

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

In the Matter of)
)
Public Safety and Homeland) RM-11780
Security Bureau Seeks)
Comment on Request of the)
National Association of State)
911 Administrators to)
Address Issues Related to)
911 Applications for)
Smartphones)

COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits these comments in response to a request from the National Association of State 911 Administrators (“NASNA”) to initiate a proceeding related to 911 applications for smartphones. NTCA appreciates NASNA’s concerns. New technology may be able to improve public safety and/or offer additional capabilities and features; but unfortunately, as highlighted in the NASNA petition, unless properly conceived, planned, and implemented, technology also has the capability to complicate legacy systems and processes, and, in the worst-case scenario, endanger emergency response activities.

As a foundational matter, the Federal Communications Commission (“FCC” or “Commission”) is not the appropriate venue to address the concerns raised by NASNA in its

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

petition. As Chairman Ajit Pai highlighted in 2013, the FCC has little more than a “supplementary role” in the 911 ecosystem, “charged with ‘work[ing] cooperatively with public safety organizations [and] industry participants . . . to develop best practices’ for ‘network diversity requirements,’ ‘call-handling in the event of call overflow or network outages,’ and ‘certification and testing requirements’ for service to [Public Safety Answering Points] PSAPs.”² Indeed, as highlighted in the NASNA petition, the issues to be addressed stem largely from unregulated application developers over which the FCC lacks jurisdiction.

Whatever the merits of the issues raised by the request, any such concerns should not and cannot be solved simply by casting about for entities over whom the Commission has statutory authority so that new duties can be imposed upon them. This is not the best public policy approach as it parlays an indirect and temporary solution to the issues at hand by using other, ill-fitting statutory provisions as a vehicle to mandate that telecom service providers fulfill the role of technology gatekeepers for consumers and PSAPs. Indeed, although it may be tempting to adopt new regulations to address the problems raised by NASNA in its petition – thereby mandating that service providers evaluate, and, based upon their findings, subsequently restrict consumer applications – this course of action would be problematic at best.³ Consumers have

² See Dissenting Statement of Commissioner Ajit Pai, *In the Matter of Improving 911 Reliability*, (PS Docket No. 13-75); *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, (PS Docket No. 11-60). Also see Wireless Communications and Public Safety Act of 1999, Pub. L. 106-81, § 6(h), as amended by New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, § 101(2).

³ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, (rel. Mar. 12, 2015). (“Open Internet Report and Order”), which specifies that broadband service providers are specifically prevented from blocking, throttling, and paid prioritization regarding Internet traffic, applications, and services. Although there are exceptions to the rules, it is not clear that 911 smartphone applications would easily qualify. As such, in response to the NASNA request, if the Commission was to install any new regulations designed to halt the use of smartphone 911

not indicated that they want or expect their Internet service provider (“ISP”) to play the role of application gatekeeper, thereby restricting the apps that can be downloaded and run on a smartphone, or the capabilities and information on the device that those apps have access to. Further, if the FCC mandates new regulatory requirements upon telecom service providers in attempt to resolve the issues raised by NASNA, it will only serve to increase the technology complexity and cost associated with providing 911 service. In turn, this will further burden small rural wireline and wireless providers that serve as carriers of last resort in high-cost areas of the country, providing essential communications links between consumers and emergency response personnel.

To be clear, NTCA does not dispute or dismiss the important concerns highlighted in the NASNA petition, but rather cautions that the FCC is not the appropriate entity to address them. The FCC operates based upon limited authority, as designated and derived from Congress, and it cannot seek to adjudicate and resolve a technology-based issue that strays from its legal purview, regardless of the merits of the issues outlined in the petition.

In juxtaposition to the FCC, the Federal Trade Commission (“FTC”) has a unique dual mission to protect consumers while also promoting competition and, as a byproduct, technological innovation.⁴ As such, the FTC is a better venue to holistically review the concerns as raised by NASNA in its petition – including the state of the application ecosystem and/or the market need for government intervention – and, likewise, the FTC is better positioned to act. As

apps by ensuring that an ISP must act as a 911 smartphone application gatekeeper, the provider may then inadvertently run afoul of the letter, intent, and spirit of the Open Internet Report and Order as it seeks to fulfill the FCC’s new regulatory mandates.

⁴ See <https://www.ftc.gov/about-ftc>, *refencing* 15 U.S.C. Sec. 45(a)(1)).

such, NTCA urges the FCC to reject NASNA's petition and instead refer it the FTC for immediate review.

To the extent the FCC determines that it must nonetheless proceed forward independently, NTCA urges the Commission to start by asking the right questions. As an initial matter, as noted above, the Commission should examine its legal authority to review and act on this request. Further, since standards are at the heart of this issue any subsequent action in this proceeding must address how to evolve and proliferate standards for the 911 apps ecosystem. NTCA agrees with the National Emergency Number Association ("NENA") in that as technology evolves, the key goal is to "maintain the security, reliability, universal character, and seamless user experience of 9-1-1 service as we add new capabilities," including rapid application advancements.⁵ Standards for 911 apps should address minimum requirements regarding security and privacy of data, and how applications interface with PSAPs and existing legacy systems, chief among them location accuracy processes and procedures. In this manner, standards provide a critical foundation, ensuring that vital legacy 911 systems can continue to function as they also look to incorporate new innovative features, functions, and capabilities for PSAPs and consumers alike. NTCA also agrees that public safety associations, such as NENA and the Association of Public-Safety Communications Officials ("APCO"), are "uniquely situated to ensure apps do not negatively impact public safety operations or lead to consumer confusion."⁶ NTCA urges the Commission to revisit the status of current 911 application

⁵ "Search, Tap, and Swipe for Help: Apps in the 9-1-1 Ecosystem", Trey Forgety, Director of Government Affairs, NENA, FCC 911 Apps Workshop (May 8, 2015), available at: https://transition.fcc.gov/pshs/911/Apps%20Wrkshp%202015/NENA_Forgety_050815.pdf.

⁶ APCO International, "The Status of 9-1-1- Apps" (April 27, 2015), available at: http://appcomm.org/wp-content/themes/directorypress/thumbs/WhitePaper_911Apps.pdf.

standards and how the public safety community can ensure that standards are adopted and implemented by developers and users alike.⁷

In addition, as highlighted in numerous FCC-led proceedings and other venues, PSAPs require an adequate and consistent funding source, which would enable call centers to benefit from Next-Generation 911, including new application technology.⁸ Congress and state governments should investigate how to further support and bolster the technologically capabilities of PSAPs to receive and benefit from new applications.

Perhaps most importantly, at the same time as standards and funding concerns are revisited, public safety associations and the states should further educate consumers as to the pitfalls of 911 smartphone applications available today. For instance, regarding text-to-911, the public safety community, including the FCC, undertook a comprehensive communications campaign to ensure the public understands that text-to-911 is not available in all areas, and the

⁷ APCO and NENA authored “Public Safety Considerations for Smartphone App Developers” in 2013 (available at: http://c.ymcdn.com/sites/www.nena.org/resource/resmgr/Docs/Smartphone_Apps_Consideratio.pdf), a joint association publication that provides smartphone application developers with information on Enhanced 9-1-1 technical architecture and outlines key issues for consideration by smartphone application developers. In addition, APCO published “Key Attributes of Effective Apps for Public Safety and Emergency Response” on August 18, 2013, (available at: http://appcomm.org/wp-content/themes/directorypress/thumbs/AppComm_Key_Attributes.pdf), which provides public safety professionals, app developers, and the public with an outline of important considerations for apps that include public safety or emergency response features. Further, at the FCC-convened April 2015 event on 911 apps, APCO also stated that it was working on a related American National Standards Institute (“ANSI”) accredited standard to further address 911 applications (see <https://www.fcc.gov/news-events/events/2015/05/911-apps-workshop>, APCO).

⁸ See Reply Comments of NTCA, *In the Matter of Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012*, PS Docket Nos. 10-255, 11-153 and 12-333, (Nov. 20, 2012).

importance of always first calling 911 when the user is able.⁹ Likewise, the public should be informed regarding the current challenges and hurdles to smartphone 911 apps.

For the aforementioned reasons, NTCA urges the Commission to decline from further examining the issues raised by NASNA in a formal proceeding and instead refer the petition to the FTC for review and potential agency action. However, if the Commission determines that it must act independently, NTCA cautions the Commission to ask the right questions as it seeks to collect feedback from stakeholders and determine what course of action, if any, is to be pursued.

Respectfully submitted,



By: /s/ Jill Canfield
Vice President, Legal & Industry & Assistant
General Counsel
jcanfield@ntca.org

/s/ Jesse Ward
Director, Industry & Policy Analysis
jward@ntca.org

/s/ Brian Ford
Senior Regulatory Counsel
bford@ntca.org

4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000

⁹ FCC, “What You Need to Know about Text-to-911,”
<https://www.fcc.gov/consumers/guides/what-you-need-know-about-text-911>.