary responsibility for the deployment and configuration of NG9-1-1, there is an important role for states to play.

- 9-1-1 Service is, by definition, an *intrastate* service subject to state regulation. 9-1-1 Service routes 9-1-1 calls to the PSAP with authority to dispatch First Responders to the caller's location; 9-1-1 calls thus originate and terminate within the same state.
- It is in each state's discretion whether to manage 9-1-1, including NG9-1-1, (i) at the state level through a state agency or office of state government, (ii) at the local level, and/or (iii) through state tariff regulation of service providers.
- States are responsible for assuring that 9-1-1 Service Providers are technically, financially and otherwise qualified to provide the service, and will not cease providing the service without alternative service being provided.
- States must have authority to establish, collect, audit and enforce 9-1-1 fees, taxes or surcharges, and to determine the 9-1-1 Selective Router or NG9-1-1 Data Complex to which service providers shall deliver 9-1-1 calls.
- It is the province of the states to specify remedies for torts including those related to failures in provision of 9-1-1 Service, and/or to grant immunity or limited immunity to providers. Grants of immunity or limited immunity may reduce service costs and permit consolidation or centralization of services.

### **D. The Role of the Federal Government in Deployment and Regulation of 9-1-1.**

The federal government does have a role to play supporting 9-1-1 Service. However public safety and 9-1-1 service are matters of intrastate concern and the federal role should be limited:

- To the extent the Commission has preempted or preempts states from regulating service providers or their provision of 9-1-1 services; the Commission must adopt its own regulations requiring service providers to provide location-based 9-1-1 services and supporting services, including collection and remittance of 9-1-1 fees, taxes or surcharges and provision of Emergency Notification Service data.
- The Commission must clearly state the extent to which it *has* preempted states from regulating 9-1-1 services. The greatest impediment to deployment of NG9-1-1 to date has been service provider claims that the Commission has fully preempted state regulation of (i) 9-1-1 service by VoIP providers, and (ii) NG9-1-1 service because it employs IP networking in the NG9-1-1 ESInets.

- The Commission can and should reduce the costs of 9-1-1 service by adopting service standards, fostering centralization of some 9-1-1 service elements and encouraging limited immunity for providers.
- Any service mandated by the federal government should be accompanied by permanent federal funding for the service
- The federal government should provide consistent funding where its activities or policies increase the costs of 9-1-1 and Emergence Response service.

Implementation of NG9-1-1 should follow these principles to assure that it provides a net improvement in 9-1-1 and public safety service.

### **III. Decisions Regarding Deployment and Configuration of 9-1-1 Services, Including Next Generation 9-1-1, Should Be Made By Local Authorities.**

The best evidence of the wisdom of local and state control of 9-1-1 is the Commission's persistent push for implementation of features of NG9-1-1 Service which will make 9-1-1 Service *less* effective, *and cost lives*. Moreover, the greatest impediment to federal preemption of regulation 9-1-1 Service is the United States Constitution, as 9-1-1 is by definition and intrastate service, and public safety is a state and local concern.

#### **A. 9-1-1 Service Is, By Definition, an *Intrastate* Service.**

9-1-1 Service allows any individual to reach *local* public safety authorities and First Responders by dialing the short code "9-1-1." It requires that service providers identify the caller's location, transmit the call to the PSAP serving the caller's location, and provide the PSAP with the caller's location so that the PSAP can determine which First Responder agencies have authority and responsibility to respond to the caller's location and can verify the location of the incident to which First Responders are to respond. The location is most important for purposes of routing 9-1-1 calls to the correct PSAP.

Because 9-1-1 calls originate and terminate in the same state, and indeed in the same public safety jurisdiction (usually a City or County), they are jurisdictionally intrastate. Indeed, 9-1-1 Service has been regulated by the states since the 1970s without interference with federal regulation of providers.

9-1-1 Service, including NG9-1-1 Service, like other public safety services, is a matter of state and local concern. It cannot and should not be preempted by Congress or the Commission. As will be discussed below, the Commission should adopt supportive regulations where it has otherwise preempted state regulation of service providers.

**B. Next Generation 9-1-1 Is Not a Panacea, May Make 9-1-1 and Emergency Response Service *Less Effective, and May Cost Lives.***

The goal of Emergency Response is to get First Responders to the scene of an incident as quickly as possible, so that the trained and professional First Responders can provide assistance as early as possible when there is the greatest opportunity of mitigating the emergency. The two segments of Emergency Response are (i) alerting public safety authorities to the location and nature of the emergency, and (ii) getting the appropriate First Responders to the location of the emergency.

Addressing the second segment of Emergency Response; the time required for First Responders to reach the scene of an emergency is determined by the happenstance of where the incident occurs in relation to the current location of patrol units and fire or police stations. There is no practical and reliable means of routinely reducing the time for First Responder units to reach the scene of an incident once they are dispatched.<sup>3</sup> It is thus in the first segment of

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<sup>3</sup> Public safety authorities can consider effective and expeditious response in siting fire and police stations (a long term proposition), move-up of fire and paramedic assets, and patrol routes and schedules; but the interval between dispatch of First Responders and their arrival on-scene remains matter of chance in the location of the incident vis-à-vis First Responders.

Emergency Response that time, and lives, will be saved or lost based on the efficiency of the 9-1-1 System.

The 9-1-1 System is the first segment of Emergency Response, in which public safety authorities are alerted to the location and type of emergency and can dispatch appropriate First Responders. The role of the 9-1-1 System is to enable members of the public to communicate the nature and location of a public safety incident or emergency to the PSAP as efficiently and quickly as possible, so that the PSAP can dispatch the appropriate First Responders with a minimum of delay. The current system has proven particularly efficient.

### **1. Text Messages to 9-1-1.**

NG9-1-1 will make it possible for the general public to transmit text messages, photographs, videos, and other data to the PSAP. Text messages are an inefficient way for the public to communicate the nature and location of an emergency to the PSAP; but will often be the only means for certain individuals to communicate with the PSAP. Thus, the ability to send text messages to 9-1-1 will be critical for the speech- and hearing-impaired community, in “silent call” situations, and when individuals are located in an area where they do not have a sufficient wireless connection to place a call, but have a sufficient connection to transmit a text message.<sup>4</sup>

The volume of text messages from the speech- and hearing-impaired community and silent call situations is likely to be small. The City of Denver has published a 10-digit text-message number for members of the speech- and hearing-impaired community to use to contact the Denver PSAP. While the Denver PSAP handles almost one million voice calls to 9-1-1 per year, in November 2012 it received 17 such text messages, two of which were test calls. Thus the

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<sup>4</sup> “Silent Call” situations are those cases in which a person would be placed in danger if they were to make an audio call and be heard and located by a perpetrator.

impact of text messages to 9-1-1 from these specific groups or types of users is likely to be small.

Text messaging to 9-1-1 will be critical for the speech and hearing impaired community which will not generally have an alternative means of contacting a PSAP. For the general population, however, text messaging 9-1-1 will delay the dispatch of First Responders. Text messaging 9-1-1 is less efficient than a voice call in which more information can be communicated in less time, PSAP call takers can interrupt the caller to calm the caller down and request that the most important information (location and type of emergency) first. The call taker can hear the level of stress in the caller's voice and background noises which can provide additional information.

In the case of Denver, when a text message is received, the dispatcher who takes the receives the text message on the dedicated smartphone used for the purpose logs out as an available call-taker until the exchange with the "caller" is completed. This tends to take longer than a duplex voice (phone) call to 9-1-1 because of the relative inefficiency of text messaging. It should be noted that the Denver PSAP has up to 35 call-takers/dispatchers on duty, while the many PSAPs have only one or two dispatchers on duty.

It has been suggested that software which scans emails and intelligently groups them by content can enable PSAPs to handle a larger number of text messages simultaneously; and that a single call-taker could simultaneously handle a number of text messages in the manner that online software support personnel juggle multiple online chat sessions. Public safety officials, however, recognize that each text message will need to be read by PSAP personnel to assure that no text message regarding a unique incident is missed.

When online support personnel “simultaneously” juggle multiple chat sessions, each customer waits his turn until the support person cycles through the other customers with whom he is chatting, reviews the chat history with the customer, and responds to the customer’s most recent chat message. This is a far different role with far less urgency than that of the PSAP. *The PSAP’s role is to determine the nature and location of the emergency, and dispatch First Responders to the scene, as quickly as possible.*

While text messaging to 9-1-1 will be vital for the speech and hearing impaired community, silent call situations and certain other situations in which voice calls are not an option; a small-percentage of 9-1-1 “calls,” text messaging to 9-1-1 is inherently less efficient than voice calls. The use of text messaging to 9-1-1 by the general public will result in delays in Emergency Response, at the cost of lives and increased property damage. It may also result in the requirement for local public safety agencies to reallocate funds to hire additional PSAP personnel, perhaps at the cost of a reduction in the number of First Responders.

## **2. Video Calls and Messages to 9-1-1.**

Video calls or video attachments from the general public will be even less useful to PSAPs, and thwart expeditious dispatch of First Responders even more than text messages. An on-scene caller can provide a description of what he or she is witnessing more quickly and accurately than a dispatcher can discern from viewing a video or video-call. In addition, pictures or videos can provide a limited perspective and distorted portrayal of the overall situation. The additional stress for dispatchers viewing graphic images may make it more difficult for PSAPs to keep their call-taker/dispatcher positions filled, and the distraction of “callers” focused on “getting the picture,” like text messaging, may result in their becoming secondary victims.

There are situations in which public safety agencies use video, or have sought to use video, for specific purposes. Adams County, Colorado sought to obtain video cameras with overview of the I-25, I-76, I-270, US 36 Interchange in Adams County. It was believed that the ability to confirm which side of the highway an accident was on would allow the PSAP to dispatch First Responder units which could reach an accident the soonest. The City of Denver's PSAP makes similar use of Department of Transportation ("DOT") traffic cameras.

The Denver PSAP also has access to cameras in areas of high criminal activity, and will use them to alert responding First Responders to information such as the number and description of individuals involved in a fight, or who appear to be armed, while the First Responders are still in route to the scene. Video from these cameras is reviewed for this information *after* units are dispatched however, *if* dispatchers have the time, as dispatching units to the scene is the first priority. It is important to note that these are not video messages from the public or videos attached to e-mails from the public, received over the 9-1-1 System. These are specific video feeds from cameras located in specific areas for specific purposes. They are useful resources which PSAPs might not be able to afford if they are forced to instead invest in capabilities to receive video messages from the public, for example.

Agencies which have adopted dashboard video cameras in police patrol cars have found significant secondary costs in storage systems to retain copies of the videos. PSAPs which accept video messages and attachments from the general public will incur similar costs, and will likely incur additional costs which federal regulators and legislators unfamiliar with day-to-day PSAP and public safety operations may not foresee.

### **3. Transmission of Other Data to the PSAP.**

When dispatched, First Responders take with them the equipment and supplies required to address any emergency they might encounter. First Responders also conduct their own first-hand assessment of the situation when they arrive on scene, based upon their professional experience as First Responders. Additional units will not be dispatched until the initial units are on-scene and can provide a professional evaluation of the situation and response needs, as additional units dispatched to an emergency are unavailable to respond to other emergencies which may occur at other locations in the jurisdiction. It is not clear that Data such as telemetry from Automatic Crash Notification (“ACN”) systems will influence the selection of units to be dispatched, would assist First Responders in preparing for the situation they will encounter or dealing with the situation upon arrival, or otherwise provide an actual benefit for Emergency Response. Such information will likely be more useful for investigative purposes.

The primary benefits of NG9-1-1 is the flexible call routing which can provide for routing of calls to an alternate PSAP in the event all call-takers in a PSAP are occupied with calls, conferencing-in interpreters for 9-1-1 calls from non-English speakers during call setup, economies of hosted 9-1-1 phone and CAD systems, and similar advantages. The abilities to transmit video to 9-1-1, and for the general public to transmit text messages to 9-1-1, may seem more exciting and dramatic but the benefit is illusory. These so-called benefits are more likely to delay Emergency Response and cost lives.

#### **C. State and Local Authorities Can Best Determine The 9-1-1 Services, Features And Configurations Which Will Best Serve Their Constituents.**

There is great variation among the states, and communities within the states, in area, population and population density, industry, recreational activities, hazards and other considerations which impact public safety planning, investment and response. There are

differences in costs and funding from state-to-state and locality-to-locality. There are alternative investments in public safety response that local authorities might properly deem more important than a broadband ESInet and systems to handle text and video messages for example.<sup>5</sup>

Hiring additional First Responders may provide greater public safety benefits than implementing video messaging to PSAPs and hiring additional dispatchers to handle additional these less-efficient message types. If storms such as Hurricane Katrina and “Superstorm” Sandy which struck the East Coast this fall are not hundred-year events, but the result of global warming or climactic cycles and likely to be repeated in the near future, local agencies in coastal areas may place a priority on investments such as in the precast concrete radio towers designed by architect Roger Crosby, to preserve essential public safety communications even during hurricanes and other national disasters.<sup>6</sup> NextNav LLC’s terrestrial-based GPS service, which is able to penetrate buildings and urban canyons, may make automatic officer locations (“AOL”) systems practicable. This would allow Dispatchers/CAD Systems and incident commanders to track officer and firefighter locations even when they are inside buildings. Local agencies may place a higher priority on such officer safety systems than on the capability of PSAPs to receive message formats which would degrade Emergency Response.

Similarly, agencies may prefer to pursue updated PSAP systems, video feeds such as those employed by Denver, CAD-to-CAD interfaces with nearby jurisdictions for exchange of incident data, automatic vehicle location (“AVL”) systems supporting dynamic dispatching and unit routing, or other alternative public safety investments. The federal government simply

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<sup>5</sup> As will be discussed below, Commission action can foster the development of regional or national advanced call centers which can receive text, video, and other types of messages and data and relay dispatch information to local PSAPs over existing facilities.

<sup>6</sup> A 100-foot Crosby-Tower would resist and accumulated over turning moment of 7,506,000 lbs/ft, would house alternative back up power sources and radio equipment inside the tower at the 35’ level (above any anticipated flood level), with a cost in excess of \$400,000 and a 75-80 year life.

cannot anticipate, weigh and implement the most effective complement of technologies, personnel, equipment and training for each jurisdiction. Moreover a “one-size-fits-all” solution would not account for the differences in jurisdictions and varying priorities, and would waste tremendous resources while diminishing the quality and responsiveness of 9-1-1 service and costing lives and property.

#### **IV. States Have An Important Role to Play in Regulation of 9-1-1.**

States play a critical role in the provision and regulation of 9-1-1 Service. First, the market for 9-1-1 Aggregation and Routing Service (“NARS”)/9-1-1 System Service is not subject to competition.<sup>7</sup> Most, if not all, states regulate the monopoly provision of 9-1-1 service either (i) by contract through a state agency or authority that purchases the service on behalf of all jurisdictions in the state, or (ii) through traditional rate-of-return tariff regulation as in Colorado. States also have an interest in assuring that NARS providers/SSPs are qualified to provide the service.

Second, the states designate the Selective Routers or NG9-1-1 Data Complex to which each service provider must deliver its customers’ 9-1-1 calls, either through contractual arrangements with an NARS or 9-1-1 System Service Provider (“SSP”) or regulation.

Finally, the states establish and enforce surcharges, taxes or fees to fund 9-1-1 Service. These are all areas the States must be able to continue to regulate.

##### **A. Market Regulation.**

The NARS/SSP “market” is significantly different than other, retail, telecommunications markets, in that it is not susceptible to competition, except perhaps through competitive bidding

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<sup>7</sup> NARS or 9-1-1 System Services involves the aggregation of 9-1-1 calls at one or more 9-1-1 Selective Routers or NG9-1-1 Data Complexes, and routing and transport of the calls to the appropriate PSAP based upon the caller’s location.

for the exclusive right to provide service for a term of years. For example in Colorado and most states, (i) there is only one customer for the service in any jurisdiction, (ii) local 9-1-1 authorities or state 9-1-1 agencies (Governing Bodies) pay for the service but do not select the originating carrier over whose facilities a 9-1-1 call is originated, (iii) a 9-1-1 Authority cannot practically refuse to accept 9-1-1 calls from a NARS or SSP (regardless of the price or other terms of service which the NARS or SSP may demand), (iv) 9-1-1 service is mission-critical, (v) as a matter of public policy, end users should not be required or expected to delay placing a call to 9-1-1 make price or other market-based evaluations as to the cost of placing the call (in fact, carriers are prohibited from charging for 9-1-1 calls), and (vi) in those states that impose traditional rate-of-return regulation on NARS providers/SSPs, 9-1-1 service is typically subject to an implicit subsidy of service to high cost areas through rate-averaging in the rate-of-return provider's tariff. These facts inhibit 9-1-1 from operating as a competitive market, and impose unique service requirements and considerations.

While BRETSA understands that there are multiple NARS providers/SSPs operating in some states, it appears that these providers either serve separate areas; or aggregate and route only 9-1-1 calls originating on either wireless or wireline networks during transition to NG9-1-1. It does not appear that NARS providers/SSPs *compete*. Because these services are not competitive, states must be able to regulate the rates and terms on which service is offered.

#### **B. Certification of Providers.**

To assure reliable and uninterrupted NARS/9-1-1 System Service, it is important that states have authority to review and approve providers of this mission critical service. States must be able to assure that providers have (i) the technical qualifications to provide reliable service meeting established standards, (ii) the resources to dedicate to restoration of service in response

to an outage, and (iii) the financial resources to assure the provider will not cease operation without provision for another approved firm to take over the service, and leave the state without 9-1-1 service.

**C. 9-1-1 Funding.**

States generally fund 9-1-1 service with surcharges, fees or taxes on traditional wireline, wireless and VoIP telephone services. States must be able to continue to assess and distribute these funds to finance the provision of 9-1-1 service.

**V. The Federal Government And Commission Can Best Play A Supportive Role To Local and State Authorities.**

The biggest impediment to deployment of NG9-1-1 and improvements in public safety has been the untenable uncertainty regarding the extent to which the Commission has preempted state regulation of VoIP 9-1-1, and 9-1-1 Services employing IP network technologies (such as NG9-1-1). The most important role the Commission and Congress can play is (i) clarifying the extent to which the states can enforce requirements for 9-1-1 service, (ii) where the Commission has preempted state regulation of 9-1-1 services, requiring service providers to meet 9-1-1 service requirements, (iii) promoting affordable improvements in 9-1-1 service by fostering centralization and consolidation of certain 9-1-1 services by commercial providers and public safety agencies operating with limited immunity, (iv) adopting technical standards enabling reduction in service costs, (v) promoting greater redundancy and survivability of a national 9-1-1 network by funding interconnection of state networks rather than pursuing a national-overlay network, and (vi) permanently assisting local authorities in meeting extraordinary costs of 9-1-1 and Emergency Response services caused by federal policies or actions, (vii) making any “Broadband Funds” available to public safety authorities to subsidize broadband ESInets and

NG9-1-1 deployment, and (viii) minimizing bureaucracy and redundant oversight that will delay, and increase the cost of, NG9-1-1 and other improvements in Public Safety Services.

**A. The Commission Must Clarify the Extent to Which It Has Preempted State Regulation of 9-1-1.**

As discussed in BRETSA's October 25, 2012, Petition for Declaratory Ruling, incorporated herein by reference, Service Providers are claiming that the Commission has preempted states from regulating any service which includes IP Networking. While this is in fact contrary to the Commission's decisions, there is enough confusion regarding the issue, and potential for state regulations to be tied up in the courts, that state action to implement and promote NG9-1-1 is being impeded.

If the states are preempted from regulating services including IP Networking, such as NG9-1-1, then the states may not (i) designate the NARS provider/SSP to which VoIP and other providers utilizing IP Networking must deliver their customers 9-1-1 calls, (ii) assure that NARS providers/SSP's employing IP Networking (NG9-1-1 providers) are qualified to provide the service, or regulate the rates at which the service is provided. Indeed, each service provider could determine to build its own expensive ESInet for delivery of 9-1-1 calls to PSAPs throughout a state, set its rates for delivery of 9-1-1 calls at whatever level it wished; and unless a PSAP was willing to refuse to accept 9-1-1 calls originating on the service provider's retail network the service provider could charge whatever it wanted for delivery of its end users' 9-1-1 calls to PSAPs. While 9-1-1 Service continues to have the characteristics of a natural monopoly, the service is one public safety officials must purchase: the delivery of 9-1-1 calls.

Clarification of the extent to which the Commission has preempted state regulation will keep the costs of 9-1-1 service reasonable, either through traditional cost-based monopoly regulation, or through competitive bidding and designation of the prevailing bidder as the

authorized NG9-1-1 provider to which telephone service providers must deliver their customers' 9-1-1 calls.

**B. To The Extent The Commission Has Preempted State Authority, The Commission Must Require Service Providers To Meet 9-1-1 Service Requirements.**

If the Commission has preempted the ability of states to require service providers to deliver 9-1-1 calls to a designated NARS provider/SSP, to assure that NARS providers/SSPs have the technical, organizational and financial qualifications to provide the service; then the Commission must pass upon the qualifications of such providers and require service providers to deliver their customer's 9-1-1 calls to the 9-1-1 Selective Router or NG9-1-1 Data Complex operated by the approved NARS provider/SSP.

A provider of 9-1-1 and NG9-1-1 services, maintaining and operating 9-1-1 Selective Routers or NG9-1-1 Data Complexes and analog or IP networks to transport the calls to the PSAPS, must of course possess the technical qualifications to reliably provide the service. It must also have the organizational resources (management, equipment and personnel) to respond to fiber cuts, equipment failures or other outages in order to expeditiously restore service. Finally, such providers must have the financial capability to continue in operation and continue to provide the service even in the event of economic downturns or instability. The termination of 9-1-1 service due to a provider's financial instability would lead to tragic consequences. If the state cannot assure the qualifications of its 9-1-1 service providers, then the Commission must do so.

In addition, as stated in BRETSA's November 21, 2012 Petition for Rulemaking, the Commission must require wireless and VoIP providers to establish national data portals providing PSAPs with manual and automated access to (i) system data including cell towers to

which an idle consumer device is connected so that First Responders can locate disconnected callers to 9-1-1 and the location of people text messaging 9-1-1 can be determined for message routing purposes, (ii) customer data to assist First Responders in locating disconnected callers, (iii) customer residential and business locations (which service providers should be required to collect) for population of Emergency Notification Service databases, and (iv) customer information as necessary for local or state authorities to audit collection and remittance of 9-1-1 surcharges, taxes or fees. The ability of states to impose these requirements, which are required to maintain traditional and expected levels of 9-1-1 and ENS services, would appear to be limited.

**C. Commission Adoption and Enforcement of Open Standards Can Promote More Affordable and Wider Interconnection of 9-1-1 Systems and Equipment.**

Much of the current development of NG9-1-1 technology and standards appears to be driven by initiatives of public safety organizations, and to be based upon open standards which can foster interoperability, competition and lower costs to publicly-funded agencies. The Commission should proceed with adoption of open standards and prevent balkanization of the NG9-1-1 market with “islands” of proprietary, non-interoperable systems.

**D. The Commission Should Promote Commercial Development of Advanced Regional or National Call Centers.**

Many PSAPs around the United States are staffed with only one or two people, who provide both call-taking and dispatch services. In larger PSAPs, the call-taking functions tend to be separated from dispatching functions. The call-taker enters data obtained from a caller into the CAD System and creates a CAD Incident File. That file is assigned to a dispatcher who dispatches First Responders to the scene of the incident or Emergency.

While the Call-Taker and Dispatcher are usually in the same room, they do not technically need to be in the same room, the same building or even the same state. Call-takers could receive calls at a regional or national center, and transmit a CAD Incident File to the local dispatch center for dispatch of First Responders. This can provide a practical alternative to upgrading PSAPs to full NG9-1-1 compliance with capability of receiving and processing text and video messages, for example. Such a regional (or national) advanced PSAP, as initially posed by AT&T, could be operated by a state, by one jurisdiction providing the service for other jurisdictions in the state (as with the Black Hawk County, Iowa PSAP's receipt of text messages to 9-1-1 for all jurisdictions in the Iowa), or even by a commercial service provider. This would most likely be a company such as Intrado, Bandwidth or TCS, which already provide 9-1-1 call routing and related services for certain service providers.

The information obtained by the call-taker in the regional advanced PSAP through the exchange of text messages, photographs or videos could be delivered to the dispatching PSAP by a variety of means. The content of a text message could be transmitted to the PSAP via the TTY machine or CAD interface in the dispatching PSAP. The information could also be provided by e-mail or other messaging method using the public internet, but telephone call to an administrative line at the dispatching PSAP, or through the APCO Project ASAP system developed for alarm companies to transmit notifications of premises alarms to PSAPs.

The Commission would need to take three steps to enable the implementation of such regional advanced PSAPs. First, it would need to eliminate any restrictions that would prevent a service provider from delivering NG9-1-1 calls to an alternative location than the dispatching PSAP, based upon call format. Second, it would need to eliminate any restrictions on the operators of the regional advanced PSAPs from answering the 9-1-1 call and transmitting

information regarding the location and nature of the incident to the dispatching PSAP in an alternative format. Most importantly, it would have to grant limited immunity to the originating carriers and advanced regional PSAP operators; and provide that the service only be available to PSAPs in states which had adopted statutes or regulations providing limited immunity from state claims.

Public safety agencies operating PSAPs benefit from governmental immunity. In Colorado, the state has granted limited immunity to NARS providers/SSPs, such that the providers are immune from liability except where damages are intentionally caused or result from gross negligence. This means that providers do not have to factor into their prices defense and liability costs arising from inevitable claims which might be brought based on negative outcomes even though there may not have been negligence involved. In some areas, even public safety agencies might need additional grants of immunity where they are providing call-taking services for PSAPs outside of their jurisdictions.

Enabling PSAPs and commercial providers to receive advanced messaging formats and relay the content to PSAPs in other jurisdictions for dispatch of First Responders, will allow for the ubiquitous deployment of, for example, text messaging to 9-1-1 without the costs of each and every PSAP in the country incurring the costs of upgrading network and PSAP facilities to NG9-1-1. Indeed, a PSAP in a rural area serving a small population may get fewer than 5 text messages a year; a number which would make it hard to justify the potentially tens of thousands of dollars in deploying a fiber ESInet to the PSAP and upgrading PSAP systems. It would make far more sense for the PSAP to pay a monthly or per-message fee to a commercial provider for the few text messages received, and invest in upgrading to full NG9-1-1 compatibility only once the fees paid for the number of messages received exceeds the cost of upgrading the local PSAP.

**E. The Commission Can Better Provide Interconnection of State 9-1-1 Networks by Funding State Interconnection Of Their Networks Than By Providing a National Overlay Network.**

There are two approaches the Commission can pursue to develop interconnection of state 9-1-1 Systems. The first is to build a national overlay network, with direct connections to the Selective Router(s) or NG9-1-1 Data Complexes in each state.

The alternative is to fund the extension of segments of state 9-1-1 networks or ESInets in border areas to interconnect with the ESInet in the adjacent state. For example, Colorado shares borders with Wyoming, Nebraska, Kansas, Oklahoma, New Mexico, Utah, and a rather small border with Arizona at the “Four Corners” area. Colorado has PSAPs serving each of its border counties, which are connected to its legacy 9-1-1 network and will be connected to its ESInet. PSAPs serving the border counties of these adjacent states will also be connected to their state’s 9-1-1 networks or ESInets. By funding an increase in capacity of the network segments to select border PSAPs in each state, and interconnection of the networks across the state borders, the interconnection of all state ESInets can be elegantly achieved at less cost than if the federal government builds a new national network to connect the states ESInets.

This approach will result in a more geodesic network; a more survivable DARPA-like network with multiple message paths between the States and routers which will select the least congested path for any message segment. Because the states or their NARS providers/SSPs will have already secured the necessary rights-of-way and placed network facilities to the border-area PSAPs, likely with additional dark fiber in place, a substantial portion of the costs will have already been met by the States. If the states purchase network services or lease facilities from commercial providers with service level agreements, there will also be greater resources for responding to service outages than it would be practical to provide on a private-network basis.

Thus, federal funding of relatively short extensions of state 9-1-1 Networks/ESInets to connect with their adjacent states' 9-1-1 networks will result in a more robust national ESInet at lower cost than a nationwide overlay network.

**F. Any Federal Mandate of Services Must Be Accompanied By Permanent Federal Funding For the Service.**

BRETSA has demonstrated above that local public safety authorities are in the best position to determine the complement of services which best meets the public safety needs of their constituents and communities, and the allocation of limited financial resources between alternative investments to improve public safety.

It is too easy for the federal government to issue mandates when it is not responsible for meeting the costs of those requirements, or assessing the sacrifice of other services or resources required to meet the mandate. Requiring that the federal government meet the costs of any mandates issues will bring a certain gravity to the decisions to mandate the service, if not accountability and ownership. It will also assure that local authorities are not forced to reduce the number of First Responders available to be dispatched to emergencies to render aid in order to fund the additional dispatchers or systems to handle text and video messages to 9-1-1, or to pay for new broadband facilities to the PSAP, for example.

**G. Any Federal Broadband Fund Should Be Available to Fund Broadband ESInets for Next Generation 9-1-1 Service.**

The federal government and state governments are creating or considering “Broadband Funds” to subsidize broadband service to rural areas where such service is not otherwise commercially viable. To the extent the Commission, other agencies or Congress create such Broadband Funds, public safety authorities should be given access to the subsidies to fund the

deployment of the statewide ESInets required for NG9-1-1, including intra-jurisdiction broadband facilities for transport of new message formats to or between PSAPs.

Public Safety and 9-1-1 is the highest and best use of broadband service. The costs of deploying broadband facilities and transitioning to NG9-1-1 could require cutbacks in other essential public safety services if additional funding is not provided. Broadband Funds should be one of the sources by which the Federal Government finances the NG9-1-1 infrastructure and services it is so strongly encourages or requires local governments to implement.

**H. The Federal Government Should Help Local Authorities Meet Extraordinary 9-1-1 and Emergency Response Costs Imposed By Federal Actions or Activities.**

Seventy-five percent of Colorado's population resides along the Colorado Front Range, in ten counties comprising just ten percent of the land area of the state. The remaining ninety percent of the state is sparsely populated. Colorado also has three major Interstate Highways which cross the state, transecting sparsely populated counties along much of their lengths: I-24, I-70 and I-76. These major interstate highways serve the *nation's* transportation needs and federal policy.

These interstate highways can also carry more people through sparsely-populated rural counties in a day, than reside in the counties. The through-travelers, often journeying cross-country, do not contribute to local 9-1-1 fees, which are based on the billing address of the subscriber. Nor do they generally contribute to the local tax base which supports the First Responders, First Responder training, fire engines, ambulances and other First Responder equipment the counties must provide to respond to incidents on these highways. Because of their relatively small populations vis-à-vis the traffic the Interstates carry, these counties spend a disproportionate amount of their budgets providing 9-1-1 service and Emergency response to the

through travelers. Similarly, the federal government owns significant portions of the land in Colorado and other western states, as Forest Service and BLM land, national monuments and parks, and other federal lands. These federal properties do not contribute to the tax base, yet public safety agencies must provide and support 9-1-1 and Emergency Response services to them. These services are often more expensive and difficult to provide due to limited access and roads in the areas.

NG9-1-1 service will be more expensive than legacy 9-1-1 service. The rural counties nationwide through which the major Interstate Highways pass, will not be able to afford the levels and features of 9-1-1 service to which residents of the large coastal urban areas and other major cities are accustomed. Subsidization of NG9-1-1 service in these counties solely from within these lesser-populated inland states will place strains on public safety budgets statewide. 9-1-1 and Emergency response costs to federal property also strains local resources.

The federal government, through the National Highway Transportation Administration, US Forest Service, Bureau of Land Management, National Park Service, and other appropriate agencies should contribute appropriate amounts to the costs of 9-1-1 and Emergency Response to the Interstate Highway System in rural areas, and to federally-owned properties. The Interstate Highways and federal lands in sparsely populated areas serve national interests, and the federal government should spread these costs across all the states and citizens who benefit from them.

**I. The Federal Government Should Not Create Additional Bureaucracies to Oversee 9-1-1 Services.**

Local Governments already do an excellent job of providing public safety services, including 9-1-1 Service. There is no need for federal oversight of these services, which are state concerns and responsibilities. As a matter of comity and respect for local authorities, the federal

government should not even consider establishing bureaucracies to oversee these local police power services.

Moreover, the creation of bureaucracies inevitably results in additional administrative costs, such as compliance costs. The nature of bureaucracies is that they continue to grow over time, seek to exert greater control, and create ever increasing expenses for the subjects of their oversight. Given that public funds are already strained, and that requiring local public safety agencies to implement NG9-1-1 would require cutbacks in other public safety resources or services in many jurisdictions; the imposition of additional costs through creation of additional bureaucracies for unneeded oversight cannot be justified. Federal regulators appear to be enamored with, and to be intent on forcing implementation of, 9-1-1 solutions that are of little or no utility and will in fact delay Emergency Response and *cost lives*. The clear lesson is that the federal government and federal agencies should not meddle in local affairs and the decisions of public safety professionals who know what technologies, resources and investments will best meet the needs of their communities.

## **VI. Conclusion.**

Local public safety authorities are in the best position to determine the complement of 9-1-1 services which will best meet their constituents needs, and the competing investments in public safety resources and technologies which will provide the greatest benefit in their unique environments. The Commission and federal government must respect the experience, local knowledge and professionalism of the local authorities and avoid interfering with their decisions.

The states have important interests in assuring that providers of NARS providers/SSPs who aggregate, route and transport 9-1-1 calls to PSAPs are qualified to provide these services and the services are not interrupted. The states must be able to assure that these monopoly

services, paid for with public funds, are reasonably priced. The states also have an interest in assuring that service providers deliver their customers 9-1-1 calls to the authorized NARS provider/SSP, and collect and remit the 9-1-1 surcharges, taxes or fees required to fund the 9-1-1 System.

The Commission and federal government can best play a supportive role, refraining from restricting local authority, mandating compliance with 9-1-1 and ENS requirements where state authority is limited, and supplementing and spreading funding across all citizens who benefit from them.

Respectfully submitted,

**BOULDER REGIONAL EMERGENCY  
TELEPHONE SERVICE AUTHORITY**

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