

April 17, 2024

***Ex Parte* Notice**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street, N.E.  
Washington, D.C., 20554

**RE: Facilitating Implementation of Next Generation 911 Services (NG911)  
PS Docket No. 21-479**

Dear Ms. Dortch:

On Monday, April 15, Brian Ford and the undersigned on behalf of NTCA–The Rural Broadband Association (“NTCA”) met with the following staff from the Federal Communications Commission (the “Commission”): from the Wireline Competition Bureau (“WCB”) Trent Harkrader, WCB Chief; Terri Natoli, WCB Deputy Bureau Chief; Suzanne Yelen, WCB Associate Bureau Chief; Victoria Goldberg, Pricing Policy Division (“PPD”) Chief; Jodie May Donovan, Competition Policy Division (“CPD”) Chief; Jodie Griffin, Telecommunications Access Policy Division (“TAPD”) Chief; Edward Krachmer, CPD Deputy Division Chief; Irina Asoskov, PPD Assistant Division Chief; Albert Lewis, PPD Special Counsel; Theodore Burmeister, TAPD Special Counsel and Simon Solemani, WCB Legal Advisor; and from the Public Safety and Homeland Security Bureau (“PSHSB”), David Furth, Deputy Chief; and David Sieradzki Policy and Licensing Division Deputy Chief. The subject was the Notice of Proposed Rulemaking (“NPRM”) in the above-referenced Next Generation 911 (“NG911”) proceeding that, among other things, would require all originating service providers (“OSPs”) to transmit 911 calls to points of interconnection (“POIs”) unilaterally designated by NG911 network providers.<sup>1</sup> Consistent with prior advocacy on this issue,<sup>2</sup> NTCA stated that the NPRM’s proposed default cost recovery framework – that would require OSPs to assume all financial responsibility for the routing of 911 calls in the absence of a state cost recovery mechanism – should be set aside in favor of a default framework that mirrors the apportionment of financial responsibility today for the origination of such calls.

As an initial matter, NTCA noted that the connecting arrangements at issue – 911 calls that NG911 network providers demand that OSPs deliver to POIs as unilaterally designated by the former – should be governed by Sections 251 and 252 of the Communications Act of 1934, as amended, (“the Act”).<sup>3</sup> While the NPRM proposes to “clarify” that these statutory provisions do

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<sup>1</sup> *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47 (rel. Jun. 9, 2023) (“NPRM”).

<sup>2</sup> See *ex parte* submission of NTCA and the RLEC Parties, PS Docket 21-479 (Feb. 6, 2024) (“*Feb. 6 ex parte*”).

<sup>3</sup> 47 U.S.C. § 251 and 252.

not apply here because 911 authorities are not “commercial telecommunications carriers,”<sup>4</sup> this legal analysis is factually flawed, as the connecting arrangements here are in fact between OSPs and NG911 network providers. These NG911 network providers seeking interconnection with OSPs are private actors and commercial entities chosen (and paid) by state 911 authorities to establish and operate NG911 connectivity and routing for a state, and their status as performing a contractually obligated function on behalf of a state does not transform them into government entities.

There is no basis to sidestep Sections 251 and 252 as it relates to these NG911 network providers. The record here makes clear that these providers seeking interconnection with OSPs are “telecommunications carriers” as defined in the Act, and as such are subject to obligations under Sections 251 and 252. A 911 emergency call placed today or in the future when NG911 is deployed is “telecommunications” as defined by the Act, as it is “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>5</sup> This “telecommunications,” in turn, is offered “for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used”<sup>6</sup> by a “telecommunications carrier.” Any contention that these services are not offered “for a fee directly to the public” is incorrect – the service is offered by NG911 network providers to states acting on behalf of public safety answering points, and, consequently, is an offering to a “class of user as to be effectively available directly to the public”<sup>7</sup> and thus the Commission has no factual basis to set aside these statutory provisions.

NTCA then noted that it would not be appropriate for the Commission to determine that the protocol underlying the calls at issue, alone, is determinative of whether Sections 251 and 252 apply in this or even any broader context. Even if the Commission may determine that NG911 network providers are not “telecommunications carriers” – a determination NTCA does not concede – it is not clear then what statutory obligation telecommunications carriers like OSPs have to interconnect with these commercial entities; the commitment by OSPs is to offer access to 911 services to their customers, and not to meet every demand – no matter how unbounded or unreasonable – made by a party that seeks interconnection. At the very least, we observed that the Commission should make clear that it is not prejudging such issues in the broader voice services context. As it relates to IP interconnection for voice traffic, where clarity on IP interconnection is

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<sup>4</sup> NPRM, ¶ 56.

<sup>5</sup> 47 U.S.C. § 153(50).

<sup>6</sup> 47 U.S.C. § 153(53).

<sup>7</sup> Characterization of this offering as “wholesale” does not alter the application of the Section 251/252 framework. See *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket N. 06-55, DA 07709) released March 1, 2007; *In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, Declaratory Ruling, WC Docket No. 10-143, et. al (DCC 11-83), released Mat 26, 2011.

necessary to advance other Commission objectives,<sup>8</sup> a full record on that critical issue should be sought. There is real concern that the determination that NG911 providers can receive payment from states for routing of NG911 traffic *and* then transfer the costs of doing so to smaller rural providers (or any other OSP for that matter) without any bound whatsoever will be deemed precedential for purposes of IP interconnection more broadly. NTCA further observed that the record lacks any review of the impact of such transferring of costs onto consumers and the implications for universal service – but that if the Commission proceeds nonetheless, it should make clear that OSPs are free to recover these costs from consumers in the form of increased local voice rates in the absence of a state-designed cost recovery mechanism.

NTCA then stated that the Section 251 and 252 questions raised by the NPRM are not dispositive as to whether the Commission can proceed with the NPRM’s default cost recovery framework. *If NG911 network providers are not telecommunications carriers, then the only alternative is that these operators are merely purchasers of a telecommunications service from OSPs as an input for fulfillment of the NG911 provider’s contract with the state.* That telecommunications service is the connectivity with OSPs’ network for the receipt of 911 traffic that OSPs will originate on behalf of their end-users, and the Commission lacks the authority to adopt the proposed default cost recovery framework that in effect requires OSPs to offer this service to a purchaser for free. As NTCA has discussed at length, neither the NPRM’s “general” assertion of authority,<sup>9</sup> nor the invocation of the “preamble” to the NET 911 Act,<sup>10</sup> the “RAY BAUM’S Act,”<sup>11</sup> or the 21st Century Communications and Video Accessibility Act (the “CVAA”)<sup>12</sup> are on point here. Importantly, no demonstration has been made that the Commission’s successful implementation of

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<sup>8</sup> See NTCA, et. al., *ex parte* letter, WC Docket No. 17-97 (fil. Feb. 13, 2024), pp. 1-2 (pointing to the fact that a lack of an IP interconnection framework limits the increased availability of caller-ID authentication, “Rich Call Data” and NG911 services).

<sup>9</sup> *Feb. 6 ex parte*, p. 7 (“Nothing in the Commission’s ‘general jurisdictional grant’ grants the agency the authority to override a host of other laws and regulations related to the offering of telecommunications services, the classification of parties providing and using such services, or the costs associated with delivering or procuring these services, as applicable.”).

<sup>10</sup> *Id.*, pp. 7-8 (stating that “[t]he invocation of the ‘preamble’ to the NET 911 Act to justify NG911 network providers to compel the free transport by OSPs to locations chosen by the NG911 network provider is unavailing” and that, in any case, “the Commission has already found in implementing the NET 911 Act that such Congressional action was adopted to effectuate the statutory requirement that providers of [interconnected VoIP] service provide 911 and enhanced 911 (E911) service in full compliance with [Commission] rules.”) (internal citations omitted).

<sup>11</sup> *Id.*, p. 8 (stating that “[t]he NG911 provision found in the RAY BAUM’S Act directed the Commission to adopt rules to ensure that dispatchable location information is conveyed with 911 calls ‘regardless of the technological platform used’” and that “nothing in the statute references anything beyond location of a caller and its provision to first responders, and certainly never alludes to the routing and cost responsibilities of OSPs and NG911 network providers”) (internal citations omitted).

<sup>12</sup> *Id.*, p. 9 (“No demonstration has been made within the NPRM or in the record that foisting the transport costs at issue on OSPs is somehow critical to ‘access by individuals with disabilities to an Internet protocol enabled emergency network.’”) (internal citations omitted).

any of these provisions requires the foisting of significant transport costs on OSPs that would result from the proposed default cost allocation rule.

Finally, NTCA reiterated the need for the Commission to be attentive to the disproportionate impact the proposed default cost allocation rule would have on rural end users. NTCA’s rural, rate-of-return regulated (“RLEC”) members operate in some of the nation’s lowest-density, highest-cost-to-serve rural areas, meaning operating costs generally must be recovered from either higher rates charged to the relatively few rural consumers living in such sparsely populated areas and/or High Cost Universal Service Fund (“USF”) disbursements. Yet these operating costs at issue – significant new transport costs for the delivery of 911 traffic to far flung POIs – will not be recoverable via USF.<sup>13</sup> Even worse, under the proposed default rule, the Commission would foreclose any other option other than increased end-user rates. This is because it is difficult to envision why a state would have an incentive to establish (or keep in place should one exist now) any NG911 cost recovery mechanism that eliminates or limits these end-user rate increases in the wake of a Commission order requiring OSPs to absorb these costs if a recovery mechanism is not in place. Thus, the proposed default rule poses substantial risk to the Commission’s statutory mission of universal service, and the adoption of a default rule for apportionment of interconnection costs along the lines of that proposed by NTCA<sup>14</sup> – at least for smaller providers operating in the most rural high-cost areas of the country, if not for all OSPs – should be considered.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.



By: /s/ Michael Romano  
Michael Romano  
Executive Vice President

cc: Trent Harkrader  
Terri Natoli  
Suzanne Yelen  
Victoria Goldberg  
Jodie May Donovan  
Jodie Griffin  
Edward Krachmer

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<sup>13</sup> See 47 CFR § 54.901, *et seq.* and 54.1301, *et seq.* (setting forth the categories of RLECs’ costs recoverable from the High-Cost USF and limiting those to local “loop” costs incurred as part of the provision of voice and broadband service to end-users).

<sup>14</sup> Comments of NTCA–The Rural Broadband Association, PS Docket No. 21-479 (fil. Aug. 8, 2023), pp. 14-16.

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Irina Asoskov

Albert Lewis

Theodore Burmeister

Simon Solemani

David Furth

David Sieradzki