

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

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

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”) hereby submits these comments in response to the issues raised in Section III.A of the Commission’s *Further Notice of Proposed Rulemaking* (“*FNPRM*”) in the above-referenced matter: in particular, whether providers of interconnected text applications should be required to alert users who try to send a text message to 911 when such service is not supported by the provider and whether they should be required to provide such alerts by the end of June 2013.¹ As VON has asserted previously, the FCC should consider any 911 functionalities of Internet Protocol services in the context of next generation 911 and not require those services to deliver solutions in the context of the existing legacy network. Furthermore, as will be discussed briefly below and in more detail in the next round of comments, the Commission lacks legal authority to impose legacy 911 obligations on IP services.

To the extent the Commission nevertheless moves forward with its proposed requirement, it may be technically possible for two-way interconnected text applications to provide a

¹ The Voice on the Net Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP-enabled communications. See www.von.org for more information about VON.

notification if the rules are flexible about the nature of the alerts, and if the requirement does not take effect until late 2013. The Commission should keep in mind, however, that (i) there are a variety of entities that provide two-way interconnected text applications, many of which are not VON members, so VON cannot speak for their capabilities, and (ii) the only reliable way to educate users about the limitations of using certain text applications to reach 911 is to provide an alert generated within the two-way interconnected text application. This last qualification applies because considerable development remains before these applications can deliver a text to 911; in the meantime, the only safe approach would be to alert users that the application does not support text to 911 and the user should take an alternative approach to reaching 911.

I. THE COMMISSION MUST CLEARLY LIMIT ANY 911 NOTIFICATION OBLIGATION TO INTERCONNECTED TEXT MESSAGING

In the *FNPRM*, the Commission proposes to require Commercial Mobile Radio Service (“CMRS”) and other providers of interconnected text messaging services to “automatically notify consumers attempting to text-to-911 in areas where text-to-911 is not supported or in other instances where the text cannot be transmitted to the PSAP.” *FNPRM*, para. 25. The Commission proposes that providers would be deemed to have met its requirement by advising consumers to place a voice call to 911. *FNPRM*, para. 32. The Commission notes the importance of people in emergency situations being able to know immediately if a text message has been delivered to the proper authorities. *Id.* In its discussion of the obligation, the Commission uses a variety of terminology to identify the type of text message that would be subject to the requirement. To the extent the Commission acts in this area, VON asks the Commission to use consistent language and to clearly limit the obligation to interconnected text messages.

The Commission proposes to extend the requirements for automatic error alert to all “providers of software applications” that enable consumers to send and receive text messages to text-capable U.S. mobile phone numbers. *FNPRM*, para. 29. VON agrees that any obligations imposed on non-CMRS providers should be limited to this category of service. The Commission notes that it does not propose to extend text-to-911 obligation to IP-based messaging applications that do not support general communication with text-capable telephone numbers, because consumers of such applications are less likely to expect the applications to support emergency communications. *FNPRM*, para. 30. VON agrees with this assessment.

II. THE COMMISSION SHOULD MAKE CLEAR THAT ALERTS GENERATED FROM WITHIN AN APPLICATION WILL MEET THE COMMISSION’S REQUIREMENTS

In the near term, the only viable approach for ensuring that an automatic error alert is sent to users of a non-CMRS interconnected text messaging service would be to generate the alert from within the application when a user attempts to send a text to 911. It ultimately may be possible to rely on the capabilities of the underlying carrier, but more work will need to be done to determine the appropriateness of this approach. Both options have implementation challenges and would require development time and resources; however, only the first of them – an error message or disclaimer built within the application itself – has any likelihood of deployment within this calendar year.

Specifically, it should be possible for interconnected text application providers to implement an application-generated message informing users – in every instance – that a text cannot be sent to 911 using the application. Since the message is not dependent on a third-party gateway or an underlying carrier and is, instead, handled within the application itself, the challenges to enabling such a message are exponentially smaller than these other options. The

time needed to implement this approach would vary depending on the number and complexity of an application provider's user interfaces, but it likely could be completed within six months of a Commission order.

In the *FNPRM* at para. 96, the FCC also discusses the option of relying on the handset's native SMS dialer. This approach appears to be technically feasible, as long as the FCC limits the requirement, as proposed by Apple, to text applications that are in use (i) on a CMRS network (as the FCC proposes in 20.18 (n)(6)(b)) and (ii) 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." *FNPRM*, para. 87. While more time is needed to determine the appropriateness of this solution, this approach – if determined to be reasonable and appropriate – could prove to be the most expedient because it relies on the carrier's underlying SMS-to-911 infrastructure, which is already a part of the existing 911 system, is compatible with the existing TDM/PSAP capabilities of the 911 network, and will be in place on the four nationwide carriers by June 2013. This may provide an appropriate interim step to NG911 because it resolves major location and routing challenges.

III. THE COMMISSION SHOULD NOT REQUIRE INTERCONNECTED TEXT SERVICES TO COMMUNICATE WITH A THIRD-PARTY GATEWAY WHEN DEVELOPING AN ALERT

The Commission should not impose any obligations that require communicating with a third-party gateway. Such an approach would be complicated, expensive, unreliable, and confusing for users. No server or gateway exists today that could receive the 911 text and then "bounce back" an error message. While the EAAC Text to 911 report includes a basic description of the architecture that might support an OTT text-to-911 gateway, detailed technical specifications for the gateway still need to be developed and, once developed, implemented and

tested by the parties who would be interoperating with those gateways. It will be important for the appropriate standards and technical bodies to guide the development of this architecture. Until the work on the specifications is complete, it is difficult to assess the time that would be required to then implement and test the architecture from end-to-end. There must also be an industry-agreed upon solution for reliably locating the user originating the text to 911. This critical mechanism does not yet exist and would have to be developed and deployed as well.

Resolving these technical challenges would not only take time, but once resolved, would impose significant costs on providers of software applications – many of which are small businesses offering innovative IP-based capabilities at little or not cost to consumers. The introduction of third-party gateways and vendors (and, thus ongoing payments to and coordination with those vendors) into the application provider’s service – something that would be necessary only if providers were required to try to bootstrap the legacy TDM 911 system onto Next Generation IP services – introduces complexities and points of possible failure, as well as costs the developer did not anticipate. VON understands that many third-party vendors charge monthly per-subscriber fees (regardless of whether or how many subscribers ever use the application to try to reach 911), in addition to up-front set-up costs. Such per-subscriber costs, or even per-transaction costs, could quickly tip an otherwise successful business model on its head as the costs approach the revenues (if any) made by the application provider. If the FCC were to take this approach, it would stifle innovation and limit the growth of applications that consumers have come to expect and enjoy. It also bears mentioning that many of these IP-enabled applications are designed for a global market. It is not clear that all potentially impacted software developers will be aware of this new regulatory obligation.

IV. THE FCC IS WITHOUT LEGAL AUTHORITY TO IMPOSE 911 LEGACY REQUIREMENTS ON INTERNET PROTOCOL SERVICES AND SUCH OBLIGATIONS WILL LIKELY RESULT IN CONSUMER CONFUSION

The Commission lacks the authority to apply any of the *FNPRM*'s proposed obligations on what it has categorized in the *FNPRM* as “interconnected text providers,” including any new obligations to provide automatic error messages for texts to 911. None of the bases put forward by the Commission – the Twenty-First Century Communications and Video Accessibility Act of 2010 (“*CVAA*”), Title III of the Communications Act, or the Commission’s ancillary authority – provide the necessary jurisdiction. As *VON* will expand more fully in its later comments, (i) the *CVAA* does not apply largely because it is focused on an “Internet protocol-enabled emergency network” and not the public switched network that is the subject of these proposed regulations;² (ii) no provision of Title III, or any other portion of the Communications Act, gives the FCC authority to regulate Over the Top (“*OTT*”) applications that are not licensed services; and (iii) the Commission’s ancillary authority is not elastic enough to be stretched to cover these proposed obligations.³ In any event, regardless of the Commission’s authority, the Commission should not impose these requirements prior to the widespread availability of Next Generation 911. *See also* Voice on the Net Coalition *ex parte* in GN Docket No. 11-117 et al (November 14, 2012).

Furthermore, the potential for consumer confusion from extending legacy 911 regulation beyond *CMRS* providers is manifest. As discussed above, *VON* endorses keeping the scope of

² The Commission fails to identify any section of the *CVAA* that would be availing. Congress carefully drafted the language of Section 615(c) to ensure the applicability of any rules would be narrowly tailored. This section makes clear that the requirements are limited to providers of interconnected and non-interconnected VoIP services. Section 615(g), which gives the FCC authority to promulgate regulations, does not give the FCC authority to extend the requirements to entities not listed in Section 615(c), such as providers of interconnected text applications.

³ Section 151 of the Communications Act alone cannot support jurisdiction. Section 151 provides insight into how Congress thinks the FCC should exercise its authority but is not itself a grant of authority.

any new obligations on OTT providers as narrow as possible, but even then the line-drawing would likely confuse consumers. There are potentially hundreds of OTT texting applications that consumers use every day, including one-way applications and applications that rely on all users to have downloaded the same texting software. While extending a bounce-back requirement to all of these services would be nonsensical and unlawful, a set of rules that applies to only some of these OTT applications would be unavoidably confusing. Another source of consumer confusion involves the device used: the FCC appropriately proposes that the new rules would apply only to the extent the interconnected text application is used on certain devices – “mobile devices” – and in certain circumstances – when used on a “CMRS network” (see proposed rule (6)(b)). The result, however, would be a requirement that may apply to an application only when a smartphone or tablet is on a mobile operator’s 3G or 4G network, but not when a smartphone or tablet is connected solely to an 802.11 network. Thus, the smart phone user who successfully reached 911 on Monday via an interconnected text application while connected to a carrier network, would fail to reach 911 on Tuesday using the same application on the same device when connected to a WiFi hotspot. Similarly, a consumer who reached 911 via a text app on their smartphone may not reach 911 using that very same application on their Internet-connected computer or television. These points highlight the importance of the FCC limiting its obligations on IP services to the next generation 911 scenarios and not pulling these services into the legacy 911 solutions.

Conclusion

The VON Coalition urges the Commission not to adopt any new obligations at this time on interconnected text messaging applications to provide automatic error messages for texts to 911. If the Commission nonetheless does so, it should limit the obligation to a message generated by the application notifying users that 911 is inaccessible from the application and that they should use alternative means to contact their local PSAP. This would be the most reasonable approach, and the one that best limits the potential for dangerous consumer confusion.

Respectfully submitted,

VOICE ON THE NET COALITION

/s/

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