

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

In the Matter of

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

Framework for Next Generation 911  
Deployment

PS Docket No. 11-153

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## **I. INTRODUCTION AND SUMMARY**

In Sections III.B and III.C of its *Further Notice*,<sup>1</sup> the Commission seeks comments on various proposals on near-term and long-term deployment of text-to-911 services. With either deployment, the Commission should hold firm to its proposal that any text-to-911 obligations should “apply on a technology-neutral and provider-neutral basis,” as well as on a competitively-neutral basis in order to “avoid[] arbitrage created by artificial regulatory distinctions.”<sup>2</sup> What’s more, the Commission should abandon non-next-generation thinking and imagine the world of communications as it is presently evolving; *i.e.*, a world moving away from circuit-switch communications that rely on ten-digit telephone numbers and the old infrastructure that supported such communications to an IP-enabled world where general communications rely on new and different protocols. To do otherwise is to risk excluding from NG911 obligations text messaging services that rely on certain IP-based protocols and still provide general communication on an open-ended basis.

Now that the four largest wireless carriers have voluntarily committed to offer text-to-911 starting in May 2014,<sup>3</sup> the Commission should require that all competing interconnected text messaging services, including so-called over-the-top (OTT) application services, match this commitment. Each such service should be able to accept and route emergency text messages to the appropriate public safety answering point (PSAP) using the agreed-upon dialing code or, when appropriate, return a bounce-back message alerting the end user of the unavailability of text-to-911. The Commission’s use of *interconnected* to refer to text messaging services that

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<sup>1</sup> *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment, Further Notice of Proposed Rulemaking*, PS Docket No. 11-153, PS Docket No. 10-255, FCC 12-149 (rel. Dec. 13, 2012) (*Further Notice*).

<sup>2</sup> *Id.* ¶¶ 90, 93.

<sup>3</sup> 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 No. 10-255 (Dec. 6, 2012). (Carrier-NENA-APCO Agreement or Agreement).

support general communication with text-capable telephone numbers may be useful in the near term; however, the Commission should be reluctant to rely on this limitation with respect to long-term deployment because users of IP-enabled text messaging services are fully capable of communicating with the general public on an open-ended basis without relying on the ten-digit telephone number. In the long term, the Commission will need to adopt a broader vision of the text messaging services that ought to be able to support text-to-911 access.

In keeping with the competitive-neutrality principle, the Commission should *not* adopt a requirement that CMRS providers “provide their customers with at least one pre-installed text-to-911 option per device model that works across the provider’s entire network coverage area” because it is both unnecessary and unwise to single out one class of competitor in the text messaging services marketplace. It is unnecessary because, while short message service (SMS) texting is used to provide text-to-911, SMS text messaging will be available as long as circuit-switched voice service is available. And it is unnecessary after CMRS providers transition from circuit-switch services to IP-enabled services because competing alternative IP-based services in a fully functioning marketplace will be available. This proposal is unwise because it injects this unnecessary regulatory intrusion into this competitive market. The Commission should focus on making sure that text messaging services are built to industry standards that provide text-to-911 access and avoid getting hung up on burdening one class of provider.

Along these lines, the Commission needs to avoid definitions of covered services that would violate the Commission’s own principle of avoiding arbitrage created by artificial regulatory distinctions. Both of the definitions proposed by Apple and the VON Coalition raise serious concerns in this area. The Apple definition would appear to allow Apple to evade any text-to-911 obligation for its iMessage service because only applies to services that send and receive text-based messages “via short message service protocol.” And the VON Coalition’s proposed requirement of a two-way service is strikingly similar to the two-way service element in the definition of interconnected VoIP service, which has created a regulatory loophole for some providers that are competing with POTS. Again, whichever way the Commission chooses

to describe the covered text messaging services, the Commission should avoid distorting the marketplace for these services and making some competitors carry the regulatory burden for all.

We support the proposal that other text messaging services should be required to meet the May 2014 service deadline agreed to in the Carrier-NENA-APCO Agreement. Naturally, the Commission should allow extensions if providers can show good cause and meet a reasonable alternative date. And the Commission should adopt other elements of the Agreement, as well, such as clarifying that providers are not obligated to resolve disputes concerning whether a PSAP is technically ready to start accepting emergency text messages and whether a PSAP is duly authorized to do so. The Commission should also use the post-request implementation period—*i.e.*, “within a reasonable amount of time of receiving such request, not to exceed six months”—for any interim text-to-911 solutions. In the long-term, the Commission might impose a shorter implementation period if the record supports doing so.

While liability protection for text-to-911 participants wasn’t expressly covered by the Agreement, it is none the less extremely important. We support limitation of liability protection that is clear and unambiguous, comprehensive, standardized, nationwide, and applicable equally to all participants that make NG911 services possible. Anything less will adversely impact participation in NG911 services.

The participating carriers in the Agreement did not commit to a text-to-911 roaming capability, and the Commission should not impose one at this time. Roaming requires an end-user-location ability not presently available with the interim solution. Any roaming obligation should wait for full deployment of NG911, if it proves to be technically feasible.

The Commission proposes that “CMRS providers be required to route text messages automatically to the appropriate PSAP *based on the cell sector to which the mobile device is connected.*” Whatever the Commission intended with this proposal, we support allowing CMRS providers to route text messages automatically to the appropriate PSAP *based on the cell site to which the mobile device is originally connected for the initial text message in any one emergency transaction (often referred to as a “dialogue”)*, and not based on the cell sector to which the

mobile device is connected. This clarification is consistent with requiring the text control center to maintain the relationship between the end user and the PSPAP during the course of the entire emergency dialogue. For interim text-to-911, the Commission should support the ATIS/TIA standards that are due out shortly. This is consistent with the commitment made in the Carrier-NENA-APCO Agreement.

Finally, the Commission should rely on the Twenty-First Century Communications and Video Accessibility Act (CVAA) as its specific grant of authority to require that text messaging services meet certain standards and allow access to emergency services via text messaging. The CVAA's specific grant of authority to the Commission is a better basis for asserting authority in this area than is either a Title I or Title III claim, both of which are more problematic.

## II. DISCUSSION

### **A. Comprehensive Text-to-911 Proposals**

Through the *Further Notice*, the Commission is seeking input on how to address the emergency communications needs of the disabled community, especially persons with hearing and speech disabilities, as well as a new generation of Americans to whom communications involve multiple media and devices. Here, the Commission is largely focusing on one category of emergency communications: text-to-911. In doing so, the Commission correctly distinguishes between the “near-term deployment” (also referred to as the *interim solution*) of text-to-911 and the “full deployment of NG911” (or *long-term solution*).<sup>4</sup> Both are equally important because, as the Commission noted, “due to the complexity and cost of deploying NG911 infrastructure on a national scale, full deployment of NG911 will not be uniform and will likely take years” and near-term deployment of text-to-911 “will substantially improve accessibility to emergency services, particularly for people with hearing and speech disabilities.”<sup>5</sup>

The challenge will be to address these needs through both near-term and long-term solutions without imposing unnecessary costs and without hobbling emerging technologies and businesses, all the while anticipating the possible future course of NG911 technologies and maintaining competitive neutrality between industry providers.

- 1. The Commission should require all providers competing in the interconnected text messaging service marketplace to provide text-to-911 service on a competitively neutral basis.**

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<sup>4</sup> *Further Notice* ¶¶ 42, 43. While full deployment of NG911 will involve more than mere texting, text-to-911 is the initial step down the path to “an IP-based system comprised of managed IP-based networks (ESInets), functional elements (applications), and databases that replicate traditional E9-1-1 features and functions and provide additional capabilities.” *Id.* n.96.

<sup>5</sup> *Id.* ¶ 43.

In the *Further Notice*, the Commission proposes requiring all CMRS and interconnected text messaging service providers<sup>6</sup> “to implement the capability to support text-to-911 in their networks.”<sup>7</sup> We understand the Commission’s proposal to mean that *all* interconnected text messaging services that offer *general* text messaging communication services should be capable of accepting and routing emergency text messages to the appropriate PSAP using the agreed-upon dialing code or, when appropriate, returning a bounce-back message alerting the end user to the unavailability of text-to-911. The Commission should make it clear, however, that all general text messaging communication service providers who compete with each other in this market must have the same obligation to provide text-to-911 access to their customers. Anything less would unfairly and improperly distort the market for text messaging services by burdening some providers while allowing others to either shirk their public safety responsibilities in this area entirely or enjoy a free ride at the expense of others.

That said, the Commission should be concerned about too narrow a view of “general text messaging communications services.” If, as the Commission asserts, it is critical for all end users to have text-messaging access to 9-1-1, the Commission has to take a longer and broader view of interconnected communications. In the same way that there is already a generation of communications consumers who have cut the wire and do not use wireline POTS services today, there is a rapidly growing community of consumers who, using various devices, are already communicating—voice, text, and video communications—almost exclusively without relying on ten-digit telephone numbers. Yet these end users are not limited to a defined set of users. They

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<sup>6</sup> In the *Further Notice*, the Commission defines “interconnected” in terms of delivering the text messages to destinations *identified by a telephone number*. See ¶ 91. We assert that this view of interconnection is too narrow, especially for the full deployment of NG911.

<sup>7</sup> *Further Notice* ¶ 60. In the *Further Notice*, the Commission uses various terms to refer to the text providers that might be the subject of any Commission future regulation concerning the long-term solution for text-to-911. The Commission appears to exclude “IP-based messaging applications that support communication with a defined set of users of compatible applications but do not support general communication with text-capable telephone numbers.” *Id.* ¶ 30. Outside of that, however, the Commission’s terminology lacks precision.

are capable of communicating with anyone using email or IP addresses.<sup>8</sup> A view of the market that focuses on the common carrier model and on old technologies, including the mechanism they employ, *e.g.*, ten-digit telephone numbers, risks leaving the new generation of consumers unserved or underserved. In the short-term, the Commission may be able to rely on its definition of *interconnected* text messaging services that “support general communications with text-capable telephone numbers”; however, that is not a viable or desirable path forward for full deployment of NG911 services.<sup>9</sup>

Along these lines, we oppose the Commission’s proposal that *CMRS providers* “provide their customers with at least one pre-installed text-to-911 option per device model that works across the provider’s entire network coverage area.”<sup>10</sup> The practical effect of this proposal is to set CMRS carriers apart based solely on their CMRS-provider status and to treat their text messaging service differently from the text messaging services of other providers of

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<sup>8</sup> If this were not bad enough, the Commission’s sense of “general communications” may be too narrow as well. Take for example communicating over Facebook. Given the numbers of individuals and entities registered on Facebook, it is hard to see how communications between and among Facebook members can be classified as limited to a defined set of users.

<sup>9</sup> There is considerable concern that the rush to develop interim solutions to text-to-911 risks codifying old generation thinking. Old generation thinking—one that is based largely on the old methods of communicating, including overreliance on common carrier duties and POTS-based switched circuit mechanisms—will not further the Commission’s stated goal of “substantially improv[ing] accessibility to emergency services, particularly for people with hearing and speech disabilities.” *Further Notice* ¶ 44. The Commission should resist the temptation to use the old telephony regulatory model to fashion solutions for the next generation of communications, including emergency communications.

<sup>10</sup> *Further Notice* ¶ 60. The Commission refers to “CMRS providers” throughout the *Further Notice*. We have understood this term to mean those CMRS providers who are subject to the Commission’s wireless 911/E911 rules. In Commission Rule 20.18(a), “CMRS providers” are subject to those rules only to the extent that they—

(1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and

(2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.

47 C.F.R. § 20.18(a). If the Commission intends something else, however, the Commission should clarify the scope of this term.

interconnected text messaging services. This proposal is part and parcel with the non-next-generation thinking the Commission needs to abandon now and in the long-term.

To be clear, with the understanding that the Commission's view on what constitutes general communications services needs to be broadened, we support requiring that all interconnected text messaging *services* provide subscribers access to text-to-911. We oppose, however, focusing on the nature of the provider of the service—CMRS provider vs. device manufacturer vs. software developer, *etc.*—instead of ensuring that all covered *services* are text-to-911 capable and meet accepted industry standards. The Commission should not obligate CMRS providers, or any other entities, to be providers of text messaging services or adopt regulations that effectively discriminate against CMRS providers and in favor of their competitors in the text messaging services market. Consistent with our pro-competition advocacy in this proceeding—*i.e.*, that the Commission's regulatory decisions should focus on the *service*, and not on the *category of the provider*, and that the Commission's regulations should not distort the marketplace in this highly competitive arena—we urge the Commission to reconsider this proposal.

Looking at this proposal from both the interim solution and long-term solution perspectives, the Commission should recognize that it is both unnecessary and unwise. *First*, in the short term, CMRS providers will be using their existing text messaging service to provide an interim solution to text-to-911. Today's CMRS provider's text messaging service is short message service (SMS) texting, which was “designed as a secondary service to use *signaling channels and other resources when they were not used for voice calls.*”<sup>11</sup> As long as CMRS providers are using their 2G, 3G, or 4G circuit-switched networks to provide service to text-capable devices, the SMS service will be available for text-to-911. This makes requiring a pre-installed application unnecessary.

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<sup>11</sup> TEXTING TO 911: Examining the Design and Limitations of SMS, 4G Americas, p. 10 (Oct. 2010). (*Texting to 911 Report*).

*Second*, in the long term, this proposal is *unnecessary* because IP-based applications built to industry standards will already give consumers choices of text messaging services to choose from with or without CMRS provider intervention. Shortly, CMRS providers themselves will begin transitioning from circuit-switched voice service to long-term evolution (LTE) systems that are IP-based. With the advent of LTE, as customers move from 3G and 4G devices to LTE devices, those old circuit-switched associated channels and resources will begin to disappear because CMRS providers will no longer want to maintain the outdated systems. As a result, CMRS providers will employ alternative IP-based text messaging services. These IP-based text messaging services will be applications on smartphones (and other IP-enabled devices) just as other software developers' applications are today. In this environment, there is no need to distinguish between text messaging service applications based on some provider classification (*e.g.*, CMRS provider, device manufacturer, software developer), imposing regulations on one provider's application but not another's. If IP-based services and devices are built to industry standards and if there is an effective certification process, text messaging applications will work on multiple devices and support NG911 emergency communications. Consumers will have multiple text messaging applications to choose from and, if they are built to agreed-upon industry standards, those applications will provide access to 9-1-1 without the need to impose some unique obligation on CMRS providers to pre-install a text messaging application. In the absence of obligating all text messaging service application developers to meet agreed-to industry standards aimed at allowing universal access to emergency services, the requirement to have one classification of text messaging service provider (*i.e.*, CMRS providers) pre-install at least one text-to-911 option per device model may increase consumer confusion because consumers may not understand why the same device (*e.g.*, smartphone, tablet) may support text-to-911 for one text messaging service application but not another.

When viewed from this perspective, the Commission would be well advised to focus on the text messaging service itself, now and in the long-term, and not the category of the provider. When all text messaging services are equally obligated to provide access to 9-1-1 under the same

regulatory regime and are employing internationally accepted standards, it doesn't matter how the text is sent, including whether the text is sent over CMRS provider facilities.<sup>12</sup> What should matter is that the consumer's choice of text messaging service allows access to 9-1-1 emergency services. So, instead of obligating one classification of provider, *i.e.*, CMRS providers, to pre-install at least one text-to-911 option per device model that works across the provider's entire network coverage area, the Commission should focus on making all text messaging applications text-to-911 capable in accordance with industry standards.

What's more, the Commission's proposal is *unwise* because text messaging services thrive in a dynamic and competitive space with many active competitors. Because of this, those competitors—whether they are a CMRS provider or a device manufacturer or an over-the-top (OTT) application developer—will need to respond to the market and make market-based decisions predicated on demand for their services and the profitability of their offerings. In some cases, this will require the provider to exit the business; in others, to retool their offering.<sup>13</sup> The Commission's proposal to require CMRS providers to pre-install at least one text-to-911 option per device model that works across the provider's entire network coverage area disrupts this market dynamic by burdening one classification of provider, leaving their competitors unequally regulated.

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<sup>12</sup> IP-based text messaging services do not rely solely on wireless spectrum. Texting can take place over a many different devices and use various media—wireline, wireless, and WiFi. Applications that are downloaded to “phones” can be equally downloaded to tablets and laptop and desktop computers.

<sup>13</sup> In spite of this, however, text messaging services would still generally continue to be profitable for many text messaging service providers and there would still be a text messaging service provider—in all likelihood, multiple providers—in the marketplace providing these services to the public. While we have no plans of exiting the text messaging service business and believe that we can provide a competitive service now and in the future (whether in the SMS format or otherwise), the future is always uncertain. Businesses should be free to make business judgments based on the best interests of their shareholders. This should not present a concern because, as the Commission has already recognized, the text-messaging market is vibrant and growing. *Framework for Next Generation 911 Deployment, Notice of Inquiry*, 25 FCC Rcd 17869 ¶ 41 (2010) (*NOI*) (The Commission takes note of the “popularity” and “ubiquity” of SMS text messaging services and discusses how consumer use of the service has “exploded in the past decade.”)

If the Commission's fundamental concern is that there should be a text messaging service available to support text messaging access to 9-1-1, that concern will be addressed by a properly functioning market for the service. Because the market is functioning as it should, there is no need for regulatory intervention to guarantee that there will be a provider of text messaging service to make texting to 911 a reality. Rather applications and devices need to be built to industry standards and properly certified, making all entities that choose to offer text messaging services to the public equally obligated to provide access to emergency communications, including text-to-911.

**2. The Commission's definition of covered services should be written so as not to distort the marketplace by intentionally or inadvertently allowing competitors in the text messaging service arena evade their public safety obligations or by allowing them to shift the cost of compliance to others.**

The Commission has roughly divided text messaging service applications into two categories:

(1) interconnected text applications that use IP-based protocols to deliver text messages to a service provider, which the service provider then delivers the text messages to destinations identified by a telephone number, using either IP-based or SMS protocols, and (2) non-interconnected applications that only support communication with a defined set of users of compatible applications but do not support general communication with text-capable telephone numbers.<sup>14</sup>

As mentioned above, the Commission favors obligating the former group of applications (*i.e.*, group 1) with providing access to 911 by text messaging, but not the latter (*i.e.*, group 2).<sup>15</sup> We agree that non-interconnected applications that only support communication with a defined set of users of compatible applications but that do not support general communication with text-capable devices should not be made the subject of this text-to-911 regime.<sup>16</sup>

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<sup>14</sup> *Further Notice* ¶ 91.

<sup>15</sup> *Id.*

<sup>16</sup> Our view of *interconnected* does not rely solely on use of ten-digit telephone numbers, but also includes protocols that allow ubiquitous or nearly ubiquitous communications on an open-ended basis.

**a. The definitions proposed by Apple and the VON Coalition raise questions of fairness and competitive neutrality.**

It remains for the Commission to further characterize the universe of the covered text messaging services in group 1. In the *Further Notice*, the Commission briefly discusses two approaches—one from Apple and another from the VON Coalition.<sup>17</sup> Both of those approaches have serious drawbacks, not the least of which is to violate what should be one of the Commission’s touchstone principles in devising solutions for NG911: competitive neutrality.

For example, Apple proposes that—

the Commission . . . limit its proposals to those applications that (1) are installed on a device that determines the user’s location using a technology that meets the enhanced 911 requirements set forth in Section 20.18(h) of the Commission’s rules; and (2) independently enables the user to send text-based messages to and receive text-based messages from any valid North American Numbering Plan telephone number via the short message service protocol.<sup>18</sup>

This definition would appear calculated to exclude Apple’s iMessage service from the text-to-911 obligation. For messages between iPhone users (*i.e.*, iMessage texter to iMessage texter), Apple’s iMessage service directs text messages over Apple’s network and away from the CMRS provider’s native SMS text messaging service—the obvious immediate impact on the CMRS provider is a reduction in its text-message revenues. When texting between different applications (*e.g.*, Apple iMessage customer texting to RIM BlackBerry customer), however, the iMessage service and several other text messaging applications redirect texts between their customer and non-customers back to the native SMS capability on the phone. Because text-to-911 would by definition involve sending texts to a non-iMessage user (*i.e.*, PSAPs), all the text-to-911 traffic would be handled by the CMRS provider’s native SMS service and none by Apple’s iMessage. While this switch between iMessage and the native SMS service would be seamless and transparent to the end user, it shifts the costs of providing this public safety obligation away from Apple and over to the CMRS providers.

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<sup>17</sup> *Further Notice* ¶¶ 87, 92.

<sup>18</sup> *Id.* ¶ 87.

This Apple service arrangement (*i.e.*, iMessage texter to iMessage texter) differs from the peering relationship that has been established for text messaging between CMRS providers. In the relationship between CMRS providers, all messages are sent to the originating CMRS provider's core network, and a message center server there determines whether they should be delivered to another subscriber on the originating CMRS provider's network (*e.g.*, Sprint texter to Sprint texter) or exchanged at a peer level with another CMRS provider (*e.g.*, Sprint texter to T-Mobile texter). This peering arrangement allows CMRS providers to be adequately compensated for the exchange of text messages. Letting application developers pick and choose between messages that their service will handle allows those developers to take the "profitable" messages and leave behind those that more expensive to process—such as text-to-911 messages—to be handled by the underlying CMRS provider. Moreover, this arrangement would allow these non-CMRS text providers to avoid having to develop the capabilities that allow them to perform a locate and route the text-to-911 messages to the PSAP based on that locate. Unless their service is placed on a regulatory par with those of other providers in the market, these non-CMRS text messaging service providers will continue to avoid investing in efforts necessary to develop location and routing mechanisms and to shift the costs of performing location and routing on their competitors.

Looking back to Apple's proposed definition, it would appear to skew the burdens of text-to-911 onto some and off the shoulders of Apple and would raise issues for the CMRS providers' interim text-to-911 SMS-based solution. *First*, under Apple's proposal, only messaging applications capable of sending messages to and from the handsets *via* SMS protocol would be covered. Apple's iMessage service doesn't do this. Consequently, the definition codifies the routing of costlier text-to-911 traffic to the CMRS provider's native SMS service and away from Apple's iMessage service. An alternative definition that references interworking *with* SMS, rather than *via* SMS, might address this concern.

*Second*, Apple's definition requires a location ability that no one can provide for the SMS-based interim solution for text-to-911; *i.e.*, that the application's technology meets the

enhanced 911 requirements set forth in Commission Rule 20.18(h). As discussed in more detail below, we anticipate using a “rough location” mechanism for the SMS-based interim solution for text-to-911. Rough location routing of text-to-911 messages is based on the originating cell site and does not meet the standards set by the Commission location accuracy rules. The Commission shouldn’t expect the level of locates from text-to-911 required of CMRS providers’ voice service under Commission Rule 20.18(h) until standards for a long-term solution are adopted and the solution is implemented. This makes the location ability aspect of the Apple definition impractical at this time.<sup>19</sup>

Turning to the VON Coalition’s suggestion that, for OTT applications, the Commission’s text-to-911 obligations should only apply when the application is “two way,” this appears equally problematic. This proposal is eerily similar to the present definition of interconnected VoIP, which has been responsible for the so-called “Skype exception” to the VoIP 911/E911 rules.<sup>20</sup> Under this exception, providers sell the in-bound and out-bound VoIP service offerings separately but the end result is effectively to provide the customer with the equivalent of a two-way voice service that competes with POTS. In the case of the Skype exception, there may have been legitimate policy reasons *early on* for the Commission to exempt Skype’s and other similar

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<sup>19</sup> In addition to being *impractical*, it may not even be *appropriate* under any future long-term NG911 standard that is ultimately developed.

<sup>20</sup> Commission Rule 9.3:

An interconnected Voice over Internet protocol (VoIP) service is a service that:

- (1) Enables real-time, *two-way voice communications*;
- (2) Requires a broadband connection from the user's location;
- (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

47 C.F.R. § 9.3 (emphasis supplied).

providers' offerings from the 911/E911 rules.<sup>21</sup> In this case, however, where text messaging services are mature and established and where competition is stiff between providers, any similar exception would only allow some to game the system and duck their public safety text-to-911 obligations, leaving the burdens of text-to-911 to CMRS providers. Such a result would not be competitively neutral.

Whichever approach the Commission adopts, it should be careful not to employ one that distorts the marketplace for text messaging services. All providers of text messaging services that compete in the same arena ought to be equally obligated to provide text-to-911 access to their customers. The aim here should be to avoid allowing certain providers of text messaging services to gain market share and revenue but to shirk any text-to-911 duties. As seen from the Commission's survey of the prior comments to the 2011 *Notice*, many providers of OTT texting applications hope to evade this responsibility even though such providers' service continue to proliferate and gain in popularity, draining revenues away from more established providers.<sup>22</sup> Any long-term solution to text-to-911 must burden all equally—CMRS providers, integrated application providers, OTT providers—*i.e.*, all those entities that provide general text messaging communication services (as opposed to providing communications to a defined set of users) regardless of how acquired or which text delivery methodology they employ.

**b. The Commission should not adopt any solution for third-party text software providers that requires the CMRS providers to shoulder a competitor's public safety obligations for free.**

In its discussion of how third-party text software providers might deliver text-to-911 access to their end-user customers, the Commission has “posit[ed] three possible implementation choices” as illustrative options.<sup>23</sup> The *first* option involves leveraging the SMS application programming interface (API); the *second* works by delivering the message to the SMS gateway

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<sup>21</sup> To be clear, we believe that the Skype exception should be eliminated and that Skype and similarly situated VoIP providers should be obligated to offer 911 access just like the POTS offerings that they seek to replace.

<sup>22</sup> See *Further Notice*, ¶¶ 85-86.

<sup>23</sup> *Id.* ¶¶ 95-98.

provider selected by the application vendor; and the *third* delivers messages to the PSAP by either the text messaging service provider or third-party service provider using NG911 protocol mechanisms. In the *Further Notice*, the Commission seeks comments on these three illustrative options, as well as asking whether alternative mechanisms might be available.

We oppose the first option because it clearly violates the general principle that these obligations and the technology to support them should be competitively neutral. In option one, the CMRS provider's SMS-based text messaging service is subsidizing the third-party text software providers' service. CMRS providers should not have to underwrite the operations of their competitors.

Much is made by some that these OTT application developers are "smaller enterprises." That may be so, but they still seek to siphon off considerable revenues from other text messaging service providers in a very competitive market. And even smaller enterprises, which seek to provide general communications services, need to meet certain minimum standards for public safety. If properly motivated, these application developers can find the means to provide location information and route text-to-911 messages to the appropriate PSAP without requiring CMRS providers or others to underwrite their operations.

**3. The Commission should adopt a reasonable deadline for implementing an interim solution to text-to-911 for all providers of interconnected text messaging services but allow providers to seek extensions upon a showing of technical infeasibility.**

In the Carrier-NENA-APCO Agreement, the four largest CMRS carriers agreed to make text-to-911 available by May 15, 2014.<sup>24</sup> This essentially gives the carriers 18 months in which to retool their existing text messaging services to this purpose. Because they are by-in-large using SMS texting as the text-to-911 offering, which was not designed or provisioned to mission-critical standards for emergency communications, this solution is by definition an interim one. The long-term solution (*i.e.*, full deployment of NG911)—one that addresses the

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<sup>24</sup> Carrier-NENA-APCO Agreement p. 2.

shortcomings of using SMS texting for emergency communications—is still under development in the appropriate standards-setting bodies (ATIS, NENA, 3GPP).

The Commission proposes to use the same May 15, 2014, deadline for requiring all CMRS providers and interconnected text messaging service providers “to implement the capability to support text-to-911 throughout their networks.”<sup>25</sup> Presumably, these providers may also be implementing interim solutions to text-to-911 based on existing text message services. Because the Carrier-NENA-APCO Agreement and the Commission’s Further Notice have put these providers on alert to this pending future obligation, the proposed May 15, 2014 deadline may be appropriate even if it doesn’t provide the remaining providers 18 months to comply from the effective date the obligation.

That said, however, the Commission should allow providers to request extensions to the deadline if they can show with reasonable certainty that technical barriers bar compliance by the deadline. Any such request should include an alternative deadline and an explanation why the alternative deadline is reasonable and is achievable while the May 15, 2014 date is not. Making the deadline for implementation of the general obligation to provide the interim text-to-911 solution the same for all CMRS providers might cause less consumer confusion; nevertheless, any potential consumer confusion caused by granting waivers of the deadline can be mitigated through the use of the bounce-back message and customer education.

**4. The Commission should safeguard providers from being embroiled in disputes between or among PSAPs or other local emergency authorities, provide covered entities and their vendors comprehensive liability protection, and allow at least six months for implementation of interim text-to-911 services.**

In the Carrier-NENA-APCO Agreement, the four largest carriers are only obligated to initiate text-to-911 service to a PSAP after May 15, 2014, *upon request*.<sup>26</sup> That request is only deemed valid if

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<sup>25</sup> *Id.* ¶ 101.

<sup>26</sup> Carrier-NENA-APCO Agreement p. 2.

a) the requesting PSAP represents that it is technically ready to receive 9-1-1 text messages in the format requested; and b) the appropriate local or State 9-1-1 service governing authority has specifically authorized the PSAP to accept and, by extension, the signatory service provider to provide text-to-9-1-1 service (and such authorization is not subject to dispute).<sup>27</sup>

We believe that some aspects of this provision may be appropriate for other providers of interconnected text messaging services once the interim solution to text-to-911 is mandated by the Commission.

**a. Technically Ready and Duly Authorized**

One aim of this provision in the Agreement was to guarantee that a provider would not be caught up in a jurisdictional dispute between or among public safety agencies. It is the responsibility of state and local governments to determine where emergency communications, including any NG911 communications, are directed and to nominate which state or local entities are responsible for receiving 9-1-1 communications and routing them to emergency service personnel.<sup>28</sup> The language of the Agreement was intended to make provisioning text-to-911 service contingent on the proper state and local governments fulfilling this obligation and to protect providers from contradictory claims of authority. In any case, interconnected text messaging service providers should not be responsible for determining whether a PSAP or other local emergency authority is duly authorized to handle text-to-911 messages or technically capable of doing so.

**b. Liability Protection**

Another aim of the provision was to extend to the four largest carriers any limitation of liability protection that might be afforded them under the NET 911 Improvement Act.<sup>29</sup> On the issue of limitation of liability protection, the NET 911 Improvement Act seeks to provide parity

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<sup>27</sup> *Id.*

<sup>28</sup> See 47 C.F.R. §20.3, definition of “Designated PSAP” (“The Public Safety Answering Point (PSAP) designated by the local or state entity that has the authority and responsibility to designate the PSAP to receive wireless 911 calls.”).

<sup>29</sup> New and Emerging Technologies 911 Improvement Act of 2008, *110 P.L. 283; 122 Stat. 2620* (2008), codified at 47 U.S.C. §§ 615a *et seq.*

among the different providers of 9-1-1 access (e.g., wireline, wireless, IP-enabled voice service provider).<sup>30</sup> One classification of provider was the catch-all “other emergency communications service provider,” which is defined as follows:

(A) an entity other than a local exchange carrier, wireless carrier, or an IP-enabled voice service provider that is required by the Federal Communications Commission consistent with the Commission's authority under the Communications Act of 1934 to provide other emergency communications services [“The term ‘other emergency communications service’ means the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service” — 47 U.S.C. § 615b(9)]; or

(B) in the absence of a Commission requirement as described in subparagraph (A), *an entity that voluntarily elects to provide other emergency communications services and is specifically authorized by the appropriate local or State 9-1-1 service governing authority to provide other emergency communications services.*<sup>31</sup>

In *voluntarily* committing to provide text-to-911 in the Agreement, there was some concern that the carriers wouldn't be viewed in their capacity as “wireless carriers” for the purposes of this statute's liability protection parity provision because text-to-911 is not a common carrier voice service and because the carriers were not at the time they made the commitment required by the Commission to provide text-to-911 access. It was thought that, as providers of text messaging services, the carriers might be seen as falling into the “other emergency communications providers” category and as such would need authorization “*by the appropriate local or State 9-1-1 service governing authority*” to provide the service in order to be entitled to whatever liability protection might be afforded them under the NET 911 Improvement Act. Hence, under the Agreement, the PSAP's request for text-to-911 service constitutes the PSAP's (and other appropriate state and local authorities') authorization to the carriers to provide that service.

In sum, this provision was a belt-and-suspenders mechanism to reassure the volunteering carriers that they would be afforded *whatever* limitation of liability protection is provided by the

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<sup>30</sup> See 47 U.S.C. § 615a(a).

<sup>31</sup> 47 U.S.C. § 615b(10) (emphasis added). This definition would appear to embrace the proposed provider of text-to-911 services.

NET 911 Improvement Act (either as a carrier or as an emergency communications service provider) and to reasonably guarantee that they could avoid any after-the-fact contention that the NET 911 Improvement Act didn't provide the requisite protection. Were the Commission to *require* interconnected text messaging service providers to provide text-to-911 service, then this issue concerning applicability of the limitation of liability provision of the NET 911 improvement Act to "other emergency communications service providers" might prove to be moot.

In the *Further Notice*, the Commission poses several questions concerning the state of liability protection afforded providers of 911/E911 services, in particular protection extended to non-traditional providers under the NET 911 Improvement Act.<sup>32</sup> In that act, Congress attempted to put wireless providers, Voice over Internet Protocol (VoIP) providers and "other emergency communications service providers" in limitation-of-liability protection parity with the "local exchange company."<sup>33</sup> Congress did this by statutorily extending to these other providers the same "immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise)."<sup>34</sup> The upshot of this, however, has been to leave many new providers perplexed as to the extent to which they are actually immune from liability associated with 9-1-1 access because immunity afforded the local exchange companies is often based on telephone company tariffs, which can vary from jurisdiction to jurisdiction or which are being eliminated or replaced or which are tied to a specific time-division multiplexed (TDM)-based technology. State statutory protections and judicial decisions aren't much better as they depend on the state's largesse of the moment and require interpretation of how such protections might be translated to providers of 9-1-1 access in

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<sup>32</sup> *Further Notice* ¶ 164.

<sup>33</sup> 47 U.S.C. §§ 615a *et seq.*

<sup>34</sup> 47 U.S.C. § 615a(a).

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

Limitation-of-liability protection for all persons and entities in the provisioning chain for access to 9-1-1 emergency services, regardless of technology, should be a national concern and should be articulated at the national level. That protection should be clear and unambiguous, comprehensive, standardized, nationwide, and applicable to all equally—regardless of technology involved. Congress’s previous attempt to address this issue has fallen short because, while well intended, it has caused confusion and doubt by tying that protection to a myriad of sources—statutes, judicial decisions, tariffs, *etc.*—some of which are obscure or present interpretation issues or are insufficient. The creation of a modern NG911 system impacts interstate commerce—network providers, software developers, equipment manufacturers, and associated vendors—and Congress needs to recognize its obligation to make limitation-of-liability protection for these entities a *national* concern. Settling this issue will go a long way in freeing the market to create the NG911 equipment and services needed to bring the provisioning of emergency services into the 21<sup>st</sup> Century and in answering the Commission’s call “to achieve a comprehensive vision for enhancing the safety and security of the American people” by “allow[ing] first responders anywhere in the nation to send and receive critical voice, video, and data to save lives, reduce injuries and prevent acts of crime and terror.”<sup>35</sup>

The Commission notes that the four largest carriers voluntarily committed to offer text-to-911 “without any precondition requiring additional liability protection other than the protection that is provided by current state and Federal law.”<sup>36</sup> The carriers didn’t take on this commitment because they thought that the then present state of liability protection was adequate or clear. Rather, they made the voluntary commitment hoping that the NET 911 Improvement

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<sup>35</sup> CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, Chp. 16: Public Safety, p. 313.

<sup>36</sup> *Further Notice* ¶ 167. It is difficult to imagine how, under the circumstances, the carriers could have conditioned their voluntary commitment on future state legislative action on this topic.

Act might provide *some level of protection* and hoping that the carriers could persuade the Commission and Congress of the need for further reform. The fact that these providers are hopeful that Congress will enact comprehensive, standardized, nationwide protection before May 15, 2014, should not mislead the Commission about our concerns over the inadequacy of the protections afforded by the NET 911 Improvement Act or deter the Commission from urging more from Congress. Our complaint with the level of protection afforded providers today under the NET 911 Improvement Act is that it lacks all the elements we believe are essential to encouraging deployment NG911 services; that is, they should be clear and unambiguous, comprehensive, standardized, nationwide, and applicable to all equally.

**c. Post-Request Implementation Period**

After receiving a valid PSAP request, the Agreement obligates the four largest carriers to implement text-to-911 service “within a reasonable amount of time of receiving such request, not to exceed six months.”<sup>37</sup> This language was used to reassure PSAPs that the request would be addressed reasonably quickly and to give the carriers time to overcome any unanticipated difficulties in implementing the service. In making this voluntary commitment, the carriers set sail into uncharted waters to offer a new service. Consequently, it wouldn’t have been reasonable to hold any carrier to a rigid schedule. This reasoning seems equally applicable to the Commission’s question of whether six months is an appropriate timeframe for implementation of any future Commission requirement to provide text-to-911.<sup>38</sup> Until the service and associated processes are refined and until providers have some experience provisioning the service, this six-month timeframe should be acceptable. At some future date, however, the Commission might want to revisit the issue and apply another, shorter timeframe if deemed appropriate.

**5. The Commission should adopt a forward-looking rule that requires all text messaging networks and text-capable cell phones to support 911 as the three-digit code for emergency texts.**

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<sup>37</sup> Carrier-NENA-APCO Agreement p. 2.

<sup>38</sup> *Further Notice* ¶ 103.

The Commission should adopt the use of 911 as the three-digit short code for emergency texts. This requirement, however, should be applied on a forward-looking basis and not applied retroactively. There are some yet undetermined number of text-capable cell phones in use and in stock that are incapable of using the digits 911 as a short code. For some of these, the short-code limitation might be susceptible to a manufacturer's modification—typically an update to the phone's operating system; these modifications would normally depend on both the cooperation of the phone's manufacturer and end-user customer. In other cases, however, the phone may not be susceptible to upgrade. Indeed, in some cases the phone may no longer be sold by the carrier or maintained by the device manufacturer.

**6. The Commission should allow CMRS providers to route their text messaging subscribers' emergency text messages automatically to the appropriate PSAP based on the location of the originating cell site of the initial text message.**

Under the Carrier-NENA-APCO Agreement, we have committed to making an interim solution to text-to-911 service available by May 15, 2014, upon valid requests from “technically ready” PSAPs.<sup>39</sup> Although not spelled out in the Agreement, we anticipate routing emergency texts to appropriate PSAPs based on rough location information. Routing in this manner uses the originating cell site of the end user's initial text message. We assert that the Commission's regulations should allow us and other similarly situated carriers to employ this routing mechanism.

In the *Further Notice*, the Commission proposes that “CMRS providers be required to route text messages automatically to the appropriate PSAP *based on the cell sector to which the mobile device is connected.*”<sup>40</sup> It is not clear to us what the Commission intends or expects based on this language. It may be that the Commission intends the obvious solution; *i.e.*, that the routing of text messages during the course of a set of text communications ought to be pinned to

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<sup>39</sup> Carrier-NENA-APCO Agreement p. 2.

<sup>40</sup> *Further Notice* ¶ 118 (emphasis added).

the location of the *originating* cell site of the *initial* text message. For our purposes, the Commission's rule ought to allow CMRS providers to route text messages automatically to the appropriate PSAP *based on the cell site to which the mobile device is originally connected for the initial text message in any one emergency transaction (often referred to as a "dialogue")*, and not based on the cell sector to which the mobile device is connected.

Using the originating cell site requires that the text control center (TCC) maintain the relationship between the end user and the PSAP during the entire emergency dialogue. In so doing, the TCC will guarantee that the emergency service personnel within the original PSAP organization work the transaction from beginning to end and avoid lost time and other possible difficulties inherent with changing PSAP organizations during the course of handling one transaction.

**7. The Commission should not require roaming for the interim text-to-911 solution.**

The Commission recognizes that ultimately text subscribers will need to send emergency text messages while roaming on another carrier's network. Today, however, with the interim text-to-911 solution, roaming is not possible. Roaming, if at all feasible, should only be part of any long-term solution to emergency texting.

In a nutshell, the problem is location information; that is, the home carrier does not have the location information necessary to route the text message to the appropriate PSAP. For example, if a T-Mobile subscriber were to roam on AT&T Mobility's (AT&TM) network and were to send an emergency text-to-911, AT&TM would send the text message from that subscriber to T-Mobile's message center to complete. When T-Mobile receives the message, it would recognize the 9-1-1 digits and forward that message to their text-to-911 control center (TCC), typically handled by a third-party vendor. The TCC would receive the text message addressed to 9-1-1 and attempt to obtain location information from T-Mobile but, because this subscriber is currently on the AT&TM's network, T-Mobile would not have any information

about the serving cell site to deliver to the text control gateway (TCG) for routing purposes. In this case, the TCC's only recourse would be to send an auto-reply (bounce-back) message to the subscriber that text-to-911 is currently unavailable.

To remedy this would require significant modification to the underlying SMS texting standards in order to provide enough information to the TCC for the TCC to determine where to send the location query. This change would likely take longer to complete than would development and implementation of a full-blown NG911 texting application and would undercut the rationale of doing SMS text messaging now as an interim solution.

Any solution to the roaming dilemma must await a long-term, real NG911 solution to text-to-911, and the Commission should not seek to impose roaming as part of any interim solution.

## **8. PSAP Options for Receiving Text-to-911.**

### **a. For the interim solution to text-to-911, the Commission should support the joint ATIS/TIA standards presently under development for non-NG911 capable PSAPs.**

Under the Carrier-NENA-APCO Agreement, the carriers committed to voluntarily offer their subscribers text-based emergency communication services “in accordance with the Alliance for Telecommunications Industry Solution (ATIS) industry standard solution . . . to requesting public safety answering points (PSAPs).”<sup>41</sup> These standards—a collaboration between ATIS and the Telecommunications Industry Association (TIA)—are due to be completed by the first quarter of this year.<sup>42</sup> Under them, we expect PSAPs to be able to select from at least three technical options for delivery of emergency text messages, one of which is text-to-TTY. Using these ATIS/TIA standards, non-NG911 capable PSAPs should be able to process text-to-911 communications from the carriers covered by the Agreement, as well as other CMRS providers.

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<sup>41</sup> Carrier-NENA-APCO Agreement p. 1.

<sup>42</sup> See: ATIS/TIA Press Release at <http://www.telecomreseller.com/2012/12/18/atis-and-tia-collaborate-on-a-nationwide-text-to-9-1-1-solution/>

The Commission should support these ATIS/TIA standards for use in the near term to allow providers of text messaging services that rely on SMS to meet their regulatory obligations to provide access to 9-1-1 emergency services as part of their offering.

**b. The Commission should explore creation and use of a national database to allow PSAPs to notify providers that they are ready to receive emergency text messages.**

In the *Further Notice*, the Commission discusses and seeks comments on a Bandwidth.com proposal to create a central database that could provide several different functions in support of text-to-911.<sup>43</sup> In particular, such a database could perform significant functions, including: (1) allowing PSAPs to register when and by what format or delivery mechanism they are ready and able to receive emergency texts and (2) notifying text messaging service providers of this registration. The Commission should be open to exploring the creation of a centralized database that would address these issues.

The Commission has experience with creating the structure and entities necessary to operate such a database on a competitively neutral basis. For example, after enactment of the Telecommunications Act of 1996, the Commission established the databases necessary to number porting between providers of telecommunications services.<sup>44</sup> Something similar might prove useful to address issues involved with both short-term and long-term text-to-911 and future NG911 services. It is clear that, given the number of existing and possible future providers of text messaging services, PSAPs would be unable to confidently notify all of them that they are text-to-911 capable and advise them on their chosen delivery mechanism. Presumably, PSAPs could access a central database web site and allow them to log on and fill out an online registration form, completion of which would automatically send out notifications to pre-registered text messaging service providers. There may be other functions that such a database could provide, as well, such as routing of text messages.

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<sup>43</sup> *Further Notice* ¶ 145.

<sup>44</sup> *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 ¶¶ 86-102 (1996).

We are open to this concept but are equally willing to encourage alternative mechanisms if proposed. What’s important is for the Commission to explore ways to facilitate development of text-to-911 capabilities by all covered services in an efficient and cost-effective manner that will provide a competitively neutral solution to the demands of text-to-911 and future NG911 services.

## **B. Legal Authority**

In the *Further Notice*, the Commission seeks comment on its statutory authority to enact the “comprehensive text-to-911 rules” as applied to providers of text messaging service, including CMRS providers and OTT text messaging applications.<sup>45</sup> Specifically, the Commission asks whether it has the authority to promulgate these rules under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), or Titles III and I of the Communications Act.<sup>46</sup> As discussed below, the CVAA itself grants the Commission specific authority to adopt text-to-911 rules for OTT text messaging applications in order to advance the goal of expanding access to emergency services for persons with disabilities.

To “achiev[e] equal access to emergency services by individuals with disabilities, as part of the migration to a national IP-enabled emergency network,” the CVAA, enacted in 2010, requires the Commission to “establish an advisory committee, to be known as the Emergency Access Advisory Committee [EAAC].”<sup>47</sup> The CVAA specifies that the EAAC is to include, among others, representatives of state and local government, emergency responders, and national organizations representing individuals with disabilities.<sup>48</sup> The CVAA further requires that, “[w]ithin 1 year after” its establishment, the EAAC is to “conduct a national survey of individuals with disabilities ... to determine the most effective and efficient technologies and

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<sup>45</sup> *Further Notice* ¶ 168; *see id.* ¶ 2 n.1.

<sup>46</sup> *See id.* ¶¶ 169-172.

<sup>47</sup> 47 U.S.C. § 615c(a).

<sup>48</sup> *See id.* § 615c(b).

methods by which to enable access to emergency services by individuals with disabilities.”<sup>49</sup> The EAAC is then required to “develop and submit [to the Commission] recommendations to implement such technologies and methods” with respect to certain specified topics, including “what actions are necessary as a part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities.”<sup>50</sup> Finally, the CVAA provides the Commission with specific “authority to promulgate regulations to implement the recommendations proposed by the EAAC” that are “necessary to achieve reliable, interoperable communications that ensure access by individuals with disabilities to an Internet protocol-enabled emergency network” and that are “achievable and technically feasible.”<sup>51</sup>

This specific statutory scheme gives the Commission rulemaking authority to adopt text-to-911 rules, including with respect to OTT text-messaging applications. The Commission established the EAAC in December 2010. In December 2011, the EAAC issued recommendations “critical to further a national policy of equal access to emergency communications services.”<sup>52</sup> As relevant for present purposes, the EAAC recommended that the Commission adopt an “Interim Mobile Text Solution” to ensure that disabled persons can access emergency services during the transition to full deployment of NG911.<sup>53</sup> Importantly, the EAAC made clear that any such interim solution would need to extend to *all* text messaging applications and could not be limited to SMS technology “since pagers and some other phones ... have applications people use for daily text communication that do not use SMS as their transport

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<sup>49</sup> *Id.* § 615c(c).

<sup>50</sup> *Id.* § 615c(c)(1).

<sup>51</sup> *Id.* § 615c(g).

<sup>52</sup> EAAC, *Emergency Access Advisory Committee (EAAC) Report and Recommendations*, at 3 (Dec. 2011).

<sup>53</sup> Recommendation T1.2, at 28.

protocol but use email or other protocols ... to communicate with similar phones and with the SMS feature's on other people's phones."<sup>54</sup>

Under the specific rulemaking authority granted by the CVAA to the Commission to implement recommendations of the EAAC, the Commission may adopt this recommendation and thus may promulgate the text-to-911 rules for wireless carriers and OTT text messaging applications. There should be no question that the text-to-911 rules are "necessary to achieve reliable, interoperable communications that ensure access by individuals with disabilities to an Internet protocol-enabled emergency network."<sup>55</sup> As the *Further Notice* explains, "add[ing] text capability to the 911 system" would "vastly enhance the system's accessibility for over 40 million Americans with hearing or speech disabilities."<sup>56</sup> The *Further Notice* further finds that "enabling consumers to send a text message to 911 in the near term will substantially improve accessibility to emergency services, particularly for people with hearing and speech disabilities."<sup>57</sup>

To effectuate the recommendations of the EAAC, the Commission can and must apply text-to-911 rules to OTT text messaging applications no less than to wireless carriers. As we have explained, and as the *Further Notice* recognizes,<sup>58</sup> a text-to-911 mandate that applies only to the SMS platform would undermine core objectives of the Commission and Congress because SMS text services "are experiencing both declining revenues and usage due to the proliferation of free [OTT] texting applications."<sup>59</sup> In light of the rapidly increasing use of OTT text messaging applications by consumers, "failing to include these substitutes in the mandate may

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<sup>54</sup> *Id.* at 29.

<sup>55</sup> 47 U.S.C. § 615c(g).

<sup>56</sup> *Further Notice* ¶ 4.

<sup>57</sup> *Id.* ¶¶ 6, 44; *see also id.* ¶¶ 50-55.

<sup>58</sup> *See id.* ¶ 89.

<sup>59</sup> AT&T Oct. 16, 2012 *Ex Parte*, at 1; *see also* Comments of AT&T Inc., *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153 *et al.*, at 1, 3, 6 (FCC filed Jan. 29, 2013).

cause significant customer confusion regarding the accessibility of emergency services via text message.”<sup>60</sup>

Finally, because the CVAA grants the Commission specific authority to adopt text-to-911 rules—including, for OTT text messaging applications—the Commission need not and should not rely on aggressive theories of Title I or Title III jurisdiction to achieve the same ends. Those theories do not withstand scrutiny and are all the more problematic because they lack any limiting principle.<sup>61</sup> To ensure prompt implementation of text-to-911 services, consistent with the recommendations of the EAAC, the Commission should look no further than the CVAA.

### **III. CONCLUSION**

AT&T respectfully requests that the Commission consider these comments in its deliberations on this matter.

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<sup>60</sup> AT&T Oct. 23, 2012 *Ex Parte*, at 1.

<sup>61</sup> See Comments of AT&T Inc., *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153, at 20-22 (FCC filed Dec. 12, 2011) (explaining why the Commission lacks Title I or Title III theory in this area).