

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications)	PS Docket No. 11-153
)	
Framework for Next Generation 911 Deployment)	PS Docket No. 10-255
)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Matthew Gerst
Director, State Regulatory & External Affairs

CTIA-The Wireless Association®
1400 Sixteenth Street, NW
Suite 600
Washington, DC 20036
(202) 785-0081

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COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

I. INTRODUCTION AND SUMMARY

CTIA – The Wireless Association® (“CTIA”) hereby submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*FNPRM*”) seeking comment on the Commission’s comprehensive text-to-9-1-1 proposals.¹ The wireless industry is dedicated to assisting in all phases of the transition to a Next Generation 9-1-1 (“NG9-1-1”) system. Although CTIA supports the development of and transition to a NG9-1-1 system, a variety of technical, operational, and regulatory issues must still be addressed to ensure that all citizens will benefit from an interim text-to-9-1-1 framework. In response to the *FNPRM*, CTIA believes that the Commission should:

- Carefully consider whether the Commission has the necessary authority under the Communications Act of 1934, as amended (“Communications Act”), including the Communications & Video Accessibility Act (“CVAA”), to require wireless service providers and equipment manufacturers to support the proposed services.
- Continue to encourage standard-setting organizations and industry players to introduce text-to-9-1-1 and NG9-1-1 services through voluntary efforts. As CTIA has noted, transitioning to NG9-1-1 will raise new technical challenges that will likely require innovative solutions. Rather than imposing inflexible mandates, the Commission should

¹ *Facilitating the Deployment of Text-to-9-1-1 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, Further Notice of Proposed Rulemaking, FCC 12-149 (Dec. 13, 2012) (“*FNPRM*”).

permit stakeholders to develop creative, voluntary solutions to evolving text-to-9-1-1 issues.

- Only take actions regarding text-to-9-1-1 requirements that reflect current technical realities.
- Collaborate with appropriate public safety entities to lead the effort to educate the public about the availability and limitations of text-to-9-1-1.
- Bolster the existing liability protection framework to further ensure that all stakeholders in the development and deployment of NG9-1-1 services are afforded appropriate liability protection.
- Use clear and consistent terminology in any discussion of the development and deployment of text-to-9-1-1 to avoid both consumer and industry confusion.

The wireless industry is committed to ensuring that all wireless subscribers can access emergency communications services when they need them most. Confirming this commitment, in December 2012, CTIA member companies AT&T, Sprint, T-Mobile, and Verizon Wireless agreed (in the “Carrier-NENA-APCO Agreement”) to voluntarily enable text-to-9-1-1 on their networks by May 15, 2014.² Importantly, this voluntary framework will provide near-term opportunities to meet the emergency communications needs of wireless subscribers who currently rely on Short Message Service (“SMS”) for everyday communications and individuals who are deaf, hard of hearing, or speech impaired.³ As noted in the Carrier-NENA-APCO Agreement, however, SMS is a store-and-forward messaging technology that was never designed nor deployed to provide time-sensitive, mission critical service.⁴ Simply put, converting SMS

² Letter from Terry Hall, APCO International, Barbara Jaeger, NENA, Charles W. McKee, Sprint Nextel, Robert W. Quinn Jr., AT&T, Kathleen O’Brien Ham, T-Mobile USA, and Kathleen Grillo, Verizon, to Julius Genachowski, Chairman, Federal Communications Commission, and Commissioners McDowell, Clyburn, Rosenworcel, and Pai, PS Docket 11-153, PS Docket 10-255 (Dec. 6, 2012) (“Carrier-NENA-APCO Agreement”).

³ *Id.* at 1.

⁴ *Id.* CTIA further notes that text messaging incorporates many of the capabilities identified in the definition of an “information service” since SMS text message service involves

text messaging into a current or next generation emergency communications medium continues to pose significant technical challenges and carry inherent limitations; limitations that CTIA and the leading Public Safety Communications organizations have identified for the Commission.⁵ With these challenges, CTIA believes that the Commission can best achieve its objectives by allowing industry standards organizations and other groups representing a broad range of stakeholders to develop common solutions. Unlike specific technical mandates, which could impede the efficient development and deployment of innovative NG9-1-1 solutions, permitting common voluntary solutions allows for flexible responses to complex, new technical challenges. Indeed, commenters have suggested a willingness to partake in these types of voluntary solutions in the near future.⁶ CTIA and the wireless industry thus remain committed to collaborating with interested stakeholders to facilitate the deployment of viable solutions for text-based communications to 9-1-1.

II. THERE ARE SERIOUS QUESTIONS ABOUT THE COMMISSION'S LEGAL AUTHORITY TO MANDATE TEXT-TO-9-1-1

As CTIA and other commenters have explained, the Commission lacks clear legal authority to mandate that CMRS providers and other providers of text-messaging services

offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. 47 U.S.C. § 3(20).

⁵ For instance, CTIA and others have noted that SMS does not have native functionality to provide automatic location information. *See, e.g.*, Reply Comments of CTIA – The Wireless Association®, PS Docket No. 10-255, at 6 (“CTIA March 2011 Reply Comments”); Comments of the Association of Public-Safety Communications Officials International, Inc., PS Docket No. 10-255, at 2 (Feb. 28, 2011) (“APCO February 2011 Comments”); Comments of the National Emergency Numbering Association, PS Docket No. 10-255, at 14-15 (Feb. 28, 2011) (“NENA February 2011 Comments”).

⁶ *See, e.g.*, Reply Comments of Competitive Carriers Association, PS Docket No. 11-153, PS Docket No. 10-255, at 1 (Feb. 8, 2013) (“CCA February 2013 Reply Comments”) (applauding the Carrier-NENA-APCO Agreement and espousing hope that its carrier-members would follow suit).

implement text-to-9-1-1.⁷ The *FNPRM* articulates the same three legal theories as a basis for text-to-9-1-1 rules that first appeared in the *NPRM*: the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), Title III of the Communications Act, and its ancillary authority, and these assertions of authority fare no better in the *FNPRM* than they did in the *NPRM*. Finally, even if the Commission had the authority to act, it would be arbitrary and capricious to do so based on this record, which does not show that it is technically feasible for all carriers to comply with those rules.

A. The CVAA Does Not Authorize a Broad Text-to-9-1-1 Mandate.

The CVAA does not confer any authority for the FCC’s proposed text-to-9-1-1 mandate. The *FNPRM*’s citation to the agency’s “‘authority to promulgate regulations to implement the recommendations proposed by’ the [Emergency Access Advisory Committee (“EAAC”)]” under Section 615c(g) of the Act, as well as specific recommendations of that Committee,⁸ is misplaced. As CTIA has explained previously, Section 615c(g) is a limited grant of authority, and text-to-9-1-1 is outside the ambit of the statute.⁹ Congress specifically intended that the Commission focus on IP-enabled networks and services used by VoIP providers.¹⁰ Although Section 615c(g) contains a residual clause authorizing the Commission to adopt other

⁷ See Comments of CTIA-The Wireless Association®, PS Docket No. 11-153, 10-255, at 19-21 (Dec. 12, 2011) (“CTIA December 2011 Comments”); Reply Comments of CTIA-The Wireless Association®, PS Docket No. 11-153, 10-255, at 9-14 (February 9, 2012) (“CTIA February 2012 Reply Comments”).

⁸ *FNPRM* at ¶ 169.

⁹ See CTIA February 2012 Reply Comments at 10.

¹⁰ *Id.* at 10; see also *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” (internal quotation omitted)).

regulations, interpreting this residual clause as granting plenary authority over electronic messaging would render the main clause specifically discussing IP messaging superfluous.¹¹ As the D.C. Circuit has recognized, “Congress . . . does not, one might say, hide elephants in mouseholes.”¹² The limited nature of the authority conferred by Section 615c(g) is further confirmed by the strict limitation that any regulations imposed must be “achievable,” “technically feasible,” and “necessary.”¹³

The agency also cannot rely on the EAAC’s recommendation as a source of authority, because the agency’s power must be grounded in the statute, rather than in the recommendations of a federal Advisory Committee. Although the EAAC recommended that carriers implement a text-to-9-1-1 solution on an interim basis pending the transition to NG9-1-1,¹⁴ this recommendation goes well beyond Section 615c’s discussion of an IP-enabled emergency network for those with disabilities. In fact, the EAAC itself noted that any recommendations

¹¹ Nor can the FCC rely on the Spectrum Act’s definition of “emergency call” to expand its authority under the CVAA. *See FNPRM* at ¶ 172 n.422 (citing Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001(13), 6503, 126 Stat. 156 (2012) (“Spectrum Act”). In the *FNPRM*, the Commission noted that “the Spectrum Act includes text messaging within its definition of ‘emergency call.’” *Id.* However, the Spectrum Act provides that the definition only applies to 47 U.S.C. § 942, which governs coordination of NG911 implementation. Spectrum Act § 6503 (codified at 47 U.S.C. § 942(e)) (“[i]n *this section*, the following definitions shall apply”) (emphasis added). There is nothing to suggest that Congress intended that the definition should apply more broadly and it certainly does not amend the CVAA. Indeed, the fact that Congress expressly *included* messaging in one statute but did not do so in the CVAA creates the inference that the CVAA does *not* include messaging. *See Keene Corp. v. U.S.*, 508 U.S. 200, 208 (1993) (“[W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (internal citations omitted).

¹² *See Whitman v. American Trucking Ass’n, Inc.*, 531 U.S. 457, 468 (2001).

¹³ CTIA February 2012 Reply Comments at 10 (citing 47 U.S.C. § 615c(g)).

¹⁴ EAAC, EAAC Report and Recommendations at 26, 28 (Jan. 26, 2012) (“EAAC Report”).

actionable by the FCC must be determined within the scope of the FCC’s authority.¹⁵ In a statement accompanying the EAAC’s recommendations, industry members of the EAAC noted significant concerns about the scope of the EAAC’s recommendations in relation to the CVAA.¹⁶

The record also reveals serious questions about whether the rules proposed are “achievable[,] technically feasible” and “necessary,” as Section 615c(g) requires.¹⁷ First, the record does not show that the proposed rules are “achievable,” *i.e.*, requiring only “reasonable effort or expense.”¹⁸ The agency cites to the Carrier-NENA-APCO Agreement as evidence that “all CMRS providers” can “cost-effectively implement a text-to-9-1-1 solution in the near term,”¹⁹ but it ignores that only four carriers entered into the voluntary agreement (which notably does not contemplate text-to-9-1-1 while a subscriber is roaming). Second, questions remain about the technical feasibility of a roaming requirement. The FCC itself acknowledged that “roaming may create issues for text-to-911 because of the greater technical complexity of routing the message to the correct PSAP based on the consumer’s location.”²⁰ Indeed, as explained further below, the EAAC recently recommended that the FCC and appropriate standards organizations, in consultation with stakeholders, study and consider the roaming issue, among others, to determine whether those issues can be resolved without significant modifications to

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 65 (“Many of the EAAC recommendations address issues well beyond those contemplated by Congress in Section 106 of the CVAA, while others do not reflect the careful balance and flexible approach that Congress intended by the CVAA or would prejudice the outcome of Commission pending rulemakings such as PS Dockets 07-114 and 10-255.”).

¹⁷ *See* 47 U.S.C. § 615c(g).

¹⁸ *See* 47 U.S.C. § 617(g).

¹⁹ *FNPRM* at ¶ 66.

²⁰ *FNPRM* at ¶ 124.

existing capabilities.²¹ Third, the agency has not shown that the broadly applicable proposed rules are “*necessary to achieve . . . access by individuals with disabilities to an Internet protocol-enabled emergency network.*”²²

Finally, the proposed rules are in direct tension with Section 2(a) of the CVAA and the agency’s interpretation of that provision. In the *Advanced Communications Services Order*, the FCC concluded that providers and manufacturers of advanced communications services and equipment are *not* responsible for third-party applications and services that are not components of its service or equipment.²³ But the draft rules purport to require carriers to “offer a text-to-911 application that the consumer can load on to” a device obtained from an unaffiliated third party.²⁴ This requirement could be read as mandating that CMRS providers build infrastructure that enables over-the-top applications to default to the carrier’s SMS solution in order to deliver this capability, which contradicts the Commission’s conclusion in the *Advanced Communications Services Order*.

B. Title III Does Not Authorize The FCC To Adopt Text-to-9-1-1 Rules.

Congress enacted the CVAA and the Next Generation 9-1-1 Advancement Act of 2012²⁵ because it recognized explicit authority was necessary to advance the implementation of

²¹ See *infra* Section III.

²² 47 U.S.C. § 615c(g) (emphasis added). See *infra* Section II.D.

²³ CVAA § 2(a) (codified at 47 U.S.C. § 153 note); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, et al.*, CG Docket No. 10-213 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 ¶¶ 77-78, 88 (2011) (“*Advanced Communications Services Order*”).

²⁴ *FNPRM* at App. B.

²⁵ Spectrum Act §§ 6503-6508.

NG9-1-1 services. In this context, the agency cannot rely on Title III to provide the broad authority missing in the CVAA. As CTIA and other commenters have noted, the specific and delimited grant of authority under the CVAA must control over more general grants of authority, such as Title III, that are not specifically addressed to text-to-9-1-1 rules.²⁶ Congress authorized the FCC to impose accessibility regulations on five enumerated services under the CVAA. Nothing in the CVAA suggests that the EAAC is empowered to make recommendations outside the scope of the CVAA, or that the FCC can fall back on general rulemaking authority to expand the effective scope of this endeavor. To the contrary, the fact that Congress has acted to establish a framework that is limited to five expressed areas suggests that the FCC does *not* have carte blanche to regulate here in reliance on Title III.²⁷

In any event, Title III does not authorize the Commission to mandate that wireless service providers provide text-to-9-1-1 capability.²⁸ In the *NPRM*, the FCC cited several provisions in Title III that confer procedural authority to grant or modify licenses, including 47 U.S.C. §§ 301, 307, 309 and 316.²⁹ As CTIA has explained, these provisions do not include any substantive grant of power over licensees' provision of text-to-9-1-1, and the invocation of these sections in

²⁶ CTIA February 2012 Reply Comments at 11; Comments of Verizon and Verizon Wireless, PS Docket Nos. 11-153 and 10-255, at 26 (Dec. 12, 2011) (“Verizon December 2011 Comments”).

²⁷ In other contexts, where Congress has intended the FCC to take specific action using its general rulemaking authority, it has made that intent clear. *See, e.g.*, Telecommunications Act of 1996, Pub. L. No. 104-104, § 704, 110 Stat. 56 (1996) (“Within 180 days after the enactment of this Act, the Commission shall complete action . . . to prescribe and make effective rules regarding the environmental effects of radio frequency emissions”).

²⁸ CTIA February 2012 Reply Comments at 12.

²⁹ *Facilitating the Deployment of Text-to-911 and Other Next Generation Applications, Framework for Next Generation 911 Deployment*, Notice of Proposed Rulemaking, FCC 11-134, at ¶ 117 n.214 (Sept. 22, 2011) (“*NPRM*”) (citing 47 U.S.C. §§ 301, 307(a), 309(j)(3), 316(a)(1)).

the *FNPRM* is no more appropriate than in the *NRPM*.³⁰ Although the *FNPRM* also newly invokes Sections 303(b) and 303(g),³¹ the agency's reliance on these provisions is misplaced.

Section 303(b). It is telling that neither Congress nor the Commission previously considered Section 303(b) as a source of authority broad enough to justify NG9-1-1 rules or a text-to-9-1-1 mandate. Rather, Congress enacted the CVAA and the Next Generation 9-1-1 Advancement Act of 2012³² because it recognized the need for explicit authority to advance the implementation of NG9-1-1 services. And while the FCC has promulgated a number of E9-1-1 reports and orders in the last few years, it has not invoked Section 303(b) as a basis for doing so.³³

Section 303(b) does not authorize the agency to impose text-to-9-1-1 rules. Section 303(b) has been interpreted to confer authority on the agency to *manage licensed spectrum*.³⁴ Yet the *FNPRM*'s proposed rule mandates the provision of text-to-9-1-1 functionality *in the applications layer*. Allowing the FCC to prescribe the provision and functionality of text-to-911 applications *that use* the radio network would be a tremendous expansion of the agency's authority. Indeed, such a broad reading of Section 303(b) would arguably allow the FCC to

³⁰ CTIA February 2012 Reply Comments at 12.

³¹ *FNPRM* at ¶ 170 (citing 47 U.S.C. §§ 303(b), 303(g)).

³² Spectrum Act §§ 6503-6508.

³³ *See, e.g., Wireless E911 Location Accuracy Requirements et al.*, Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking, Docket No. 05-196, 26 FCC Rcd 10074 ¶ 39 (2011) (relying on Sections 301 and 303(r) of the Communications Act for authority to promulgate further E911 location accuracy rules).

³⁴ *MCI Telecomms. Corp. v. FCC*, 561 F.2d 365, 373 (D.C. Cir. 1977); *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 441-43 (D.C. Cir. 1991). CTIA notes that the proposed rules extend well beyond SMS over licensed spectrum to include text messages sent over *unlicensed* spectrum, *e.g.*, Wi-Fi.

impose, for example, a requirement that carriers offer news services or even prescribe the particular content of such services.

Section 303(g). Neither does Section 303(g) authorize the proposed text-to-9-1-1 rules. In pertinent part, Section 303(g) provides that the agency shall “generally encourage the larger and more effective use of radio in the public interest[.]”³⁵ This clause delegates no regulatory authority in the context of text-to-9-1-1. Instead, it constitutes a general statement of policy.³⁶ Accordingly, Section 303(g) cannot justify the proposed rules.³⁷

C. Any Attempt to Rely on Ancillary Authority Would Be Dubious.

With the Commission’s authority to promulgate the proposed text-to-9-1-1 rules under the CVAA or Title III in doubt, any attempt by the Commission to rely on its ancillary authority would be highly dubious. It is well-settled that the FCC may only regulate pursuant to its ancillary authority when: “(1) the Commission’s general jurisdictional grant under Title I covers the subject of the regulations; and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”³⁸ Foremost, the proposed rules are not “reasonably ancillary” to the FCC’s “effective performance of its statutorily mandated responsibilities” under Title III. As explained above, the agency has not

³⁵ 47 U.S.C. § 303(g).

³⁶ See *Comcast v. FCC*, 600 F.3d 642, 644 (D.C. Cir. 2010) (“[S]tatements of policy, by themselves, do not create ‘statutorily mandated responsibilities.’”) (internal citation omitted).

³⁷ To the extent that Section 303(g) does contain limited, specific grants of substantive authority, they are very different from that at issue here. For example, Section 303(g) grants authority to “study new uses for radio” and to “provide for experimental uses of frequencies.” 47 U.S.C. § 303(g). Those provisions have no bearing here.

³⁸ *Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

identified any duty to require text-to-9-1-1 capability. Lacking a basis in a “statutorily mandated responsibility” under Title III, the proposed rules would be ancillary to nothing.

D. The Adoption of a Text-to-9-1-1 Mandate Would Be Arbitrary and Capricious On The Instant Record.

Even if the FCC had authority to adopt the proposed rules, which it does not, it would be arbitrary and capricious for the agency to do so. An agency order is arbitrary and capricious if it requires regulated entities to take an action which has not been shown to be technically feasible.³⁹ But the proposed rules do just that, by requiring CMRS providers to route emergency text messages to the appropriate PSAP, even when a customer is roaming.⁴⁰ As CTIA explains below, the record does not show that provision of text-to-9-1-1 while roaming is technically feasible.⁴¹ Absent a sufficient record of feasibility, it would be arbitrary and capricious for the FCC to adopt the rule as proposed.

III. ANY ACTION TAKEN BY THE COMMISSION MUST REFLECT TECHNICAL REALITIES

CTIA and its member companies are committed to fulfilling the promise of NG9-1-1 services for all citizens. Thus, the wireless industry has consistently collaborated and innovated to develop emergency communications solutions to benefit the public at large. To continue the successful transition to NG9-1-1 services, however, any regulatory requirements imposed must reflect the technical realities and challenges that may face the wireless industry during the

³⁹ *Carlin Communications, Inc. v. FCC*, 787 F.2d 846, 847, 856 n.5 (2d Cir. 1986) (suggesting rule was arbitrary and capricious as applied to certain providers where FCC did not show that its proposal was technically feasible with providers’ systems); *see also Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (the agency must “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made’”) (internal citation omitted).

⁴⁰ *FNPRM* at App. B.

⁴¹ *See infra* Section III.

transition. For example, the Commission should carefully consider the amount of time providers may need to implement required text-to-9-1-1 capabilities before proposing an implementation timeline. To that end, CTIA notes that only four carriers were parties to the Carrier-NENA-APCO agreement, and the Commission should not assume that their voluntary commitment can form the basis for an industry-wide regulatory deadline. Along these lines, CTIA stresses that the Commission should consider any proposed rules in light of current technical realities, network architectures and individual carrier circumstances.

A. The Text-to-9-1-1 Roaming Proposal May Not Be Technically Feasible.

The Commission's text-to-9-1-1 roaming proposal may not be technically feasible. The *FNPRM* proposes that when a subscriber is roaming, both the home and visiting network operators must cooperate to support the delivery of a text message to the appropriate PSAP serving the sender's location.⁴² Before such a requirement is imposed, however, additional studies assessing the feasibility of text-to-9-1-1 when a customer is roaming are necessary. At present, there is considerable uncertainty surrounding whether texting-to-9-1-1 services may be available when a customer is roaming. Accordingly, as the Commission correctly notes, the Carrier-NENA-APCO agreement does not provide for text-to-9-1-1 service while a subscriber is roaming.⁴³ In its recent report on interim text-to-9-1-1 solutions, the EAAC recommends that the Commission and appropriate standards organizations, in consultation with appropriate stakeholders such as representatives of public safety and individuals with disabilities, study and

⁴² *FNPRM* at ¶ 126; App. B, § 20.18(n)(5) (proposed rule).

⁴³ *Id.* at ¶ 19; *see also* Carrier-NENA-APCO Agreement at 3 (“SMS-to-911 will not be available to wireless subscribers roaming outside of their home wireless network”).

consider the roaming issue to determine whether it can be resolved prior to the completion of the NG9-1-1 transition without significant modifications to existing capabilities.⁴⁴

In its recent report, the EAAC found that “in inter-carrier domestic or international roaming situations, SMS-to-9-1-1 cannot, at this point, be supported because addressing the ‘Text Originator Information’ and ‘Home Network Control’ issues would require significant modifications to the wireless originator network and core infrastructure that will ultimately delay the deployment of SMS-to-9-1-1 services.”⁴⁵ As the EAAC noted, SMS text messages that are sent between wireless provider roaming partner networks do not always pass through Text Originator Information, which includes location information that is necessary to route the SMS to the appropriate PSAP.⁴⁶ Further, SMS messages are under “home operator control,” meaning that an SMS message is routed to a subscriber’s home network for processing, regardless of the network from which the message originated.⁴⁷ This is particularly problematic in the international roaming context, as an international roamer’s home operator network is outside the U.S. and not capable of routing an SMS message toward the appropriate U.S. PSAP. These are significant challenges that require additional examination by technical experts and other stakeholders.⁴⁸

⁴⁴ EAAC, *Report of Emergency Access Advisory Committee (EAAC) Subcommittee 1 on Interim Text Messaging to 9-1-1*, at 2 (March 1, 2013) (“EAAC March 2013 Text Messaging Report”). Interim Text to 911 Report, at 2.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Moreover, roaming is not supported by hybrid service offerings such as the service provided by Republic Wireless. <http://republicwireless.com/>. Republic Wireless’ calling services may be Internet-based and the 911 Services associated with Republic Wireless’ Internet-based calling services are different from those offered by traditional providers of CMRS

CTIA submits that the Commission should not take any specific action with regard to roaming until the record is more fully developed regarding the feasibility of text-to-9-1-1 while roaming. Instead of adopting requirements that would impose significant compliance hardships for providers, the Commission should more appropriately address the roaming issues by educating the public about the known limitations of text-to-9-1-1 services.

B. The Commission Should Carefully Consider the Continued Necessity of Wireless TTY.

In light of the availability of alternative text-based communications methods for the deaf, hard of hearing and speech impaired to reach PSAPs, including text-to-9-1-1, the Commission has appropriately sought comment on whether to continue mandating in the future that new wireless networks and handsets support a wireless TTY solution. It is generally accepted that wireless TTY is seldom, if ever, used for 9-1-1 communications by the deaf, hard of hearing and speech impaired.⁴⁹ Consequently, the Commission should evaluate the continued necessity of the wireless TTY requirement on a holistic basis.

The EAAC has noted that TTY devices and services are used very little over wireless handsets and networks.⁵⁰ Moreover, an EAAC survey demonstrates that mobile text-based communications, such as SMS, e-mail and data services are more commonly used by the TTY user community than TTY devices or services via wireless handsets and networks.⁵¹ In the

or wireline telephone services. Republic Wireless' Mobile VoIP 911 calling services are not meant to be relied upon in the case of an emergency. *See* <https://community.republicwireless.com/docs/DOC-1489>.

⁴⁹ *FNPRM* at ¶ 110.

⁵⁰ *See EAAC, Report on TTY Transition*, at 11 (Mar. 2013) (“EAAC TTY Transition Report”).

⁵¹ *FNPRM* at ¶¶ 110-111.

CVAA, Congress specifically recognized that there should be a transition from TTY to more commonly used text-based communications.

As the Commission thus correctly observed in the *FNPRM*, there are other forms of accessible communications to reach 9-1-1 services that can be used by persons with disabilities.⁵² Taking these developments into account, CTIA agrees that it is appropriate for the Commission to consider whether the TTY user community is best served by maintaining the TTY requirement for new wireless handsets and networks, particularly over those wireless devices and services that support SMS-based text-to-9-1-1 on a voluntary basis.

IV. THE COMMISSION AND PUBLIC SAFETY ENTITIES MUST TAKE A LEADING ROLE IN PUBLIC EDUCATION REGARDING TEXT-TO-9-1-1

CTIA agrees with the Commission that “educating the public is critical to the successful roll-out of text-to-911 and preventing consumer confusion.”⁵³ Public education efforts will be vital to managing the public’s expectations about the evolving communications services available during emergencies, particularly during a transition period to NG9-1-1. In its Comments regarding consumer education and automated bounce-back messages, CTIA noted that, while automated bounce-back messages will play an important role in educating subscribers about text-to-9-1-1, other steps must be taken to explain to the public that text-to-9-1-1 services are limited.⁵⁴ Along these lines, the Commission itself stated that “[a]side from educating the public about the availability or unavailability of text-to-9-1-1, education is also imperative to

⁵² *Id.* at ¶¶ 111-113.

⁵³ *Id.* at ¶ 36.

⁵⁴ Comments of CTIA – The Wireless Association®, PS Docket No. 11-153, PS Docket No. 10-255, at 11 (Jan. 29, 2011) (“CTIA January 2013 Comments”).

inform the public about the capabilities and limitations of text-to-911 where it is available, and the circumstances under which texting 911 is or is not preferable to making a 911 voice call.”⁵⁵

Although the signatory service providers to the Carrier-NENA-APCO Agreement have stated that they will work together, alongside the Commission, to develop an outreach effort, commenters agree that responsibility for consumer education should not be left solely to wireless carriers.⁵⁶ The Carrier-NENA-APCO Agreement was not intended to displace the Commission’s leadership role in educating the public.⁵⁷ As the promise of text-to-9-1-1 continues to make headlines, it will take a joint effort, led by the Commission, to successfully manage the public’s expectations regarding text-to-9-1-1. In turn, effectively managing the public’s expectations of text-to-9-1-1 services through Commission-coordinated public education will help promote trust and understanding of this emerging technology.

As part of the ongoing public education effort, CTIA also urges the Commission to make clear that text-to-9-1-1 is not currently an option in the vast majority of the country. Some commenters have suggested that consumers may have unrealistic expectations about the availability of text-to-9-1-1 services.⁵⁸ To effectively manage the public’s expectations and

⁵⁵ *FNPRM* at ¶ 37.

⁵⁶ *See* Comments of AT&T Inc., PS Docket No. 10-255, PS Docket No. 11-153, at 7 (Jan. 29, 2013) (“AT&T January 2013 Comments”) (suggesting the Commission should be the primary public educator); Comments of the National Emergency Number Association, PS Docket No. 11-153, PS Docket No. 10-255, at 7 (Jan. 29, 2013) (“NENA January 2013 Comments”); Comments of The Boulder Regional Emergency Telephone Service Authority, PS Docket No. 11-153, PS Docket No. 10-255, at 11 (Jan. 29, 2013) (“BRETSA January 2013 Comments”) (arguing that public education should be a shared responsibility of state and local 9-1-1 and the Commission).

⁵⁷ *See* AT&T January 2013 Comments at 7-9.

⁵⁸ BRETSA January 2013 Comments at 12 (explaining that fictional television dramas may create unrealistically high expectations about text-to-9-1-1 availability).

avoid confusion, the public will need to understand that text-to-9-1-1 services will not immediately be available in all locations. In addition, public education will be essential to explaining the technical limitations of the short code “9-1-1.” As CTIA and others have explained, some existing wireless handsets do not have the capability to support texting to a three digit code such as 9-1-1.⁵⁹ For the transition to NG9-1-1 to be successful, the public must understand that not all devices may support text-to-9-1-1. Accordingly, public education efforts must emphasize that subscribers should not rely upon the availability of text-to-9-1-1 without first confirming that their particular device is capable of supporting the service.

It is also well-established in this and related proceedings that SMS will always have inherent limitations as an emergency communications system. Existing text message technologies such as SMS were not built to mission-critical standards for use as a form of emergency communication.⁶⁰ Further, the ability to speak directly, in real time, with an emergency service provider will always have certain advantages that cannot be replicated in a text-to-9-1-1 environment. For example, a voice call allows for the 9-1-1 call taker to assess the emotional state of the caller, to hear background noise that may be relevant to the emergency response, and to hear information provided by other individuals speaking in the background.⁶¹ There always will be situations where an individual would be better served by making a voice

⁵⁹ CTIA January 2013 Comments at 7; *see also* Letter from Bennett L. Ross, counsel to Motorola Mobility, Inc. to Marlene H. Dortch, Federal Communications Commission, PS Docket No. 11-153, at 1 (Apr. 17, 2012) (“Motorola has released well in excess of 100 mobile device and software combinations in the U.S. market within the past three years, none of which has been tested for support for 911 as a SMS short code. As a result, with the installed base of Motorola devices, end users’ experiences in trying to use 911 as an SMS short code may be seriously lacking.”). CTIA also notes that Common Short Codes are comprised of either five-digit or six-digit numbers. *See* http://www.usshortcodes.com/csc_csc.html.

⁶⁰ *See, e.g.*, AT&T January 2013 Comments at 7.

⁶¹ *Id.*

call to 9-1-1, rather than by sending a text message, and any consumer education program should highlight these limitations so that consumers can make an informed decision regarding which technology to use when requesting emergency assistance.

V. THE COMMISSION SHOULD TAKE STEPS TO PROMOTE LIABILITY PROTECTION FOR PROVIDERS OF NG9-1-1 SERVICES

As CTIA and others have observed in this proceeding, a text-to-9-1-1 and NG9-1-1 world contemplates a wide variety of new entities, media, and applications that may challenge existing liability protections.⁶² Delivery of wireless NG9-1-1 services can involve many entities, including: (1) the caller; (2) the service provider from whom the emergency call is generated; (3) the manufacturer of the handset used to make the call; (4) a routing infrastructure/location vendor; (5) an application software vendor; (6) a PSAP CPE/GIS vendor; (7) PSAP personnel; and, (8) first responders, among others.⁶³ Further, a variety of new technologies are involved in providing text-to-9-1-1 capabilities to the public. The record in this and related proceedings shows widespread support for clear, comprehensive, standardized, nationwide liability protection for *all* of these entities and technologies participating in any aspects of emergency services access, including texting to 9-1-1.⁶⁴ Avoiding lingering risks of legal exposure for NG9-1-1 entities will help facilitate a prompt NG9-1-1 transition.⁶⁵

⁶² See Reply Comments of CTIA – The Wireless Association®, PS Docket No. 12-333, PS Docket No. 11-153, PS Docket No. 10-255, at 2-4 (Jan. 14, 2013) (“CTIA January 2013 Reply Comments”).

⁶³ See *id.* at 6.

⁶⁴ See, e.g., Comments of the Association of Public-Safety Communications Officials International, Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 4 (Dec. 13, 2012) (“APCO December 2012 Comments”) (“Liability protection, consistent with existing laws, must be in place to ensure a healthy, competitive environment for NG9-1-1 products and services, and promote the most rapid advances in technology to protect life and property.”); Comments of AT&T Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 3-4 (Dec. 13, 2012) (“AT&T December 2012 Comments”) (“Without [liability protection], access providers and others would

Congress has taken action to provide important liability protections to providers of 9-1-1 services. Further, the Commission has made important recommendations to Congress, urging a broad approach to liability protections for the NG9-1-1 environment. Acknowledging that existing liability protections should be enhanced, the Commission recently recommended that Congress should include appropriate liability protection as a part of any federal law that imposes NG9-1-1 requirements or solicits voluntary NG9-1-1 activity.⁶⁶ Additionally, CTIA agrees with the Commission's recommendation that Congress should consider incentives for states to revise their liability regimes to provide appropriate protection for entities providing or supporting NG9-1-1 services.⁶⁷

However, while existing liability protection provisions and the Commission's recent recommendations provide an important foundation for protecting entities in the NG9-1-1 world, the Commission should continue to bolster the liability protection framework. As commenters have noted, existing federal parity of protection statutes such as the New and Emerging

be reluctant, or would refuse entirely, to participate in the system that makes emergency services possible or the costs of providing such access would rise and become prohibitive because everyone in the chain of production would have to adjust rates and prices to cover potential claims and losses.”); Comments of TeleCommunication Systems, Inc., PS Docket Nos. 10-255, 11-153, and 12-333, at 5 (Dec. 13, 2012) (“TCS December 2012 Comments”) (“Without adequate liability protection, NG9-1-1 innovation will quickly slow and eventually cease. Such a result is unacceptable, and certainly not in the best interest of the citizens using or benefitting from 9-1-1.”).

⁶⁵ See, e.g., Comments of Verizon and Verizon Wireless, PS Docket Nos. 10-255, PS Docket No. 11-153, PS Docket No. 12-333, at 5 (Dec. 13, 2012) (“Verizon December 2012 Comments”) (“To the extent that a state does not have a 911 liability protection statute, or has a statute that does not clearly cover non-voice services . . . liability risks could potentially deter NG911 deployment or increase deployment costs in a particular state.”).

⁶⁶ FCC, *Legal and Regulatory Framework for Next Generation 911 Services*, Report to Congress and Recommendations, at 40 (Feb. 22, 2013).

⁶⁷ *Id.* at 39.

Technologies 911 Improvement Act⁶⁸ (“NET 911 Act”) and Section 6506 of the NG9-1-1 Advancement Act⁶⁹ merely extend the “patchwork” of state legislation to 9-1-1 service providers.⁷⁰ States vary significantly in terms of the duties of care and potential liabilities imposed on 9-1-1 activities.⁷¹

As CTIA has stated during the course of this proceeding, comprehensive liability protection should be articulated at the national level and extend to both federal and state causes of action.⁷² Even if federal statutes extend the patchwork of state liability protections to NG9-1-1 participants, providers will still be subject to the vagaries of state law. Further, it is essential that liability protection be ensured for all of the diverse entities, technologies, and stakeholders in a text-to-9-1-1 or NG9-1-1 environment. For these reasons, CTIA strongly supports creating a nationwide uniform liability standard that protects all entities and technologies involved in access to 9-1-1 services, regardless of the technology being used.

VI. ANY RULES ADOPTED BY THE COMMISSION MUST BE CLEAR, EASILY UNDERSTOOD, AND USE CONSISTENT TERMINOLOGY

In its bounce-back message Comments, CTIA noted the importance of promulgating text-to-9-1-1 rules that are clear and easy to understand. As part of its effort to educate the public about the availability of text-to-9-1-1 services in their area, the Commission must craft text-to-9-1-1 rules that are clearly and consistently worded. These concerns raised by CTIA in

⁶⁸ See 47 U.S.C. § 615a.

⁶⁹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012), Title IV, Subtitle E, § 6506 (Next Generation 9-1-1 Advancement Act).

⁷⁰ See, e.g., AT&T December 2012 Comments at 2.

⁷¹ CTIA February 2011 Comments at 12; see also Comments of CTIA – The Wireless Association®, PS Docket No. 08-51 at 10-11 (Jun. 30, 2008) (“CTIA June 2008 Comments”).

⁷² CTIA January 2013 Reply Comments at 7.

its previous Comments are not limited to the bounce-back message context. Any text-to-9-1-1 rules that use inconsistent or vague terms may hinder efforts to explain text-to-9-1-1 availability to both providers and the public at large. Nevertheless, as CTIA and others have noted in this proceeding, there are several instances in the *FNPRM* and/or in the Commission’s proposed rules where the Commission uses inconsistent terminology that could create confusion for both subscribers as well as those potentially regulated by the Commission.

Throughout the *FNPRM*, the Commission has used several similar-sounding but distinguishable terms to describe the universe of providers who would be subject to its proposed rules. For example, the *FNPRM* refers, at various points, to “interconnected text messaging providers,”⁷³ “other providers of text messaging services,”⁷⁴ “prospective text-to-9-1-1 service providers,”⁷⁵ “prospective providers of interconnected text service,”⁷⁶ and “interconnected text application providers.”⁷⁷ In its bounce-back message Comments, CTIA noted these inconsistencies and suggested that the Commission should either (1) use consistent terminology throughout the *FNPRM* and the proposed rules or (2) provide a detailed explanation as to the differences among these various provider types and state how it proposes the rules would apply to each.⁷⁸ CTIA’s concerns about consistent terminology are equally valid in the broader

⁷³ *FNPRM* at ¶ 2.

⁷⁴ *Id.* at ¶ 25.

⁷⁵ *Id.* at ¶ 26.

⁷⁶ *Id.* at ¶ 29.

⁷⁷ *Id.* at App. B, § 20.18(n)(6)(a) (proposed rule).

⁷⁸ Moreover, smartphones use both licensed and unlicensed networks for text messages, and hybrid service providers providing text-capable handsets may not be able to support basic 9-1-1, let alone text to 9-1-1. See n. supra. [Republic Wireless’ Mobile VoIP 911 calling services are not meant to be relied upon in the case of an emergency. See <https://community.republicwireless.com/docs/DOC-1489>]

text-to-9-1-1 context. Using clear and consistent terminology throughout all of the Commission’s proposed text-to-9-1-1 rules is essential to avoiding both public and industry confusion.

Along similar lines, the *FNPRM* uses inconsistent terms to describe the types of mobile devices that would be covered by the proposed rules. For example, the Commission’s proposed rules refer to both “text-capable wireless handset[s]”⁷⁹ and “mobile device model[s].”⁸⁰ Using both terms, without providing definitions, creates ambiguity about what is covered by the Commission’s proposed rules and what is not covered. For example, using both terms creates confusion about whether other mobile devices, such as air cards and tablets, are included within the ambit of the proposed rules. Again, the Commission should either use consistent, defined terminology throughout the *FNPRM* and proposed rules, or clarify, with greater precision, the mobile devices that the proposed rules would cover, keeping in mind that it must only adopt regulations such that compliance is technically feasible.

Further, both the *FNPRM* and the Commission’s proposed rules refer to “consumers” sending text messages to 9-1-1 rather than “subscribers.” Using “consumers” rather than “subscribers” suggests that the Commission is presuming that all consumers, regardless of subscription, should be able to access the text-to-9-1-1 service. CTIA has raised significant concerns with continuing an “all calls” approach for new 9-1-1 emergency communications services.⁸¹ Existing network standards and architectures for text messaging, such as SMS, require a message to be originated from a wireless handset with valid service. Accordingly,

⁷⁹ *Id.* at App. B, § 20.18(n)(2) (proposed rule).

⁸⁰ *Id.* at App. B, § 20.18(n)(2)(a) (proposed rule).

⁸¹ *See* CTIA December 2011 Comments at 8 (delineating the policy challenges implicated by extending the Commission’s “all calls” rules).

CTIA submits that “subscribers” is the more appropriate term to use throughout the *FNPRM* and the proposed rules.

VII. CONCLUSION

The wireless industry shares the Commission’s important goal of ensuring that wireless subscribers can access emergency communications systems when they need them most. CTIA and its members have long been involved in the development of text-to-9-1-1 solutions, culminating in the adoption of the Carrier-NENA-APCO voluntary agreement. Just as the wireless industry will continue to strive to ensure that its networks, devices, and services are capable of providing NG9-1-1 capabilities to subscribers, so too must the Commission take steps to provide an appropriate legal and operational environment for text-to-9-1-1 services.

Respectfully submitted,

By: /s/ Brian M. Josef

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Michael F. Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Vice President, Regulatory Affairs

Matthew Gerst
Director, State Regulatory & External
Affairs

CTIA – The Wireless Association®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
(202) 785-0081

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