

**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

**REPLY COMMENTS OF THE TEXAS 9-1-1 ENTITIES
TO THE FURTHER NOTICE OF PROPOSED RULEMAKING**

April 11, 2013

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Table of Contents

A.	Preliminary Reply Statement and Summary	4
B.	CMRS and OTT Scope of Texting-to-9-1-1 Regulation	6
C.	Voluntary or Mandatory Texting-to-9-1-1 Service.....	9
D.	Non-Unitary Multiple Web Interfaces and Interoperability	11
E.	Small and Rural Carriers.....	12
F.	Legal Authority.....	12
G.	Conclusion	13

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The Texas 9-1-1 Alliance,¹ the Texas Commission on State Emergency Communications,² and the Municipal Emergency Communication Districts Association³ (collectively, “the Texas 9-1-1 Entities”) respectfully submit the following reply comments to the Federal Communications Commission (the “Commission”) Further Notice of Proposed Rulemaking (“FNPRM”). The FNPRM seeks comments on the proposed rules to enable consumers to send text messages to 9-1-1, a capability that will enhance the accessibility of the 9-1-1 system for over 40 million people with hearing or speech disabilities and provide a

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

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

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

potential lifesaving alternative to the public in situations where a 9-1-1 voice service is not available or placing a voice 9-1-1 call could endanger the caller.⁴

A. Preliminary Reply Statement and Summary

The Commission’s proposed rules will enable wireless consumers to text-to-9-1-1. The FNPRM states that the purpose of the proposed rules is to vastly enhance the accessibility of the 9-1-1 system.⁵ The Commission also made clear, however, that text-to-9-1-1 is and will remain a complement to, rather than a substitute for, voice 9-1-1 service and that even as it takes this first major step in the transition to NG911, the Commission continues to encourage all consumers seeking emergency help to access 9-1-1 by voice whenever possible.⁶ Whether the Commission’s aspirational “complement rather than substitute” admonition will prevail remains a concern, given the ubiquity of text messaging in our society. It does, however, raise primary overarching and transcending considerations in evaluating each issue; specifically, how to prudently address the next transition step in a manner that achieves and protects the intended public safety benefits of text-to-9-1-1.

If text-to-9-1-1 is initially over used, then the matter will not have been prudently addressed and protected to achieve its intended purposes. Accordingly, for the reasons stated herein, the Commission should apply the bounce back requirement to both CMRS and interconnected text providers (non-native Short Message Service [“SMS”], or over-the-top [“OTT”], text-to-9-1-1 applications [hereinafter “OTT”]) as set forth in proposed 47 C.F.R. §

⁴ *In the Matter of Facilitating the Development of Text-to-911 and other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*; PS Docket No. 11-153; PS Docket No. 10-255, FNPRM at ¶¶ 4, 8, 48, 56, and 57 (rel. Dec. 13, 2012).

⁵ FNPRM at ¶ 56.

⁶ FNPRM at ¶ 8.

20.18(n)(1) and (n)(6)(a), respectively. The Commission should apply the May 15, 2014 deadline to CMRS carriers, with an additional one-year extension for those CMRS providers serving less than 500,000 customers. Finally, the Commission should keep OTT under further review, refresh the record within one year, and then decide soon thereafter the specific issues and how to consistently address the so-called “Skype exception” in the context of both OTT SMS and Interconnected VoIP.

It is critical for the Commission and the Department of Justice (“DOJ”) to send consistent messages to PSAPs on the issue of whether text-to-9-1-1 is mandatory or voluntary under federal requirements. Similarly, on the closely related issue of self-registration information that may be provided by a service provider at “no charge” in the case for SMS text-to-9-1-1 but not provided at “no charge” for other 9-1-1 calls including TTY 9-1-1 calls, the Commission and DOJ should address this issue consistently and agree on the implications of this issue for PSAPs.

NENA is correct that there will be grave concerns on text-to-9-1-1 if browser-based options are not unitary and PSAPs face supporting dozens of differing browser-based text-to-9-1-1 platforms. Therefore, Commission should modify the proposed rule to address these types of issues in the manner suggested in the initial comments of the Texas 9-1-1 Entities, to ensure that this will not occur.

The Texas 9-1-1 Entities agree with NENA that, in the context of tier III wireless carriers that are non-nationwide and serve *less than 500,000 customers*, there should be a general presumption for the interim period that an additional one year is warranted. However, in the context of carriers that are non-nationwide and serve *more than 500,000 customers*, the Texas 9-1-1 Entities generally agree with the Commission’s reasoning in rejecting Metro PCS’s argument that there should be only tier I carrier text-to-9-1-1 requirements.

VON and CTIA assert their arguments that the Commission lacks authority to regulate in this area (as they did in their initial comments in the bounce back message portion of this proceeding). As such, the Texas 9-1-1 Entities incorporate by reference their February 8, 2013 reply comments on the legal authority issue. Moreover, the Commission may still determine that anything involving the 9-1-1 emergency number is inherently “telecommunications service” for regulatory purposes.

B. CMRS and OTT Scope of Texting-to-9-1-1 Regulation

TIA indicates that it cannot agree to non-native SMS, or OTT, text-to-9-1-1 applications and services having the same obligations as proposed for other SMS text-to-9-1-1.⁷ TIA indicates that OTT messages are reliant on broadband access that is less dependable than SMS carried over existing standards-based SMS architectures.⁸ TIA adds that where legitimate technical differences in capability exist that make a service clearly nascent, the issue is not one of technology neutrality but of detrimental effects to innovation.⁹ NENA believes that the Commission’s initial text-to-9-1-1 rules should apply (a) to CMRS; and (b) to OTT SMS originated from “mobile devices,” such as mobile telephones, tablet computers, and other advanced mobile devices.¹⁰

AT&T, however, opposes the Commission focusing on the nature of the provider of the service – CMRS provider vs. device manufacturer vs. software developer, etc. – instead of

⁷ TIA Initial Comments at p. 6.

⁸ *Id.* at p. 7.

⁹ *Id.* at p. 8.

¹⁰ NENA Initial Comments at p. 4.

ensuring that all covered services are text-to-9-1-1 capable and meet industry standards.¹¹ AT&T makes several reasonable arguments on the issue.¹² AT&T also raises concerns with the VON's suggestion to only have a text-to-9-1-1 requirement when the application is "two-way," pointing out how it is eerily similar to the present Commission definition of "Interconnected VoIP" and the associated "Skype exception" from Interconnected VoIP E9-1-1 requirements.¹³

AT&T's arguments are persuasive especially for the long term, as is NENA's suggestion to limit OTT text-to-9-1-1 to "mobile devices" in the interim. However, the Texas 9-1-1 Entities have concerns about non-voice capable devices being able to send text-to-9-1-1. Requiring text-to-9-1-1 on a device that is incapable of, or not intended to be used to make voice calls may send the wrong public education message, given that the Commission has indicated "that text-to-911 is and will remain a complement" and that the Commission "continues to encourage all consumers seeking emergency help to access 911 by voice whenever possible."¹⁴ BRETSA and CTIA point out the advantages of voice calls for the majority of the population and the necessity of public education on this matter.¹⁵ BRETSA and Sprint also make the important point about

¹¹ AT&T Initial Comments at p. 4.

¹² *Id.* at pp. 4-10.

¹³ *Id.* at pp. 10-11.

¹⁴ FNRPM at ¶ 8.

¹⁵ BRETSA Initial Comments at p. 14 ("As BRETSA and other public safety entities have stated in various comments in this docket, text-messaging-9-1-1 will, in the ordinary case, be less efficient than a voice call to 9-1-1 and delay Emergency Response. The primary purpose of 9-1-1 service is to notify public safety authorities of the location and nature of an emergency so that appropriate First Responders can be dispatched to the location. This can be most expeditiously accomplished through a voice call, which not only allows the information to be communicated more quickly, but also allows the call taker to hear the level of stress in the caller's voice, better calm the caller, interrupt the caller and ask for the most pertinent information [which is not possible with simplex text-messaging systems], and to hear background noises."); CTIA Initial Comments at p. 17 ("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.").

not overwhelming PSAPs by over promoting text-to-9-1-1 to the general population when it is not the optimal choice or course of action.¹⁶

Given that the majority of 9-1-1 calls should continue to be made as voice calls whenever possible and that PSAPs must not be overwhelmed by text-to-9-1-1, the prudent next steps are keeping OTT under further review, refreshing the record within the next year, and then deciding soon thereafter the specific issues and how to consistently address the “Skype exception” in the context of both OTT SMS and Interconnected VoIP. Additional reasons for taking a cautious approach regarding OTT include, but are not limited to, the following: (1) text-to-9-1-1 is new and deployment will not be without challenges; (2) with the prior implementation of CMRS text-to-9-1-1, the public will have more time to understand, learn, and become comfortable with the appropriate use of text-to-9-1-1, and similarly, the PSAPs will have more time to understand, learn and become comfortable with handling text-to-9-1-1 calls; (3) the Commission and all interested parties will have a larger set of data on text-to-9-1-1 deployments, the effectiveness of public education, and use cases and circumstances; and (4) some of the devices and services covered under the AT&T and NENA suggestions, such as tablets, currently may not be able to make voice 9-1-1 calls or they may be under the “Skype exception.”

Accordingly, the Commission should take the prudent steps outlined above. If the Commission takes a modified approach regarding OTT text-to-9-1-1, the Commission should nonetheless put OTT and “Skype exception” providers firmly on notice that distinctions without

¹⁶ BRETSA Initial Comments at p. 15 (“It has also been stated that concerns with PSAPs being overwhelmed with text messages to 9-1-1 have been demonstrated to be overblown. BRETSA respectfully submits that it is premature to reach such a conclusion on the limited tests that have been conducted, and before text-messaging to 9-1-1 is generally available.”); Sprint Initial Comments at p. 5 (“Consumer education will play a vital role in determining whether PSAPs will be overwhelmed once text-to-9-1-1 is implemented. If consumers use text-to-9-1-1 service for non-emergencies, PSAPs could easily be inundated with text messages.”).

differences as between competing devices and services will be only temporary, pending the Commission's further review of OTT issues and the "Skype exception."

C. Voluntary or Mandatory Texting-to-9-1-1 Service

While the Commission's proposed changes to 47 C.F.R. 20.18 do not specifically mention the PSAP request process, the FNPRM specifically indicates that "PSAPs will retain the discretion to decide whether to accept text messages."¹⁷ (The FNPRM also discusses the Carrier-NENA-APCO agreement proposed "valid PSAP request" approach in the context of PSAPs indicating their delivery preference option.)¹⁸ Intrado comments that "PSAPs should make specific documented requests to carriers," but the DOJ indicates that "in fulfillment of their existing obligations to provide effective communication under title II of the ADA, PSAPs must accept a call from a person with a hearing or speech disability that originates as an SMS call."¹⁹

In the event that the Commission and the DOJ agree that PSAP deployment is voluntary, then PSAPs will need to review their respective state laws to determine whether they are authorized to accept or reject text-to-9-1-1 and potential liability issues associated with their interpretation. In at least some states, including Texas currently, "9-1-1 service" is defined as a telecommunications service. Although the answer may be different depending on the context and legislative intent, there may not be uniform agreement and clarity on whether CMRS SMS and OTT SMS are "telecommunications services" in the context of 9-1-1 service in a state.

The Commission and the DOJ must make clear whether there is any voluntary choice and, if so, whether text-to-9-1-1 is initiated by a PSAP request notwithstanding the deadlines in

¹⁷ FNPRM at ¶ 64.

¹⁸ FNPRM at ¶ 144.

¹⁹ DOJ Initial Comments at p. 2.

the proposed regulation. There could be material legal and liability issues for PSAPs, if they misunderstand whether they truly have a choice in the matter under federal requirements. Accordingly, it is critical for the Commission and the DOJ to send consistent messages to the PSAPs for purposes of federal requirements on this issue.

Related to the voluntary or mandatory determination is the issue of supplemental self-registration information. Some providers market the providing of supplemental information to PSAPs, while others seek to enroll customers. Moreover, while some offer supplemental information on a text-to-911 call at no charge to the PSAP, such information may not be made available without a charge for other 9-1-1 call situations, including traditional TTY 9-1-1 calls.²⁰ In contrast to some 112 texting in Europe, the Commission has not taken the self-registration information approach to text-to-9-1-1 even though the approach may provide process and valuable information.²¹ The Commission and the DOJ should indicate what, if any, federal requirement issues are raised if (1) the PSAP accepts or does not accept the supplemental information, or (2) the PSAP only accepts supplemental information provided at no charge. The issues of whether a PSAP's acceptance of text-to-9-1-1 is voluntary or mandatory and the providing and acceptance of supplemental information are critical issues which the Commission and the DOJ need to address in a consistent manner.

²⁰ See, TeleCommunication Systems Introduces TCS Smart911, First Nationwide, Rich Information Solution for Text to 9-1-1, Jan. 23, 2013 ("TCS provides its Geospatial Emergency Manager (GEM9-1-1™) portal with TCS Smart911 data about text senders free to all PSAPs as a public service. ... PSAPs can purchase an enhanced version of TCS Smart911 to use in conjunction with all voice emergency calls to 9-1-1 in addition to text to 9-1-1.") *available at* www.ravemobilesafety.com/telecommunication-systems-introduces-tcs-smart911-first-nationwide-rich-information-solution-for-text-to-9-1-1/.

²¹ See, 112 SMS Service, Questions and Answers: ("Must I be deaf or hard of hearing to register? A. No. The 112 SMS service is primarily for people who cannot make voice calls because they have a hearing loss or a speech impairment but it is open to all registered users."); *available at* http://www.112.ie/Questions_and_Answers/145#.UWHVpZOSiSo.

D. Non-Unitary Multiple Web Interfaces and Interoperability

NENA indicates that browser-based OTT options must be unitary in order for PSAPs not to have to support dozens of differing browser-based text-to-9-1-1 platforms.²² Similarly, Intrado indicates that, even though different proprietary technologies and interfaces may be used for text-to-9-1-1, they should all support the industry standard ingress point in order to ensure interoperability.²³ The Texas 9-1-1 Entities agree.

The Texas 9-1-1 Entities addressed this issue in our initial comments:

The Commission should modify new proposed 20.18(n) in Appendix B of the FNPRM to add an additional subsection stating that only standards-based interoperable web applications that enable CMRS providers, interconnected text providers, and PSAPs to choose single-source solutions may be used after 18 months from the date of rule adoption.

The Texas 9-1-1 Entities also agree with the Commission proposal to allow the PSAP to designate its text service provider as the recipient of text-to-9-1-1 if (1) the PSAP’s text service provider accepts text messages using industry-standard protocols, such as the NENA i3 standard, and (2) the PSAP text service provider does not charge the CMRS or interconnected text provider a fee for delivering such messages. The Commission should modify new proposed 20.18(n) to incorporate this requirement and the associated conditions.

Finally, in the context of both integrating multiple web browsers and the PSAP’s text service provider, there should be a requirement to work in “good faith” with a PSAP and/or its text service provider on these issues, as requested and technically feasible. This “good faith” requirement should be incorporated into new proposed 20.18(n) in Appendix B of the FNPRM. (footnotes in original omitted)²⁴

The Commission should modify the proposed rule to address these types of issues in the manner suggested in the initial comments of the Texas 9-1-1 Entities.

²² NENA Initial Comments at pp. 18-19.

²³ Intrado Initial Comments at p. 4.

²⁴ Texas 9-1-1 Entities Initial Comments at pp. 3-4.

E. Small and Rural Carriers

NENA indicates that several smaller and rural carriers have expressed to NENA certain concerns related to sparsely populated areas and, therefore, NENA supports an extension of not more than one year.²⁵ The Texas 9-1-1 Entities agree that, in context of tier III wireless carriers that are non-nationwide and serve *less than 500,000 customers*, there should be a general presumption that the additional one-year extension is warranted for the interim period. However, in the context of carriers that are non-nationwide and serve *more than 500,000 customers*, the Texas 9-1-1 Entities generally agree with the Commission's reasoning in rejecting Metro PCS's argument where the Commission stated that "[t]here is no evidence that the cost of implementing a text-to-911 solution will be substantial enough to warrant limiting the obligation to the largest carriers."²⁶

F. Legal Authority

VON and CTIA assert that the Commission lacks authority to regulate in this area (as they did in their initial comments in the bounce-back message portion of this proceeding).²⁷ As such, the Texas 9-1-1 Entities incorporate by reference their February 8, 2013, reply comments on this issue, which were as follows:

The Commission should reject assertions that it lacks authority to require the bounce back messages under the Communications Act of 1934, as amended ("Communications Act"), including the Communications & Video Accessibility Act ("CVAA") as urged by CTIA and VON. VON argues that the CVAA cannot provide the Commission authority because bounce back messages rules would not be focused on "internet protocol-enabled emergency network," but are, instead, focused on the existing "public switched network." However, CTIA's and VON's authority challenges should be rejected based on VON's own argument.

²⁵ NENA Initial Comments at pp. 6-7.

²⁶ FCC FNPRM at ¶ 59.

²⁷ Von Initial Comments at pp. 2-9; CTIA Initial Comments at pp. 3-11.

The Commission has not ruled that any type of communications that uses numbers to connect to another person is not “telecommunications” subject to the Commission’s jurisdiction over “telecommunications,” “numbering,” and “9-1-1.” VON’s argument supports the Commission’s authority, because VON indicates that the proposed text-to-911 rules involve the “public switched network” -- which is within the Commission’s “telecommunications,” “numbering,” and “9-1-1” authority. Historically, under the Commission’s Part 64 *Miscellaneous Rules Relating to Common Carriers* (47 C.F.R. Part 64) connecting devices to the telecommunications network (*i.e.*, the PSTN), the Commission had requirements that addressed critical issues, such as the ability of devices to interact with 9-1-1. To the extent necessary, the Commission should simply clarify, for the limited purposes of 9-1-1 service, that anything with the ability to use telephone numbers to reach others is subject to the Commission’s jurisdiction over “telecommunications,” “numbering,” and “9-1-1” (footnotes in original omitted).²⁸

Furthermore, to the extent that VON is also asserting that SIP NG9-1-1 interconnection and obligations for connecting to an ESInet should not be triggered until there is *fully completed* “national” NG9-1-1, the position is an unreasonable and unrealistic interpretation of the word “national” in this context. NG9-1-1 SIP interconnection and obligations should not be delayed while waiting on full national NG9-1-1 deployment, if states and regions have deployed the appropriate NG9-1-1 IP infrastructure. Moreover, the Commission may still determine that anything involving the 9-1-1 emergency number is inherently “telecommunications service” for regulatory purposes.

G. Conclusion

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

²⁸ Texas 9-1-1 Entities Reply Comments at pp. 4-5.

Respectfully submitted,



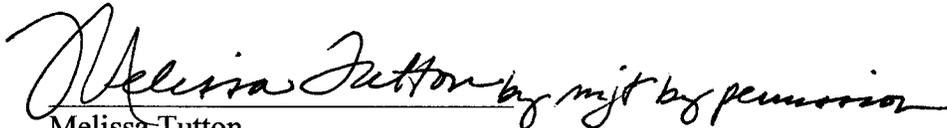
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