



November 14, 2012

(Filed electronically)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Notice**
GN Docket No. 11-117
WC Docket No. 05-196
PS Docket No. 11-153
PS Docket No. 10-255
PS Docket No. 07-114

Dear Ms. Dortch:

The Voice on the Net Coalition (VON) provides these additional comments related to 911 requirements for IP-based SMS services provided from mobile devices. In its previous filings, VON has advocated that the FCC should refrain from imposing 911 requirements on IP services – whether SMS, instant messaging, VoIP or another other “over the top” (“OTT”) IP service -- prior to the transition of the 911 infrastructure to next generation capability, including the ability to locate the user of the OTT service.¹ It remains important that the FCC not impose or even suggest solutions that are technically infeasible and that would lead to consumer confusion.

As the Commission is well aware, the ability to locate users of IP-based services is not readily available today. The FCC has a pending Notice of Inquiry where it has asked a number of questions about the state of real-time location of IP-based VoIP services.² In response to that NOI, commenters demonstrated that the record is far from settled on whether and to what extent real-time location of IP-based users is technically feasible. In fact, a number of commenters suggested that the Commission leave this complicated – and highly technical –

¹ See, e.g., Reply Comments of the Voice on the Net Coalition, PS Docket No. 11-153 (filed February 9, 2012).

² See Further Notice of Proposed Rulemaking and Notice of Inquiry, PS Docket No. 07-114, FCC 10-177 (rel. Sept. 23, 2010). Locating the sender of an OTT SMS is no different than locating the sender of an OTT VoIP call. To the network – wireless, wireline, WiFi, etc. – the bits being transmitted are just that: bits. Thus, the limitations and challenges of locating an OTT SMS are identical to those of locating a VoIP caller.



issue to an advisory committee of industry experts.³

Even more recently, the Commission queried in its Public Notice seeking comment on the legal and statutory framework for NG 911 services whether it should recommend to Congress that it enact legislation that would “required or incentivize the development of technologies that provide more accurate and efficient transmission of 9-1-1 caller information in an NG9-1-1 environment.”⁴ Given these outstanding questions about location information, the FCC has no basis upon which to require – or even tentatively conclude that – OTT SMS services should be subject to a 911 calling obligation. To do so would assume to resolve these outstanding technical issues that remain unanswered in separate FCC proceedings.

These technical issues, moreover, are at the heart of successfully enabling an OTT SMS to 911. Without the ability to locate the texting party, the SMS cannot even be routed to the appropriate PSAP, much less provide sufficiently accurate information to direct first responders to the location of the emergency event. Moreover, there are additional unknowns that should be resolved before reaching any tentative conclusion about OTT SMS to 911, e.g.:

- 1) How will the new requirement impact the transition to Next Generation 911? The transition will involve significant time and money on the part of both the public and private sectors. The Commission must be careful not to require technology solutions that will be soon obsolete as the industry moves to NG911.
- 2) How can the Commission impose 911 requirements on IP-based SMS services without imposing unnecessary regulation generally or stifling innovation? IP-based SMS services are not telecommunications and arguably may not be information services. The Commission must consider the broader legal and technological implications of imposing regulation on these types of applications.

Additionally, it is important to note that SMS services offered by a mobile operator may function even where voice and IP services do not, e.g., in circumstances where a voice call cannot be completed or the data network is not available or reliable. In these circumstances OTT SMS can fail where SMS would succeed. Therefore, the FCC should not risk further consumer confusion by

³ See Comments of the Telecommunications Industry Association, Docket 07-114 (filed October 3, 2011) at 5-7; Comments of the Information Technology Industry Council, Docket 07-114 (filed October 3, 2011) at 16.

⁴ Public Notice, PS Docket No. 10-255, DA 12-1831 (rel. November 13, 2012) at 5.



reaching conclusions about less reliable means of contacting 911. In this transitional period, as the industry moves to a next generation 911 world, the FCC should focus on the capabilities that exist and are reliable today rather than create consumer expectations that cannot be fulfilled.

If, despite this known lack of any current solution to the location problem, the Commission nonetheless chooses to propose that OTT SMS providers enable SMS 911 capability, VON recommends that the FCC make clear that any OTT SMS to 911 proposals in its FNPRM are limited to two-way OTT SMS in which the user can both send and receive OTT SMS texts. This is important not only so the PSAP can have a text communication with the sender of the 911 text, but also because not all PSAPs will be capable of receiving an SMS to 911. Thus, it is critical that the text sender be capable of receiving a text back so she can receive a responsive text informing her that SMS to 911 is not supported by a particular PSAP. Moreover, mandating these providers, some of whom do not charge for their services, to adapt their technology could significantly change business models, impair innovation, and create customer and emergency provider confusion.

Finally, in VON's opinion, there is no public policy justification for extending 911 obligations to over-the-top IP text or SMS services prior to the implementation of a true next generation 911 network. There is no evidence that customers using over-the-top applications expect that they can use these applications to contact emergency services. It seems highly unlikely that a wireless user with both voice and SMS capabilities on the wireless device itself and an over-the-top messaging application would choose to open an application, sign in and then send an "SMS" to a PSAP rather than simply calling 911 or using the wireless phone's native SMS capability that (a) the customer likely uses on a near-daily basis, and (b) is readily available to the user without opening any application or providing sign-in information.



November 14, 2012
Page 4

VON looks forward to working with Commission staff to develop effective solutions for emergency communications using IP-based services. Please contact me directly if you have any questions.

Sincerely,

/s/

Glenn S. Richards
Executive Director

cc: Charles Mathias (by email)
Henning Schulzrinne (by email)
David Turetsky (by email)
Patrick Donovan (by email)
David Furth (by email)
Erika Olsen (by email)