

**§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

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

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Summary

Providing for the public safety is primarily a state and local responsibility. Public safety, and 9-1-1 services, are provided by local officials familiar with their communities and the unique public safety requirements of their jurisdiction. 9-1-1 must serve the operational imperatives of local public safety agencies.

Local public safety authorities are dedicated to their mission and deserve the respect of the FCC and federal government. Local public safety authorities deal in the *reality* of public safety and emergency response, and not in the unrealistic expectations of consumers and regulators based upon fictionalized entertainment. Local and state authorities must have discretion and control over 9-1-1 Service, PSAP operations and their budgets if 9-1-1 is to serve the operational imperatives of public safety response. The Commission and Federal Government must respect state and local officials, and comity demands that state and local authorities have discretion and authority over the implementation of NG9-1-1.

As the FCC has found, over eighty percent (80%) of PSAPs have fewer than five call-taker/dispatcher positions. Mandatory increases in PSAP staffing would likely require local authorities reduce the number of First Responders, their equipment or training, as public safety budgets are finite.

Similarly, requirements to accept less-efficient means of communication with PSAPs, are impractical and will reduce the effectiveness of overall Emergency Response. That the FCC advocates such results is the strongest evidence that local and state authorities rather than federal bureaucrats should drive 9-1-1 policy and deployment of Next Generation 9-1-1 (“NG9-1-1”).

Side-by-side competition will not necessarily improve 9-1-1 Service or Emergency Response, and may significantly increase costs of 9-1-1. 9-1-1 Service continues to have

characteristics of a natural monopoly, with significant capital costs to commence service and low marginal costs of production. Moreover, there is only one customer for 9-1-1 service in any area/jurisdiction, and price competition will not increase traffic volumes or vendor revenues. 9-1-1 service is price inelastic and only deregulation and increase of SSP rates will increase SSP revenues.

Service Providers would modify 9-1-1 funding mechanisms to avoid the responsibility for collecting and remitting 9-1-1 fees or surcharges. Surcharges remain an effective and appropriate method of funding NG9-1-1, but should be assessed upon connections to the PSTN or the public Internet, including broadband connections. Assessing surcharges based upon connections rather than specific devices or over-the-top applications which may use those connections to communicate with a PSAP is practical and enforceable.

States should have discretion as to whether surcharges are remitted at the state or local level. Whether remitted at the state or local level, service provider tax departments or partners already remit state and local taxes on service, and can remit surcharges on the same basis. The Commission should adopt rules proposed by BRETSA in its November 21, 2012 Petition for Rulemaking to require service providers to provide electronic access to their system and customer information for purposes of locating disconnected callers, routing text-messages to 9-1-1, populating Emergency Notification Service Databases *and auditing remittance of surcharges*.

Over-the-top application providers have the opportunity to market to the public applications promising to improve public safety response, but which would in fact delay emergency response, require an application be installed at the PSAP, and/or transfer costs to PSAPs for the profit of the application publisher. PSAPs should not have any obligation to install

applications to receive messages from such applications. Nor should they be required to accept messages from such applications, unless (i) the application transmits the message in a standard format approved by a standards-setting organization, or (ii) application messages are transmitted and which relays emergency information to the appropriate PSAP in an approved format.

States should have discretion whether or not to grant service providers immunity. In the event a state denies immunity to service providers against claims sounding in ordinary negligence, the FCC should mandate that any reserves against liability claims be recovered through surcharges collected in that state only. No state should subsidize defense or payment of negligence claims in other states.

The greatest impediment to effective regulation of 9-1-1 and NG9-1-1, and implementation of NG9-1-1, is uncertainty by the states as to their authority over 9-1-1 and services employing IP networking technologies, fueled by vendor claims of federal preemption. The Commission must clarify that it has not preempted state regulation of services employing IP networking, and that states retain jurisdiction over 9-1-1 service. The Commission should get out of the way and allow states to implement NG9-1-1 as they deem most appropriate.

The Commission's and federal government's proper role in 9-1-1 is (i) to preserve open standards and prevent the application of intellectual property rights in the manner that have caused the interoperability issues which plague the public safety radio services, (ii) assure that niche vendors are not denied opportunities to provide solutions for implementation of NG9-1-1 (including through acting on BRETSA's November 21, 2012 Petition for Rulemaking), and (iii) providing funding for 9-1-1 service where federal government activities impose burdens and costs on the 9-1-1 system.

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**REPLY COMMENTS OF THE
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The Boulder Emergency Telephone Service Authority (“BRETSA”) , by its attorney, hereby submits its Reply Comments in the above-referenced proceeding. In support whereof, the following is respectfully shown:

I. Introduction.

Ironically, parties filing comments herein overlook the nature and purpose of Next Generation 9-1-1 (“NG9-1-1”). NG9-1-1 is a digital *telecommunications* service which facilitates call routing and format conversion. For example with NG9-1-1, analog calls from wireline service providers are converted to digital format for transmission over the ESInet using Session Initiated Protocol (“SIP”), and converted back to CAMA compatible analog format at the Legacy PSAP Gateway for use by legacy PSAPs. Greater concern should be paid to assuring that

standards for NG9-1-1 remain open and are not subject to intellectual property rights (“IPR”) which have led to the continued interoperability issues in the public safety radio services.

It is the nature of telecommunications that resources can be accessed at any distance to provide effective solutions. For example, currently, when a 9-1-1 call is placed by a non-English speaker, the PSAP call-taker conferences-in on the call an interpreter from a translation service such as Language Line Services. It is irrelevant where the Language Line interpreter is located.

It has been proposed that with NG9-1-1, a person would enter their preferred language into their profile on their wireless phone. When a person calls 9-1-1, their phone would insert in the transmission stream information indicating their language preference, and the NG9-1-1 System would conference in an interpreter during call setup (taking seconds rather than minutes).

For the purpose of enabling speech- and hearing-impaired individuals to communicate with a PSAP by American sign language through a video-call (“Video-ASL), it has been suggested that each PSAP in the country should be required to hire a pool of ASL qualified call-takers/dispatchers, and that PSAPs acquire video-conferencing capability. While BRETSA and each PSAP agencies it supports are committed to providing the best 9-1-1 and emergency response services possible to people located in its jurisdiction, including the speech- and hearing-impaired, BRETSA respectfully submits that this demand is unrealistic. PSAPs nationwide have difficulty recruiting PSAP personnel even without specifying such ASL skills. It is typical that one percent (1%) or less of people who apply for dispatcher positions will pass the screening process. Even when candidates have the necessary multitasking skills, emotional disposition for the high-stress positions, and pass a police background check, about half of the candidates hired drop out during the training process.

The unsatisfactory experiences the speech- and hearing-impaired community has had in placing 9-1-1 calls through relay services is testament to the difficulty of finding candidates with the capabilities to serve in dispatch positions, even without specifying high level ASL capabilities. Rather than requiring that each PSAP add ASL capabilities to the requirements for its dispatcher positions, the solution is to establish specialized relay services with Video-ASL capable call-takers which PSAPs can rely upon, like Language Line services, when a speech- or hearing-impaired person places a Video-ASL call to 9-1-1. The Video-ASL service can be establish a conference-call connection with a call-taker at the destination PSAP, or create and transmit to the destination a Computer Aided Dispatch system incident file for the local PSAP to dispatch First Responders.

The 9-1-1 relay provider can charge a per-call fee charged to the PSAP contracting for such services. If the PSAP is located in an area where a sufficient number of Video-ASL calls are received from speech- and hearing-impaired individuals, the PSAP will find it more cost effective to provide Video-ASL call-taking capabilities itself. If in practice, speech- and hearing-impaired individuals tend to resort to sending text messages to 9-1-1 in emergency situations, enormous expense of developing Video-ASL call-taking capability in each PSAP throughout the country will have been avoided.

Also ironically, commenters suggest that the public safety community has an obligation to meet “consumer expectations,” and that consumers should expect the same level of service anywhere they may live or travel in the United States. Yet consumer expectations (and those of some commenters and regulators) appear to be based upon fictionalized entertainment, with stories based in the largest cities in the country.

9-1-1 is not a concierge service, but an emergency service. The goal of 9-1-1 service is to communicate to a PSAP, as expeditiously as possible, the nature and location of an emergency so that First Responders can be dispatched. This is best accomplished through a caller placing a voice call to relate to the PSAP what the caller has observed. The exchange of text message is not as expeditious as a voice call; and the transmission of photographs or videos for PSAP personnel to decipher for themselves the nature and location of the emergency is even less expeditious and less accurate.

Indeed, given the minimum delay *inherent* in calling 9-1-1, the dispatch of First Responders, and the arrival of First Responders on the scene of an incident, it is critical that individuals manage their own emergencies. For example, paramedics advise that the survival rate of persons suffering heart attacks is impacted more by the presence of bystanders trained in CPR who render aid prior to arrival of First Responders, than by any action First Responders might take.

If the Commission accepts that the public is entitled to an equal level of 9-1-1 and emergency response service wherever they may travel as they would receive at home, then the federal government must nationalize local public safety services, relocate First Responders, and significantly subsidize such services in the majority of the country. Absent such action, there is no way that a person traveling through rural counties with a population density of three-people per square mile will receive the same level of 9-1-1 and emergency response services as they would in Washington, D.C. or some other major metropolitan area.

II. Local and State Authorities Must Have Discretion Regarding 9-1-1.

Commenters suggest that the FCC should establish standards for 9-1-1 and PSAP handling of 9-1-1 calls, including calls from the hearing- and speech-impaired. Commenters also

suggest that the FCC should police PSAP compliance with the standards, including through secret-shoppers, with progressive levels of enforcement. These commenters fail to understand that 9-1-1 service and PSAP operation is just one aspect of public safety and emergency response.

The Commission has found that approximately eighty percent (80%) of PSAPs have 5 positions or less.¹ BRETSA's experience is that PSAPs frequently have more positions than call-takers/dispatchers to (i) provide redundancy in the event of a failure of workstation software or hardware, (ii) provide additional positions in the event of a major incident, and (iii) to facilitate the staged updates of workstations. BRETSA believes that the majority of PSAPs have between one and four call-takers/dispatchers per shift. PSAPs with only one or two personnel on duty will typically have these personnel provide both call-taking and dispatch services, while PSAPs with three or more personnel will assign some of the personnel on any one shift to serve as call-takers and some to serve as dispatchers.² Thus, the vast majority of PSAPs likely have two or fewer call-takers on duty during any shift.

Decisions made by local public safety authorities with respect to the number of PSAP positions and personnel are driven by budgetary considerations as well as by the typical volume of calls received. Public safety agencies have limited budgets to allocate among PSAP operations, First Responders, First Responder equipment and training, jail facilities, etc. Public safety agencies invest in PSAP equipment to improve the effectiveness of the personnel they

¹ Public Safety and Homeland Security Bureau, "A Next Generation 911 Cost Study: A Basis for Public Funding Essential to Bringing a Nationwide Next Generation 911 Network to America's Communications Users and First Responders," White Paper (Sept. 2011) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309744A1.pdf , at 13.

² As the term suggests, call-takers receive 9-1-1 calls from the public, determine the location and nature of the incident about which the person is calling, and provide Emergency Medical Dispatch (first-aid instructions) if required. Dispatchers communicate by radio, and possibly by text message over Mobile CAD systems, with First Responders. In a small PSAP a call-taker/dispatcher may simultaneously be on the phone with the caller and on the radio with the First Responders.

have. Federal mandates which require that public safety agencies employ additional PSAP personnel may very well require a reduction in the number, equipment or training of First Responders to actually respond to incidents.

As discussed above, Public Safety Authorities subscribe to Language Line-type services to supply interpreters for calls from non-English speakers. In jurisdictions with large populations for whom Spanish is their first or only language and higher volumes of calls from Spanish speaking callers, PSAPs may seek to hire and schedule on each shift call-takers who are fluent in Spanish as well as English if that should prove less costly and more efficient than using a Language Line-type service for calls from Spanish speakers. By the same token, public safety authorities might find it preferable to subscribe to third-party “call-taking” services for text messages, photos, video or data, provided by commercial vendors or other PSAPs, until the volume of such “calls” makes it more economically efficient for the PSAP to receive such “calls” itself. This would not necessitate any diminution in the quality of service, as PSAPs with three or more call-takers/dispatchers will typically divide call-taking and dispatching responsibilities; and call-taking services can be provided remotely without loss of efficiency.

Individual PSAPs could elect to subscribe to third-party advanced call-taking services from (i) an SSP, (ii) a company such as Bandwidth, Intrado or TCS which routes calls from wireless and/or VoIP providers to SSPs, (iii) some other third-party provider (such as Language Line), or (iv) another PSAP. In the latter case, a state could elect to designate one or more existing PSAPs to receive advanced format “calls,” or to develop advanced regional PSAPs to provide call-taking functions and transmit CAD incident files to local dispatch centers. Local and state authorities should have the ability to configure 9-1-1 services in the manner which will best meet their budgetary and operational requirements, as particularly enabled by NG9-1-1.

As BRETSA has previously stated, text messages will delay emergency response in the ordinary case. Photos, videos and other data may be useful for tactical, investigative and evidentiary/prosecutorial purposes, but will undermine the primary purpose of 9-1-1 service of a PSAP expeditiously determining the nature and location of an incident and dispatching First Responders. The quest of individuals to capture images of an incident may well put them in harm's way, and such images may increase the stress to which call-takers/dispatchers are subjected. First Responders already take with them to the scene of an incident the tools, equipment and training to deal with any circumstance they might encounter. While some PSAP managers are exploring the capability to provide images transmitted to 9-1-1 directly to First Responders in order to avoid unnecessary impacts on PSAP personnel, other agency heads are investing in software to disable the video screens of Mobile Data Terminals ("MDT") so that First Responders are not distracted when racing to the scene of an incident.

The Commission and federal government must respect and trust local officials to weigh these and the multitude of other considerations which go into developing local public safety policies to serve the unique needs and environment of the local community.

III. Federal Policy Should Focus On Cost Effective Provision of 9-1-1 Service, Not Introduction of Competition.

Providers, and the Commission, appear to assume that competition will necessarily increase the efficiency or decrease the costs of 9-1-1 service in an NG9-1-1 environment. There is no evidence to support this conclusion.

The primary advantages of NG9-1-1 are (i) the ability to apply alternative call routing rules when a PSAP is at call-handling capacity or is down, and (ii) the potential availability of *hosted* phone and CAD services for a monthly per-seat fee, at lower cost than that at which a PSAP could purchase and maintain its own phone or CAD system. There would appear to be

advantages in the application of alternative routing rules and provision of hosted services through a single SSP.

In addition, 9-1-1 service is still characterized by a relatively large capital cost of providing a dedicated 9-1-1 network, with very low marginal costs of production (cost of transmitting an additional call or unit of data). This is the classic model of a monopoly, but unlike a classic monopoly *there is only one customer for service in each jurisdiction or area*. The volume of 9-1-1 calls is price inelastic, as the callers do not pay for the calls and the immediacy of the incident prompting the 9-1-1 call precludes cost considerations. Adding providers will not result in price competition for those who place the calls, or additional volumes of traffic; it will simply divide existing traffic among additional providers and facilities, and thus increase prices for service commensurate with the need to meet the costs of the additional facilities and profit margins of the additional providers.

BRETSA is not aware of any state in which SSPs compete side-by-side to deliver 9-1-1 calls to the same PSAPs. Some states have a separate SSP providing NG9-1-1 service to PSAPs for calls originating from wireless or VoIP providers than the SSP which delivers 9-1-1 calls originating on the networks of wireline LECs. However this appears to be a transitional stage with the expectation that 9-1-1 calls originating on wireline networks will eventually be delivered over the NG9-1-1 ESInet.

Colorado has had experience with applications for “competitive” offerings of SSP service. One applicant, Dash Government Services, proposed to compete on a jurisdiction by jurisdiction basis. Issues encountered included (i) LECs which served different jurisdictions which might be contract with different SSPs, requiring deployment of a Selective Router function at each such LEC and separate 9-1-1 trunks to each SSP, (ii) the complications involved

in transferring misrouted 9-1-1 calls between PSAPs which were customers of separate SSPs, and (iii) Colorado's requirement that SSPs offer service statewide and average rates, which would result in rate-churn each time a PSAP changed the SSP to which it subscribed for 9-1-1 service. The second application for certification as a competitive SSP was filed by NextGen Communications, a subsidiary of TCS, and posed even greater concerns for Colorado PSAPs and for SSP "competition" in general. NextGen proposed to route and transmit to PSAPs only those 9-1-1 calls originating on the networks of TCS carrier-customers. NextGen thus did not propose to compete with the existing SSP in the sense that it would replace the existing SSP for any PSAP. Rather, NextGen's proposal would have resulted in the 9-1-1 traffic previously delivered over the facilities of one SSP being split among the facilities of two SSPs, with duplicate (redundant) facility costs to be recovered and returns expected by each SSP. Both Dash and NextGen dismissed their applications prior to full hearing, and the question is left whether a PSAP could have ethically or politically refused to accept 9-1-1 calls from NextGen at whatever price it demanded, if it had been certificated.³

It should be left to the states to determine whether the public service will best be served through (i) side-by-side competition in the provision of 9-1-1 services, (ii) selection of an exclusive provider of 9-1-1 services through an RFP or other process, or (iii) certification and either traditional rate-of-return regulation with tariffed rates, or relaxed pricing regulation such as price ceilings. In the case of states in which an agency contracts for SSP service on behalf of all PSAPs, the pricing would likely be determined through competitive bidding or negotiation.

The Commission should make clear that it has not preempted state regulation of IP services, and that 9-1-1 Service is by definition an intrastate service because 9-1-1 calls both

³ NextGen requested waiver of the tariffing rules and proposed to enter into contracts with public safety authorities for its services.

originate and terminate within the same state. This is essential to allow states to certify SSPs, in order to assure that such providers are technically and financially qualified to provide the service.

IV. Surcharges Are An Appropriate Funding Mechanism.

A number of commenters address funding of NG9-1-1 Service. The levying of surcharges or fees on telephone services is an appropriate and proven funding mechanism, but some modification of the surcharge model is appropriate. It is not feasible to assess and allocate surcharges based upon devices. However any device which may be used to contact 9-1-1 must use a transmission medium to connect to the PSTN or public internet. Users should be assessed a fee based upon connections to the PSTN or public internet. That is, traditional wireline telephone service customers and wireless service customers should be obligated to pay a fee or surcharge as at present, and broadband customers should be required to pay a fee based on the amount of upstream bandwidth provided (the number of simultaneous voice calls which could be placed). In other words, surcharges would be levied on the available connectivity to contact a PSAP.

Because connectivity to the PSTN or public Internet is provided with provider-facilities which are physically present in the state (except possibly in the case of satellite-delivered access), state jurisdiction to assess, collect, audit the surcharges is clear and enforceable. This is not the case with VoIP or similar services which are provided over Internet access facilities owned and controlled by companies other than the VoIP or other service provider.

Again, states should be free to establish their own funding mechanisms requiring collection and remittance of fees by service (connectivity) providers, and to have the fees remitted at the state or local level. Service providers remit state and local taxes on service, and thus already process tax remittances on the basis of service or billing address. No additional

difficulty is created if a state provides for 9-1-1 surcharges or fees to be established by and remitted to local or state authorities.

In its November 21, 2012 Petition for Rulemaking, BRETSA suggested that wireless and VoIP providers be required to provide PSAPs with electronic access to system and customer information for purposes of (i) locating callers to 9-1-1 whose calls had been disconnected, (ii) routing text messages to 9-1-1, (iii) populating Emergency Notification Service databases, and (iv) *auditing surcharge remittances*. BRETSA urges the Commission to issue a Notice of Proposed Rulemaking to establish these requirements.

A. Diversion Of 9-1-1 Fees To State General Funds.

BRETSA understands that some state legislatures have transferred 9-1-1 fees to their general funds in order to meet state constitutional requirements for a balanced budget; and to avoid cutting education or other essential services. This has not occurred in Colorado, both as a measure of legislative priorities and responsibility and the fact that surcharges are remitted at the local level and are not retained in state accounts. Nevertheless, a state's decision to "raid" 9-1-1 funds and limit the ability of the state to upgrade to NG9-1-1, in order to limit or avoid cuts to other essential programs, is within the state legislature's and governor's prerogative and not a decision to be second-guessed by the Commission or federal government. The legislatures and governors which "raid" 9-1-1 funds for this purpose are acting in the interest of their constituents; and at their political peril.

At the same time, it would be inappropriate for other states, through any federal 9-1-1 surcharge or federal grants of tax proceeds, to subsidize deployment of NG9-1-1 Service in states which re-purposed their own 9-1-1 fees. Eligibility for Federal subsidies or grants should be restricted to states which have not re-purposed their own 9-1-1 fees in this manner.

B. Diversion Of 9-1-1 Fees For Other Public Safety Purposes.

Commenters also suggest that 9-1-1 Fees have been diverted for non-9-1-1 public safety purposes, such as funding radio systems; but the issue is not so clear as they suggest.

A state might determine that proceeds of 9-1-1 fees or surcharges shall be spent solely for routing and transport of 9-1-1 calls to PSAPs. A state might just as reasonably determine that 9-1-1 fees may also be spent on (i) 9-1-1 telephone systems which route 9-1-1 calls among PSAPs serving a single jurisdiction or within a PSAP, (ii) call-recorders or call-loggers which record telephone conversations, (iii) CAD systems in which a call-taker will enter incident data based on the call for a dispatcher to dispatch (or for automatic dispatch with some CAD systems) and which will provide instant access to maps, aerial photographs and incident history for the location of the incident, and (iv) consoles, backup power supplies and other infrastructure to support these PSAP systems. A state might determine that personnel costs for call-takers and/or dispatchers, including bilingual personnel and personnel expert in communicating with speech- and hearing-impaired individuals is appropriate, or that subscription to Language Line-type services is appropriate. Some states might find some of these expenditures inappropriate if 9-1-1 fees are classified as surcharges, but appropriate if the fees are classified as a tax under state law.

NG9-1-1 complicates these issues. If PSAP telephone systems, call recorders and CAD systems are provided on a hosted basis, over the ESInet, would it be appropriate to pay for these services and/or the bandwidth to support them with proceeds of 9-1-1 fees or surcharges?

The following circumstances also complicate the issue of appropriate use of 9-1-1 surcharges or fees:

- Clear Creek County, Colorado, is seeking to acquire a new CAD system which will allow dispatchers to transmit CAD incident data to First Responder Units and dispatch them without a voice-radio call, so that its two dispatchers can handle additional calls. This is an alternative to

investing in an additional PSAP position and hiring an additional call-taker/dispatcher to handle calls. It should be noted that Clear Creek County receives over 80% of its 9-1-1 calls from travelers on Interstate 70 passing through the County.

- Jefferson County Colorado has noticed a trend in First Responders asking a dispatcher to have a person who has called 9-1-1 hang-up, so the First Responder can call the person directly on the First Responder's cell phone while in route to the incident location. The calls between the First Responder and the person reporting an incident are not recorded by the PSAP call-logger or otherwise, and the call-taker/dispatcher cannot monitor the calls for information which might warrant dispatch of additional units, for example. As a result, Jefferson County is exploring solutions which would allow the PSAP to conference the First Responder into the 9-1-1 call so that the entire transaction would be recorded and could be monitored by the call-taker/dispatcher.
- El Paso-Teller County 9-1-1 (Colorado Springs, Colorado) is exploring the ability to have photographs, video or other images which might be transmitted to 9-1-1 in an NG9-1-1 environment forwarded to First Responders, but not displayed at the PSAP where they would be of limited use to PSAP personnel and would elevate stress levels and emotional involvement of call-takers/dispatchers.
- With NG9-1-1, it will be possible to use routing rules to transmit calls to any PSAP via the ESInet, to any 10-digit landline, mobile or VoIP telephone number, to any 56kbps or faster internet connection, or over any radio system capable of handling voice traffic, in the event of a PSAP overflow or outage situation or even by time-of-day. Small counties with limited public safety budgets who may have only one or two Sheriff's deputies on duty and on patrol at night, may elect to have 9-1-1 calls forwarded over public safety radio systems directly to a deputy on patrol at night, who could dispatch another on-duty deputy, or self-dispatch.

In each of these circumstances, 9-1-1 calls or call-data will be directly forwarded to First Responders over various types of radio and/or mobile data terminals or systems. A state could reasonably conclude, in good faith, that these systems are therefore part of the system for routing, transmitting, receiving and handling 9-1-1 calls and appropriate for funding with 9-1-1 fees.

9-1-1 fees are collected from state residents to be used for provision of 9-1-1 service. The definition of "9-1-1 service" to be funded through such fees is not so clear-cut as some

commenters would suggest. The appropriate definition of 9-1-1 service for purposes of application of 9-1-1 fees is also a decision to be made by each state; not to be dictated by distant bureaucrats who are not experienced with or responsible for the overall day-to-day public safety services to the residents of those states, and who are not subject to the balanced budget constraints of the local agencies or states, or the political judgments of the local electorate.

Nor is it necessary for the federal government to dictate to any state the appropriate uses of 9-1-1 surcharges or fees. State and local governments will of course act in good faith to meet the needs of their constituents, and are subject to the political will of their constituents if they fail to do so. BRETSA has demonstrated that there are a variety of ways in which state or local authorities might achieve the benefits NG9-1-1 without applying a one-size fits all template that could bankrupt some jurisdictions or require that First Responders be taken off the streets to afford additional PSAP capabilities or personnel. The goal of 9-1-1 service should not be the deployment of any specific technology at any specific location, but to get First Responders to the scene of an incident as expeditiously as possible. Technological solutions are simply a means to this end.

If the federal government wishes to assure that grants to support NG9-1-1 are used for specific purposes, it need only specify the purposes for which the grants are to be used and require reports and documentation on the use of the funds. It need not adopt one-size fits all requirements for 9-1-1 systems.

V. Over-The-Top Applications Pose Risks For 9-1-1 And Emergency Response.

Over-the-top applications pose a unique challenge for 9-1-1 and emergency response, could defraud consumers, and can reap rewards for their publishers by shifting costs to public safety authorities. Some over-the-top applications currently being demonstrated require

installation of special software at the PSAP. Given the number of “apps” currently available for some devices, including copy-cat apps, it is simply not possible for all PSAPs to install the software and train their dispatchers in their use.

BRETSA previously advocated that app publishers be required to provide SSPs with the software necessary to convert messages from their apps to a standard format, at no cost to the SSPs. Even this solution may not be feasible given the potential number of apps which could be developed. Thus, neither SSPs nor PSAPs should be required to install any software to receive, decode or use emergency messages from over-the-top applications, and publishers should be effectively required to either deliver their messages (i) in a standard format (e.g. an SMS text message in which an application might automatically insert GPS coordinates), or (ii) via relay from a call center such as those operated by premises or personal alarm companies, OnStar, or similar emergency messaging providers.

Over-the-top application providers should be subject to liability, or limited liability, under state law. Service providers over whose facilities such applications transmit messages should not be liable for the negligent or intentional acts of non-affiliated application publishers since they lack the power to control, limit or prevent the actions of the application publishers.

VI. Service Providers Should Be Granted Limited Immunity, *By States In Their Discretion.*

9-1-1 is an intrastate service, as 9-1-1 calls originate and terminate within the same state. Liability of 9-1-1 service providers will primarily arise under state laws. In Colorado, service providers are given *limited* immunity, in that they remain liable for intentional acts or gross negligence. This approach seems appropriate to BRETSA, in that it avoids excessive claims and litigation and avoids the need for service providers to increase rates to offset litigation costs and

damages awards; yet it provides incentives for service providers to exercise care and avoid intentional conduct which would interfere with the proper delivery of 9-1-1 calls.

Some states may reach a different conclusion than BRETSA, and choose to grant or deny immunity or limited immunity to service providers. A state could conclude that denying any immunity to service providers would allow for residents damaged as a result of a service provider's actions to be made whole, and the costs to be spread among all residents of the state. The costs would be spread among all residents through the mechanism of (i) increased provider charges to public safety authorities to enable it to defend against and pay claims arising out of its 9-1-1 service, and (ii) the public safety authorities setting fees or surcharges at a level to enable payment of the increased rates.

Such a policy would be entirely within a state's discretion, and would not be unreasonable so long as the state was not able to spread the costs of its policy to other states. Because many wireless and VoIP providers have adopted regional or national pricing plans consistent with their national or regional advertising plans, it is possible that increased liability costs would be spread to users in other states. However it is within the Commission's authority to adopt regulations requiring that any rate elements or portion of a provider's pricing attributable to a state's policy denying immunity for ordinary negligence involving the routing and transmission of 9-1-1 calls be recovered through a separate surcharge applied only in the state denying such immunity.

States may wish to grant limited immunity not only with respect to the routing and transport of 9-1-1 "calls," but also for the operation of regional advanced PSAPs by commercial providers or governmental entities. Companies such as Bandwidth.com, Intrado or TCS which manage 9-1-1 compliance for wireless and VoIP providers, SSPs, or other third-party providers,

might establish regional or national advanced PSAPs to convert and/or forward text message or multimedia message content to destination PSAPs not yet capable of receiving them in native format. These advanced PSAPs might interact with the callers in cases of call-overflow or receipt of message formats the destination PSAP is not yet prepared to handle, and transmit “CAD incident files” to the destination PSAP for dispatch of First Responders, just as a call-taker in the same PSAP might create a CAD incident file for a dispatcher to dispatch First Responders.

Alternatively, a PSAP which has upgraded to full NG9-1-1 capability might provide such advanced PSAP services for other PSAPs in its state. A feature of NG9-1-1 is that 9-1-1 calls can be forwarded to alternative PSAPs in the event that the PSAP which should receive a call is at capacity or there is a PSAP or network outage. Depending upon state law, these advanced or alternative PSAPs might not have the benefit of governmental immunity when handling 9-1-1 calls from outside their local jurisdiction.

Decisions as to whether to grant immunity from liability under state law are for each state to make in its own discretion. As long as the state’s judgment does not increase the costs of service in other states or otherwise impact other states, neither any other state nor the federal government has any interest in the matter.

VII. The Role Of The Commission And Federal Government.

The most important role the Commission and federal government can play with respect to NG9-1-1 is to require that standards be open and non-proprietary; or that Intellectual Property Rights used for public safety systems be licensed on a fair and reasonable basis. This is necessary to preserve interoperability and avoid the Tower of Babel which persists in the public safety radio market.

The Commission must reinforce that it has not preempted states from regulating telecommunications services using IP networking technology, and that 9-1-1 calls are intrastate, and thus 9-1-1 service and SSPs are subject to state jurisdiction. The greatest impediment to NG9-1-1 is not a lack of funding or will on behalf of the states. It is uncertainty as to the role of the states with respect to 9-1-1 based on service provider claims of preemption and a lack of clarity by the Commission. By making this clarification, the Commission will get out of the way of the states and let them effectively proceed with improvements to their 9-1-1 systems. This will also enable the states to contract with, or certify, single NG9-1-1 vendors to provide service without having to contract with alternative providers desiring to split the finite volume of 9-1-1 traffic among providers solely for their own pecuniary benefit. BRETSA requested that the Commission clarify state authority over 9-1-1 service, regardless of the technology employed, in its October 23, 2012 Petition for Declaratory Ruling, which BRETSA incorporates herein by reference and which the Commission should grant.

While established service providers seeking to delay or avoid service mandates, pontificate on the complexities and difficulties of implementing NG9-1-1; niche vendors are developing and proposing solutions to overcome these complexities and difficulties. For example, while wireless providers described the difficulties and risks of providing SMS text-to-9-1-1, other vendors were demonstrating how SMS text-to-9-1-1 can be provided if they are afforded access to wireless provider system information. State and local public safety officials will seek out niche vendors who can provide cost-effective solutions to improve 9-1-1 service and emergency response. The Commission must, however, assure that these niche vendors are not blocked by service providers from developing or implementing solutions which are a low priority or non-priority for service providers.

The Commission should act on BRETSA's November 21, 2012 Petition for Rulemaking and issue a Notice of Proposed Rulemaking to require that wireless and VoIP providers provide electronic access to system and customer information for purposes of locating callers to 9-1-1 whose calls have been disconnected, routing text messages to 9-1-1, populating Emergency Notification Service databases, and auditing remittance of 9-1-1 surcharges or fees.

The federal government should also make funding available to support any mandates it adopts for implementation of NG9-1-1 systems, and where federal activities impose costs on local 9-1-1 systems. Examples of federal activities which impose costs on local 9-1-1 systems include (i) interstate highways which carry primarily non-local traffic through jurisdictions, generate the majority of 9-1-1 calls in those jurisdictions and also burden emergency response resources, and (ii) federal lands administered by the US Forest Service, Bureau of Land Management, US Park Service or military services, from which no local taxes are derived to support public safety services but which impose burdens on those services.

VIII. Conclusion.

Comments submitted in this proceeding are rife with demands that the Commission and federal government impose and enforce on state and local governments a variety of requirements to implement NG9-1-1. Just because commenters or federal bureaucrats believe they have a good idea does not mean that they should impose those ideas on state and local authorities who are public safety professionals operating in the context of their overall mission, and/or are subject to budgetary constraints from which the federal government is immune.

Imposing federal mandates regarding 9-1-1 service upon authorities with limited budgets could do more harm than good, by taking off the street the First Responders to actually provide aid in a police, fire or medical emergency. Imposing federal mandates regarding 9-1-1 service

upon authorities with actual public safety experience and responsibility could do more harm than good, by replacing efficient voice calls with a variety of multimedia “calls” which may in practice delay dispatch of First Responders, impact PSAP personnel, place the public at risk and spawn additional incidents from people focused on getting pictures of incidents (of dubious value and of no value for purposes of dispatching First Responders) to send to 9-1-1.

Imposing federal mandates does not guaranty the most effective or efficient 9-1-1 service or emergency response. BRETSA has demonstrated that the issues and choices for implementation of NG9-1-1 are not so clear as commenters suggest. There may be more cost-effective alternatives to achieve the same or better results which states should be free to explore. Public safety is in any event a state and local concern best left to state and local governments. Even in the case of large natural disasters and disasters affecting multiple states, it is the local and state public safety infrastructure which provides the on-the-ground response, with financial and logistical support from the federal government.

State and local officials are deserving of respect, and in the interest of comity should be afforded continued control and discretion regarding public safety services in their states and communities.

Respectfully submitted,

**BOULDER REGIONAL EMERGENCY
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