

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

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

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits these reply comments in response to a Public Notice² seeking feedback regarding smartphone applications for 911 and specifically, the concerns raised by the National Association of State 911 Administrators (“NASNA”) in its letter.

NASNA seeks the Federal Communications Commission’s (“FCC’s” or the Commission’s”) assistance to address certain 911-smartphone applications, which interfere with the provisioning of emergency response services. NTCA appreciates the important issues

¹ NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² *In the Matter of Public Safety and Homeland Security Bureau Seeks Comment on Request of the National Association of State 911 Administrators to Address Issues Related to 911 Applications for Smartphones*, (RM -11780), rel. Dec. 19, 2016. (“Public Notice”).

highlighted by NASNA. However, several other parties commenting on the Public Notice share NTCA's view that the Commission is not the appropriate venue to address these concerns. In contrast, comments filed in support of the NASNA petition mostly suffer from the same defect as the request itself, advocating for regulatory intervention from the Commission without addressing the foundational issue of jurisdictional authority. Indeed, although the Commission has broad authority to oversee 911 systems, this authority is not unfettered; the Commission does not have the authority to regulate third parties and/or the operations of unrelated applications. As an alternative, holding ISPs responsible for restricting the actions of consumers and/or the applications available on a device is problematic and ill advised.

NTCA agrees that NASNA's concerns can be organized into three general categories: "(1) standards that address certain technological concerns with 911 Apps; (2) testing and/or certification requirements that 911 Apps must meet before entering the marketplace; and (3) rules governing the marketing of 911 Apps."³ These categories provide much-needed clarity to the variety of issues raised in the NASNA petition, while also highlighting a common thread: application service providers. At base, the concerns initially raised by NASNA and further amplified by the public safety community in their initial filings stem from the actions and/or inactions of unregulated application service providers, over which the FCC lacks jurisdictional authority.

NTCA recognizes that, unfortunately, certain emergency services applications available to consumers today may interfere with the traditional 911 calling operations provided by telecommunications operators pursuant to the Commission's rules. However, NTCA agrees that

³ Initial Comments of Mission Critical Partners at 3.

“[w]ireless carriers cannot be the gate keepers for these third-party emergency services apps over which the carrier has no control.”⁴ Indeed, “[w]here an app ‘takes over’ the 911 experience from the CMRS provider, there must be no compliance responsibility or legal liability on the carrier for the routing and delivery of location information of these calls by over-the-top 911 apps that may ride on top of the CMRS provider’s internet access service.”⁵

As NTCA asserted in its initial comments, in an attempt to address NASNA’s concerns, the Commission should not seek to blindly cast about for entities over which it can impose new regulatory requirements, thereby holding ISPs responsible for the technical operations of unrelated consumer applications. Telecom service providers cannot and should not act as technology gatekeepers, 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, the Commission should proceed with caution as it seeks to balance concerns related to 911 services. 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 services. 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 geographically disperse consumers and emergency response personnel.

Additionally, NTCA reiterates that the Commission is not the appropriate venue to regulate application service providers, or “edge providers.” In its Public Notice, “the

⁴ AT&T at 2.

⁵ *Id.*

Commission omits discussion of where it would derive authority over apps enabling 911 communications, or apps generally.”⁶ AT&T agrees that it is “unclear... under what authority NASNA believes the Commission could compel application providers to implement any of the recommendations NASNA puts forward in its letter.”⁷ Indeed, the Commission has explicitly stated, in multiple proceedings, that its regulatory reach does not extend to edge providers.⁸

In juxtaposition, the Federal Trade Commission (“FTC”) is statutorily authorized to address NASNA’s concerns as they relate to application service providers and instances of consumer harm.⁹ The FTC also has the “proven experience and requisite expertise”¹⁰ required to assess, analyze, and intervene, if necessary, within the consumer application marketplace.

⁶ Comments of ACT The App Association at 3.

⁷ AT&T at 2.

⁸ The App Association at 4, referencing *In the Matter of Protecting and Promoting the Internet*, 30 FCC Rcd. 5601, GN Docket No. 14-28, Report and Order, at Para. 382 (2015) (writing “[the Commission is] not, however, regulating the Internet, per se, or any Internet applications or content. Rather, our reclassification of broadband Internet access service involves only the transmission component of Internet access service.” See also *In the Matter of Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor ‘Do Not Track’ Requests*, DA-15-1266, RM-11757, Order, at Para 1 (2015) (writing “[t]he Commission has been unequivocal in declaring that it has no intent to regulate edge providers.”).

⁹ See <https://www.ftc.gov/about-ftc>, referencing 15 U.S.C. Sec. 45(a)(1)).

¹⁰ The App Association at 4.

In conclusion, 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. At a minimum, the Commission should ask for feedback regarding its jurisdictional authority to proceed, and how it can promulgate standards and best practices related to application service providers.

Respectfully submitted,



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