Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Facilitating Implementation of Next Generation 911 Services (NG911)	)	PS Docket No. 21-479
	)	

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Notice of Proposed Rulemaking ("NPRM")[2] released by the Federal Communications Commission ("Commission") seeking comment on rules to advance the ongoing nationwide transition to Next Generation 911 ("NG911") service. The NPRM proposes to: (1) require wireline, interconnected VoIP, and Internet-based TRS providers (hereinafter "OSPs") to route 911 calls, in Internet Protocol ("IP") format, to a delivery point(s) as determined by NG911 providers;[3] and (2) establish a cost allocation methodology that would require OSPs (as opposed to the private NG911 provider contracted to manage NG911 services

[1] NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

[2] *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").

[3] *Id*., ¶ 2. The NPRM proposes to define 911 authority as "the state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to designate the point(s) to receive emergency calls." *Id*., ¶ 53.

for a given state[4]) to arrange for, and assume the financial responsibility for, the routing of such calls to the destination point(s) as designated by the NG911 provider.[5] The NPRM further states that this "default" cost allocation methodology would apply unless a state establishes a cost recovery mechanism that would, presumably, reimburse OSPs for costs incurred in the routing of 911 calls as proposed by the NPRM.

The record in the proceeding supports setting aside the NPRM's default cost allocation methodology and moving to an alternative approach for several reasons. First, as the record shows, the NPRM's cost allocation proposal is based upon factual and technical errors: in particular, the failure to properly distinguish between separate elements of a voice network leads the NRPM to underestimate the costs that OSPs will assume. These costs, as the record demonstrates, will be significant and could impact universal service as voice rates will increase.

Second, commenters agree that the NPRM's default cost allocation proposal is unsupported by the Commission's legal authority. For one, it is inconsistent with Sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"). Moreover, as parties note, even if the Commission declares that NG911 providers are not "telecommunications carriers" under these provisions, it lacks the legal authority to declare that these entities – that can only be deemed private operators if they are not telecommunications carriers – are entitled to compel OSPs, entirely at their own cost, to route public safety traffic to points as designated by the NG911 provider. Moreover, as the record

[4] The "NG911" provider as discussed herein is not to be confused with OSPs or the state 911 authority. The NG911 provider, rather, is in most states the third-party entity chosen by a state 911 authority – via a state issued Request for Proposal ("RFP") – to provide NG911 service to the residents of a particular state.

[5] NPRM, ¶ 2.

shows, the Commission cannot save its proposal by declaring NG911 providers are "government entities," as they are instead companies that state 911 authorities have hired to perform a function. This does not transform them into government actors outside the scope of the Act.

Finally, the NPRM's proposal is very much based on the notion that its cost allocation proposal is somehow the only way to "end disputes between NG911 providers and OSPs." Yet, this is most decidedly not the case – by definition, any default rule would achieve the purpose of "ending" disputes, and it is worth noting that the proposed default allocation here creates incentives for private NG911 providers *not* to reach compromise precisely because the default literally results in transfer of all costs for interconnection to OSPs. Moreover, only a default rule that limits transport responsibility for the calls at issue here to OSPs' "network edge" is within the Commission's legal authority. This proposal would be a surgical amendment to the NPRM's original proposal and would quickly advance the NG911 transition by setting clear "rules of the road" for all parties involved in the provision of NG911 service.

II. BASED ON THE RECORD IN THIS PROCEEDING, THE COMMISSION SHOULD SET ASIDE THE NPRM'S COST ALLOCATION PROPOSAL, AND ADOPT INSTEAD A METHODOLOGY THAT FAIRLY APPORTIONS, AMONG ALL BENEFICIARIES, THE COSTS OF THE NG911 TRANSITION.

The record in this proceeding demonstrates that the NPRM's proposed NG911 default cost allocation methodology is based on a technically and factually flawed tentative conclusion that rests upon a material underestimation of the costs that many OSPs will assume should the draft rule go forward. The proposal is further based on a mistakenly applied interpretation of the relevant legal framework that the NPRM claims governs the exchange of traffic at issue herein. Arguments advanced by those parties supporting the NPRM's proposed cost allocation rule fail to overcome these fatal flaws. That said, the Commission can easily pivot – and promote the

NG911 transition as it intends – by adopting the proposed cost allocation rule set forth in Section II. C., *infra*. This alternative creates a clearly defined set of responsibilities for NG911 traffic exchange via a default rule and reasonably apportions the costs of such exchange among the various beneficiaries of this valuable service.

A. The record demonstrates that the proposed cost allocation rule is based on mistaken factual and technical assumptions, and fails to account for other important factors as well.

As an initial matter, the NPRM tentatively concludes that "the costs for rural LECs providing broadband to transmit 911 traffic via IP to a state's NG911 point of interconnection would be small."[6] As NTCA demonstrated in its initial comments, this tentative conclusion is factually and technically flawed.[7] For one thing, the NPRM mistakenly conflates *intra-network switching costs* with *inter-network transport costs* – in other words, the NRPM does not take into account the fact that an OSP having IP-enabled switching functionality within its own network has no bearing on whether another network element (transport) is also IP enabled.[8] Indeed, for most rural local exchange carriers ("RLECs"), to the extent any IP-enabled transport arrangements may be available to enable delivery of IP traffic beyond the RLEC's own IP switch, <u>*this must be purchased from other operators*</u>. From a factual standpoint, the NPRM also mistakenly presumes that RLECs' existing voice traffic exchange arrangements are available to

[6] *Id*., ¶ 74.

[7] Comments of NTCA–The Rural Broadband Association ("NTCA"), PS Docket No. 21-479 (fil. Aug. 9, 2023), pp. 5-10.

[8] Comments of the Rural Telephone Company Consortium ("RTCC"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 23 (stating that "the FCC 's purported cost estimates appear to be based on an assumption that the existence of soft switching includes SIP trunking. Such an assumption is in error. Whether the RLEC has deployed soft switching does not equate to SJP transport, let alone dedicated transport.").

handle this traffic[9] – as NTCA demonstrated,[10] this is factually incorrect as RLECs do not exchange voice traffic via "peering" arrangements that can be leveraged here to somehow, without cost, obtain the result the NPRM seeks to achieve. Rather, RLECs and likely many other OSPs will incur significant new transport costs to comply with the NPRM's proposed rule, as dedicated facilities must be procured to lease transport facilities from other operators. That the NPRM does not base its proposal on any of this leads to the unjustified and unjustifiable determination that the cost to transport NG911 traffic to any point as designated by the NG911 provider would somehow be "small."

To the contrary, the record indicates these costs will indeed be substantial. As an example, USTelecom notes that one of its members estimates "ongoing annual operating costs in northern California are approximately $750,000, which come on top of an initial cost of $378,000 to aggregate traffic from multiple exchanges to reach the state-designated interconnection point hundreds of miles away." [11] RTCC (a group of 24 RLECs operating in rural Nebraska) estimates that each individual company that is part of that group will incur least $15,000 annually.[12] This estimate is similar to that provided by NTCA with respect to one

[9] NPRM, ¶ 74.

[10] NTCA, p. 6 (stating that "RLECs generally do not have settlement-free peering arrangements; most RLECs exchange Internet traffic through paid-for transit arrangements that provide access to one of several distant Internet Exchange Points ("IXPs"). Moreover, the existence of these relationships is irrelevant, as these IXPs will not necessarily be in the same locations as the NPRM expects NG911 traffic to be delivered, meaning some incremental cost for further transit and transport would likely be required for compliance with the NPRM's proposal.").

[11] Comments of USTelecom – The Broadband Association ("USTelecom"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 4.

[12] RTCC, p. 4.

Kansas RLEC,[13] and the KS RLECs' comments provide cost estimates demonstrating this will be the typical level of cost burden assumed by small, rural operators across that state.[14]

Those parties supporting the NPRM's proposed cost allocation rule provide no meaningful, fact-driven grounds for doing so. For one, NASNA merely states that it "agrees with the Commission's position that the financial burdens to smaller OSPs are not insurmountable."[15] This "analysis," however, offers no more insight than mere repetition of the mistaken assumptions in the NPRM – *which, of course, are themselves based on earlier NASNA statements that are similarly mistaken*.[16] The Commission cannot justify moving forward with a proposal that would shift costs to OSPs based upon nothing more than a "positive regulatory feedback loop." Even worse, NASNA's assertion that adoption of the cost allocation proposal "may provide a return on investment in the form of offering other commercial services by making these updates to their facilities"[17] betrays yet again its misunderstanding of the underlying facts. To repeat, the facilities at issue here are not on the OSPs' networks, nor are they facilities leased for other purposes; they would, rather, be leased for the singular dedicated

[13] NTCA. p. 3; Comments of the Five Area and Mid-Plains, PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 9; Comments of the South Dakota Telecommunications Association ("SDTA"), PS Docket No. 21-479 (fil. Aug. 9, 2023), pp. 11-12; Comments of Home Telephone ILEC LLC d/b/a Home Telecom ("Home"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 10.

[14] Comments of the Kansas Rural Local Exchange Carriers ("KS RLECs"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 2.

[15] Comments of the National Association of State 911 Administrators ("NASNA"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 11.

[16] In paragraph 73, the NPRM tentatively concludes that the costs that OSPs will assume here will be "small." In doing so it cites NASNA reply comments filed in February of 2022 in response to the Commission seeking comment on the NASNA Petition for Rulemaking. In comments subsequently filed on the NPRM, NASNA "agrees" with the NRPM'S cost analysis that is in fact based on NASNA's earlier reply comment assertions.

[17] NASNA, pp. 11-12.

purpose of routing NG911 traffic to specified locations chosen by the private NG911 providers, rendering NASNA's assertion as to collateral benefit nonsensical at best.

Additional attempts to justify the cost allocation proposal as "necessary to end disputes" fall woefully short as well. That OSPs have not jumped at the opportunity to provide, exclusively at their own cost, an input that private NG911 providers need to fulfill a state contract for which the latter will receive substantial remuneration, should come as no surprise. Moreover, the notion that the shifting of these costs entirely onto OSPs is the *only* path forward here because it will "help accelerate the deployment of NG911 services across the nation by eliminating a common source of OSP disputes"[18] misses the mark as well. Any clearly established set of cost responsibilities would end the disputes to which Comtech points – indeed, the "network edge" rule proposed by NTCA would similarly set a clear demarcation point, allow all parties to operate from a shared understanding of their relative responsibilities, and thus "end these disputes" as well. But the Commission has a duty to adopt a cost allocation rule based upon accurate assessments of the costs at issue and the implications of shifting those onto rural consumers, and such default rule must be within the agency's legal authority. Only the NTCA proposal meets that test.

Beyond such baseless cost assumptions in its foundation, a further examination of the record demonstrates that the proposed demarcation point fails to account for important factors. For one, as USTelecom correctly points out, "OSPs will also have less awareness of and visibility into the conditions in areas of the network beyond their service footprint, which makes

[18] Comments of the Comtech Telecommunications Corp. ("Comtech"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 6.

complying with obligations such as 911 outage reporting more challenging."[19] Thus, should the Commission go forward with its proposal, it may need to amend its 911 outage rules[20] to account for these new 911 traffic routes that extend across multiple state boundaries and that could include traffic touching multiple providers' networks. Liability concerns exist here as well; as the South Carolina Telephone Coalition states "[u]nder South Carolina law, the State 911 Authority and its agents enjoy broad immunity from liability for acts or omissions in developing, adopting, operating, or implementing a 911 system" yet "third-party transport providers was not contemplated by the South Carolina legislature."[21] This is an issue that the NPRM fails to consider entirely. Finally, Home Telephone correctly points out that the traffic sent to the NG911 providers' designated point of interconnection will, in turn, be routed to local PSAPs.[22] The NPRM seems not to contemplate this new network element at all, much less which party will pay for it or be responsible for complying with the Commission's or states' 911 rules for public safety traffic sent over those connections.

As the RTCC correctly notes, a "rational connection between the facts found and the choice made" that is not "arbitrary and capricious" is a central tenet of the Administrative

[19] USTelecom pp. 4-5.

[20] *See* Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, PS Docket No. 15-80, et al., Second Report and Order, FCC 22-88 (rel. Nov. 18, 2022).

[21] Comments of the South Carolina Telephone Coalition ("SC Coalition"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 15.

[22] Home, p. 11. ("Likewise, the back-end connection from the Aggregator [NG911 provider] to the local PSAPs suffers from the misassumption of network configurations. The complexity of NG911 operations has led many states to outsource the network functions to a relatively small number of Aggregators that employ centralized operations. This creates the need to establish a reliable back-end connection from the Aggregator location to local PSAPs' locations. This network, which will be a new element, will require the same or even higher level of quality than the front-end connection. Alas, this issue is not addressed in the NPRM.").

Procedure Act ("APA").[23] Ultimately, the record here confirms that the cost allocation proposal rests on a mistaken factual and technical foundation that is at odds with the costs the rules would impose on OSPs. To engage in "reasoned decision making," the Commission should alter its course based upon the factual and technical mistakes highlighted in the record. Fortunately, the Commission can easily alter its course, and thereby not only cure the legal infirmities of its proposal but also further the NG911 transition, by adopting the "network edge" proposal made below.

Finally, it is worth reiterating that the NPRM's cost allocation proposal portends universal service implications.[24] As NTCA stated in initial comments,[25] RLECs in particular operate in some of the nation's lowest-density, highest-cost-to-serve rural areas, meaning operating costs generally must be recovered from one of two places – higher rates charged to the relatively few rural consumers living in such sparsely populated areas and/or High-Cost Universal Service Fund ("USF") support. SDTA notes this as well, further illuminating the fact

[23] RTCC, p. 12, citing *Motor Vehicle Mfi-s. Ass 'n of US., Inc. v. State Fann Mut. Auto. Ins. Co.*, 463 U.S. 29- 43 (1983) ([T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made."'). *Home Box Office Inc. v. FCC.*, 567 F.2d 9, 35 (D.C. Cir. 1997) (The review of the underlying record "must be 'searching and careful,"' ensuring "both that the Commission has adequately considered all relevant factors and that it has demonstrated a 'rational connection between the facts found and the choice made."') (internal citation omitted); *Baltimore Gas and Elec. Co v. US.*, 817 F.2d 108, 116 (D.C. Cir. 1987) (The "arbitrary and capricious standard of review requires "an agency… to respond to significant comments that cast doubt on the reasonableness of the rule the agency adopts."); *Appalachian Power Co v. E.P.A.*, 249 F.3d 1032, 1059 (D.C. Cir. 2001) ("This Court is obligated to 'overturn a rulemaking as arbitrary and capricious where the EPA has failed to respond to specific challenges that are sufficiently central to its· decision."'); *NA.A.C.P., Jefferson County Branch v. Donovan*, 765 F.2d 1178, 1183-84 (D.C. Cir. 1985).

[24] NPRM, ¶ 75 ("we seek comment on the impacts of our proposed rules on the availability of universal service and universal service support under section 254 of the Act.").

[25] NTCA, pp. 2-5.

that the "USF does not include transport expenses as a recoverable cost."[26] This means that these costs will need to be recovered entirely from small, rural customer bases – resulting potentially in rates that may "unreasonably incomparable" when compared to those paid by urban counterparts in direct contravention of the mandate for universal service set forth in the Act.

B. The record demonstrates that the Commission lacks the legal authority to impose the proposed cost allocation rule.

The record does not support the Commission's attempt to sidestep the interconnection provisions of the Act. While the Commission posits that Sections 251 and 252 are inapplicable here because the state 911 authorities are "government actors,"[27] this assertion, like the cost issues raised above, misconstrues the underlying facts. As NTCA and others noted,[28] the relevant entity for the purposes of the legal analysis is the NG911 provider – this is the party with whom OSPs will exchange NG911 traffic and the parties to whom the Commission proposes to grant the authority to set interconnection points for that. The mere execution of a government contract does not convert a private entity into a government actor, and any order that turns upon such reasoning would be legally suspect. Moreover, nothing in the assortment of statutes the NPRM cites (the Ray Baum Act, the 21st Century Communications and Video Accessibility Act[29]) grants the Commission the authority to enable a private government

[26] SDTA, pp. 6-7 ("Required transport to out-of-state points of interconnection (POIs) will add cost, which will need to be recovered from either the Universal Service Fund (USF) or the end-user's customers. Federal USF does not include transport expenses as a recoverable cost.").

[27] NPRM, ¶ 56.

[28] Comments of the Pennsylvania Telephone Association ("PTA"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 6.

[29] NPRM, ¶¶ 60-63.

contractor the ability to demand that other parties provide, for free, a vital input necessary to fulfilling that contract.[30]

The record further confirms that the NG911 providers are not only private entities but also "telecommunications carriers" subject to Section 251 and 252 of the Act. As the South Carolina Telecommunications Association notes, "in South Carolina, 911 providers (including but not limited to Comtech) hold certificates of public convenience and necessity to provide the local telecommunications services necessary for the provision of NG911 service."[31] The Pennsylvania Public Utility Commission states that *it has addressed this specific issue*, writing that it, "has carefully considered the role of contracted 911 service providers and concluded that these entities qualify as requesting telecommunications carriers for purposes of Section 251 and 252."[32] The Pennsylvania PUC further notes that "there is substantial federal court precedent that 911 service providers are 'telecommunications carriers' and that they may obtain Section

[30] NTCA, p. 15 ("To the extent that a private NG911 provider neglected to factor these costs into its winning bid, the Commission should not endorse a cost allocation methodology that pushes these costs onto OSPs to make up for this failure; worse still, to the extent that the NG911 provider did include such costs in its bid, the default rule in the NPRM would enable 'double recovery.'").

[31] SC Coalition, p. 5.

[32] Comments of the Pennsylvania Public Utility Commission ("PA PUC"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 7. ("The Pa. PUC reviewed the application for authority to operate as a competitive local exchange carrier (CLEC) submitted by Intrado, a 911 service provider. Intrado proposed to 'provide the routing, transmission and transport of emergency calls to government and quasi-government PSAPs.' The Pa. PUC found that the applicant 'will be engaging in the provision of 'telecommunications service' and 'telephone exchange service' as the terms are defined under federal law in TA-96, and public utility service under applicable Pennsylvania law… Intrado is entitled to all rights and obligations under Sections 251 and 252 of TA96, 47 U.S.C. §§ 251 and 252.' As for the relationship between PSAPs and 911 service providers, the Pa. PUC found that 'Intrado plans to offer its services to PSAPs through the use of individual case basis (ICB) contracts… negotiated between Intrado and its PSAP end-user customers.'").

251 interconnection with incumbent LECs through Section 252 arbitration at state commissions."[33]

In addition, the record rejects the NPRM's reliance on the *US Cellular* and *King County* decisions. As the PA PUC states, *U.S. Cellular Corp. v. FCC* does not offer the Commission a path to exempting NG911 providers from Sections 251 and 252 because it:

> involved a dispute between wireless carriers and PSAPs over cost allocation but did not involve Section 251, LECs or covered 911 service providers whatsoever. And U.S. Cellular's conclusion that "PSAPs are governmental entities playing a critical role in the provision of public safety services," is again, not pertinent to the central issue before the FCC, which is the allocation of interconnection costs and duties as between two types of commercial entity: covered 911 service providers on one hand, and rural LECs on the other.[34]

With respect to the *King County* decision, as NTCA noted, the costs at issue there involved a materially different and much narrower proposition – the costs of network upgrades and trunking facilities on carriers' owned and operated network facilities or otherwise within their licensed service areas. RTCC explains why that decision is inapplicable to the instant proposal, stating that:

> the FCC does not reconcile the RLEC network traffic delivery requirement [that the NPRM proposes] with the geographic scope of the network that the RLEC operates versus the expansive geographic scope of wireless carriers' networks. Nor does the NPRM demonstrate how, should the King County Reconsideration Oder be applied to a RLEC, the FCC's authority to expand the geographic scope of the RLEC's network beyond the RLEC's state-defined certificated area and the FCC-defined Study Area for a given RLEC. Moreover, no demonstration is

[33] *Id*., p. 6. ("In *Bellsouth Telecommunications, Inc. v Finley*, the court approved findings of the North Carolina Utilities Commission that a 911 service provider qualified as a requesting telecommunications carrier under Section 251, provided 'telephone exchange service' and was thus entitled to arbitration before the state commission and interconnection with the incumbent LEC. Similarly, in *Ohio Bell Telephone Company v Public Utilities Commission of Ohio*, the court approved the state commission's findings that the 911 service provider offered 'telephone exchange service', qualified as a requesting telecommunications carrier and was entitled to Section 251 interconnection and Section 252 arbitration."). Citations omitted.

[34] *Id*., pp. 9-10. *See also* RTCC, p. 19.

> provided within the NPRM that the application of the King County Reconsideration Order standard required a wireless carrier to transport traffic beyond its existing licensed service area.[35]

By contrast, those supporting the NPRM's tentative conclusion with respect to Sections 251 and 252 offer once again little meaningful analysis. Statements such as "Comtech agrees with the FCC's interpretation"[36] hardly suffice to set aside these core provisions of the Act – yet this seems to be the extent of legal discussion on this issue by those supporting the NPRM's proposal. Indeed, the only substantive attempt to argue in support of an exemption from these provisions for NG911 providers misses the mark. More specifically, the Texas 911 Entities' assertion that Sections 251 and 252 of the Act are inapplicable here "because they were intended to apply to local telecommunications competition"[37] overlooks an important point. For one, the statutory text speaks precisely to the kinds of cost issues implicated by the NPRM's proposal – Section 251(c)(2)(b) states that ILECs' interconnection duties include the requirement to provide interconnection "at any technically feasible point within the carrier's network."[38] This provision ensures that the emergence of competition that Section 251 promotes does not come at the price of increased voice service rates as ILECs are forced to take traffic outside their network footprints. On this point, as SDTA correctly notes, these provisions do "not require an RLEC with limited-service areas, and limited local exchange networks provide interconnection 'off

[35] RTCC, pp. 20-21

[36] Comtech, p. 10.

[37] Comments of the Texas 9-1-1 Alliance, the Texas Commission on State Emergency Communications, and the Municipal Emergency Communication Districts Association ("Texas 9-1-1 Entities"), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 4.

[38] 47 U.S.C. § 251(c)(2)(b). *See also* RTCC, p. 8; SDTA, p. 8.

network' for the benefit of any carrier that may be engaged in providing NG911 services."[39] In other words, the Commission must look at the entirety of Sections 251 and 252 as part of its analysis.

Finally, RTCC correctly notes that the NPRM "fails to reconcile its default framework with the requirements of Sections 201 and 202 of the Act or how the other statutes it cites eliminate the need for a Section 201-202 analysis."[40] Indeed, the Commission has already found in another context that "a carrier has no legal obligation to agree to unilateral attempts to change network interconnection points."[41] As the Commission went on to say, "on several occasions the Commission has found that unilateral attempts by a carrier to change its interconnection point with another carrier that results in increased costs or inefficient routing of traffic is unjust and unreasonable under section 201(b) of the Act."[42] Yet, as RTCC also notes, "[n]o showing has been made that the NPRMs default cost recovery framework that would assign NG911-related transport costs to the RLECs results in 'just and reasonable' charges as required by 47 U.S.C. § 201(b)."[43] Here, the NPRM proposes to enable a carrier (the NG911 provider) to alter unilaterally the current points of interconnection for 911 traffic and impose new transport costs on OSPs, without any consideration as to whether these are just and reasonable.

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[39] SDTA, p. 6.

[40] RTCC, pp. 14-15.

[41] *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, FCC 20-143 (rel. Oct. 7, 2020) ¶ 71.

[42] *Id*.

[43] RTCC., p. 15.

C. The record offers the Commission an alternative NG911 cost allocation framework that would avoid placing a disproportionate burden on rural consumers and advance the NG911 transition as intended.

NTCA's sole purpose in commenting in this proceeding is to ensure that a commonly shared desire to promote the NG911 transition does not result in rural communities shouldering an increased cost burden because either the transport costs that come with this transition were misunderstood, ignored, or malapportioned. Fortunately, the Commission can quickly pivot here and adopt an alternative cost allocation rule that otherwise preserves the NPRM's vision of the NG911 transition while avoiding a result that harms rural consumers.

NTCA therefore renews its call for a "network edge" rule that would place the financial responsibility for the delivery of the traffic at issue herein on the NG911 provider to the extent that destination points for the delivery of NG911 traffic are located outside an OSP's network boundary. This would operate as a default in the absence of a state cost recovery mechanism. This proposal has several advantages. For one, it would require only a minor amendment to the NPRM's proposal and a minor deviation from both the Commission's and state 911 authorities' vision for the NG911 transition. States that are concerned about NG911 providers' ability to absorb these costs could certainly adopt a cost recovery mechanism to alleviate them. And, of course, to the extent that any NG911 provider factored these into their RFP response before signing a contract to become the NG911 provider for a state, they would not qualify for such a mechanism as these are costs they already should be prepared to absorb.[44]

Just as importantly, this minor adjustment can cure the factual and technical deficiencies underpinning the cost allocation rule proposed in the NPRM and rest upon sturdier legal

[44] *See* fn. 30, *infra*.

authority. And, because this default rule would operate in the absence of agreement otherwise or the existence of a state cost recovery mechanism (and would largely preserve existing well-known constructs that govern 911 traffic exchange today), it should expedite the NG911 transition as all parties involved would know the "rules of the road," minimizing the potential for disputes. Finally, the default rule proposed by NTCA would ensure that the costs of the transition are shared on a statewide (or at least more regional) basis and for a service that has broader benefit, rather than allowing these costs to be disproportionately foisted on small, rural customer bases and in a way that could undermine the continued affordability of voice service.

IV. CONCLUSION

For the reasons set forth above, the Commission should set aside the proposed rules and establish OSPs' "network edge" as the demarcation point for the allocation of costs related to NG911 call routing.

Respectfully submitted,

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