

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

In the Matter of	)	
	)	
Improving 9-1-1 Reliability	)	PS Docket No. 13-75
	)	
Reliability and Continuity of Communications	)	PS Docket No. 11-60
Networks, Including Broadband Technologies	)	
	)	
	)	

To: The Commission

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

The Boulder Emergency Telephone Service Authority (“BRETSA”), by its attorney, hereby submits its Comments on the Commission’s March 20, 2012 Notice of Proposed Rulemaking in the above-referenced Docket.<sup>1</sup>

**I. Introduction.**

9-1-1 is by definition an intra-state service, within the jurisdiction of state utility commissions. The Commission should at most adopt or endorse *recommended* best practices for state and/or local authorities to adopt. What is most important is that the Commission clarify the extent to which it has preempted state regulation of 9-1-1, including SSP services, if any.<sup>2</sup>

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<sup>1</sup> BRETSA is a Colorado 9-1-1 Authority which establishes, collects and distributes the Colorado Emergency Telephone Surcharge to fund 9-1-1 Service in Boulder County, Colorado. The BRETSA Board includes the Boulder County Sheriff, the City of Boulder Police Chief, representatives of the Boulder County Firefighters Association and the City of Longmont Division of Public Safety. The fifth seat of the Board is filled by representatives of the smaller cities and towns in Boulder County, Colorado on a rotating basis. These Comments are thus intended to represent the perspective of the entity responsible for 9-1-1 operations, *and* of the agencies and authorities responsible for PSAP operations and overall public safety services.

<sup>2</sup> SSPs aggregate 9-1-1 calls originating on the networks of multiple originating service providers, and provide routing and transport services to deliver the 9-1-1 calls to the appropriate PSAP.

Finally, the Commission should defer indefinitely further consideration in Docket 11-153 of granting service providers immunity from liability in the provision of 9-1-1 and SSP services.

**II. Adoption and Enforcement of Standards for 9-1-1 and SSP Service Are Matters of State Authority.**

9-1-1 Calls are by definition *intrastate* calls. 9-1-1 Calls are routed to PSAPs within the same state, and indeed within the same local jurisdiction, in which the caller is located. The Commission thus lacks authority to adopt regulations pertaining to the reliability of 9-1-1 service. BRETSA submits that the Commission cannot properly preempt state regulation of 9-1-1 services provided by VoIP or wireless providers because of the intrastate nature of the calls.

BRETSA does support the Commission's endorsement of recommended best practices for 9-1-1 and SSP services.

**III. The Commission Should Clarify The Extent To Which It Has Preempted State Regulation of 9-1-1 and SSP Service.**

9-1-1 and SSP service, including quality and reliability of the service, has traditionally been a matter of state concern because 9-1-1 calls are intrastate calls. However service providers have recently been claiming that the FCC has preempted state regulation of wireless, VoIP and IP-enabled services including 9-1-1 service, and also including SSP service in an IP-enabled, Next Generation 9-1-1 context. While BRETSA does not believe the Commission's decisions support these claims; the Commission's deregulating "technologies" rather than "services," and enabling service providers to determine the regulations to which they are subject through their election of which technologies to employ to provide services, may have contributed some confusion to the issues.

Confusion or ambiguity regarding Commission preemption of state regulation may cause some states to question their authority to adopt, apply or enforce standards of reliability and

quality of service for 9-1-1 and SSP services. Confusion or ambiguity regarding Commission preemption of state regulation may cause some service providers, including SSPs, to deem state regulations establishing standards of reliability and quality of service for 9-1-1 and SSP services unenforceable and irrelevant. The Commission's proposed rules herein, pursuant to which the Commission proposes to adopt regulations pertaining to reliability and quality of such intrastate services, can only contribute further to the confusion regarding whether the Commission has preempted state authority over 9-1-1.

Instead of adopting the rules proposed in the NPRM, the Commission should grant BRETSA's October 25, 2012 Petition for Declaratory Ruling, which is incorporated herein by reference, and reaffirm that it has not preempted states from regulating 9-1-1 Service, regardless of the technology employed. This will enable the states to take appropriate action to assure the reliability and quality of 9-1-1 service.

#### **IV. The Commission Should Defer Indefinitely Proposals In Docket 11-153 To Grant Service Providers Immunity From Liability.**

Ironically, while the Commission seeks to act in the above-referenced docket to assure that 9-1-1 and SSP service is reliable, it is receiving and considering comments in Public Safety Docket 11-153 arguing that service providers should be granted immunity against any liability from their provision of 9-1-1 and SSP services, whether the liability arises from ordinary negligence, gross negligence or intentional conduct. The events giving rise to this docket should give the Commission pause in considering such immunity.

The purposes for holding parties liable for their negligent or intentional conduct is not just to provide a remedy and relief in the form of damages for those injured by the conduct, but also to deter such negligent or intentional conduct. Absent potential liability for damages, service

providers have no incentive to employ best practices in their facilities and systems for routing and delivering 9-1-1 calls.

There is no reason that service providers cannot (i) be required by the states to meet basic and good engineering practices in the provision of 9-1-1 service, and also (ii) be subjected to civil liability where their failure to act prudently in the provision of such services causes injury, death or other damage to individuals or their properties.

The Commission's, and the Virginia Commission's, respective findings in their reports on the outages of 9-1-1 systems resulting from the June 2012 derecho should put the final nail in the coffin for calls to grant service providers immunity in the provision of 9-1-1 and SSP services.

Respectfully submitted,

**BOULDER REGIONAL EMERGENCY  
TELEPHONE SERVICE AUTHORITY**

By: \_\_\_\_\_/s/\_\_\_\_\_

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