



February 6, 2024

Ex Parte Letter

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:

Pursuant to 47 C.F.R. § 1.1206, NTCA–The Rural Broadband Association (“NTCA”) and various Rural Local Exchange Carrier (“RLEC”) groups¹ (collectively “NTCA and the RLEC Parties”) hereby submit this written *ex parte* letter addressing the record that has developed in response to the above-referenced Next Generation 911 (“NG911”) Notice of Proposed Rulemaking (“*NPRM*”) issued by the Federal Communications Commission (“Commission”).²

This letter is aimed at assisting the Commission in resolving the legal, factual, and public policy concerns raised by the *NPRM*, advancing the already ongoing transition to NG911, and doing so in a manner that will comport with applicable law and benefit rural communities. While the NG911 transition will no doubt benefit consumers as public safety services stand to improve, Commission action to advance this goal must be grounded in the law, facts, and rational public policy. Unfortunately, the *NPRM*’s proposed “default” cost recovery framework (the “Proposed *NPRM* NG911 Default Framework”) raises significant legal, factual, and public policy concerns that must still be addressed. As more fully discussed in Exhibit 1 hereto, these concerns can and should be resolved expeditiously by adoption of the “*RLEC Alternative Proposal*” outlined below. This alternative proposal is based upon and largely captures ideas previously put forth in the record of this proceeding.

Among other things, the *NPRM* proposes to enable private NG911 network providers to dictate destination points to which all originating service providers (“OSPs”) would be required to route 911 calls in Internet Protocol (“IP”). Of particular interest to NTCA members and the RLEC

¹ NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities. The RLEC groups include the Rural Telephone Company Consortium (the “RTCC”), the South Carolina Telephone Coalition (the “SC Coalition”), the South Dakota Telecommunications Association (“SDTA”), the Pennsylvania Telephone Association (“PTA”), the Kansas RLECs (“KS RLECs”); the Iowa Communications Alliance; and Home Telephone ILEC, LLC.

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*”).

Parties is that the *NPRM* would require, by default, that OSPs assume, entirely, the financial responsibility for the routing of such calls to points of interconnection (“POIs”) as designated *unilaterally* by a NG911 network provider.³ The *NPRM* proposes to allow this despite the fact that private entity NG911 network providers voluntarily assumed the contractual obligations to establish and operate the entire NG911 system for a given state and are receiving remuneration from the state.⁴ These POIs, in turn, would predominantly be outside OSPs’ network footprints and could even be several states away, thus requiring the establishment of new transport routes entirely at an OSP’s expense.⁵

For the reasons stated herein, NTCA and the RLEC Parties recommend the adoption of the *RLEC Alternative Proposal* in lieu of the Proposed *NPRM* NG911 Default Framework.⁶ The foundational elements of the alternative are as follows:

1. The POI for NG911 connections would be at a technically feasible point within the RLEC’s network;
2. The RLEC’s transport and cost responsibility would be to provide the connectivity to its side of the POI, and NG911 providers would assume the transport costs associated with delivering NG911 calls beyond those POIs;
3. The NG911 network provider (as a telecommunications carrier) and the RLEC would utilize the Section 251/252 framework established under the Communications Act of 1934, as amended (the “Act”) to establish the terms and conditions for such NG911 connectivity;
4. A state, consistent with its own authority, would be free to establish a NG911 cost recovery mechanism should it wish, even as the *RLEC Alternative Proposal* would operate as a default should the state not do so; and

³ *NPRM* at ¶ 2.

⁴ The “NG911 network provider” as discussed herein and in Exhibit 1 is not to be confused with OSPs or the state 911 authority. Rather, as the record demonstrates, the NG911 network provider 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 a Public Safety Answering Point (“PSAP”).

⁵ Notably, these private NG911 network providers are under fixed-term contracts and when those terms end, the next new private NG911 network providers, under the Proposed *NPRM* NG911 Default Framework, can dictate a whole new set of POIs and impose a whole new set of costs all over again on RLECs and their rural customers rather than using existing infrastructure.

⁶ The *RLEC Alternative Framework* proposed herein would operate as a default for all OSPs/NG911 network providers in the absence of an agreement otherwise. In other words, OSPs and NG911 network providers would be free to establish alternative POIs and provisions related to the financial responsibility to deliver traffic to those should they see fit.

5. No liability or responsibility would exist for the RLEC for NG911 traffic once it delivers such traffic to the POI.⁷

To remain consistent with the long-standing Commission application of Sections 251 and 252 of the Act, the jurisdictional and cost issues raised by the Proposed NPRM NG911 Default Framework must be addressed. Moreover, the consistent treatment of the Section 251/252 interconnection principles would advance the policy objective to expedite NG911 service by minimizing disputes between an RLEC and the NG911 network provider. By adopting these Section 251/252 principles, the RLEC and NG911 network provider would implement consistently applied and recognized network interconnection rights, responsibilities, and obligations. The Commission's proper acknowledgement regarding states' involvement in NG911 would be preserved, allowing states to address the terms and conditions and potential additional cost recovery mechanisms that may be necessary for 911-related end-to-end intrastate calls.

Likewise, and most importantly, adoption of the *RLEC Alternative Proposal* would ensure that consumers in rural areas are not saddled with increased rates for recovery of costs caused by the outsized financial burden that the Proposed NPRM NG911 Default Framework would impose upon RLECs.⁸

NTCA and the RLEC Parties respectfully submit that setting aside the Proposed NPRM NG911 Default Framework and in favor of the *RLEC Alternative Proposal* will enable the NG911 transition to move forward on a sound legal, technical, and factual foundation.

Thank you for your attention to this correspondence and Exhibit 1 attached hereto. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

⁷ NTCA and the RLEC Parties recognize that certain issues such as transport liability, protocol, and location-based routing requirements remain to be resolved, but respectfully submit that such issues can and should be resolved based on the Section 251 interconnection agreement negotiations process between an RLEC and the NG911 network provider or, absent agreement, the Section 252 arbitration process and involvement of the state commission. In this way, the specific facts and circumstances of a given interconnection arrangement can either be established or arbitrated.

⁸ The Act recognizes that an RLEC as a "Rural Telephone Company" (*see* 47 U.S.C. § 153(44)) and as a smaller LEC is treated differently for interconnection purposes under the Act. *See* 47 U.S.C. §§ 251(f)(1) and (f)(2), respectively. The Commission has also treated RLECs where they are interstate rate of return carriers differently for purposes of seeking wireless interconnection. *See* 47 C.F.R. § 51.709(c). The FCC has also made clear that "Rate-of-return carriers play a vital role in the high-cost universal service program. Many of them have made great strides in deploying 21st century networks in their service territories, in spite of the technological and marketplace challenges to serving some of the most rural and remote areas of the country." *In the Matter of Connect America Fund, et. al, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, *et al.*, FCC 16-33 (rel. Mar. 30, 2016), at ¶ 2.



By: /s/ Michael R. Romano
Executive Vice President – Federal Regulatory
mromano@ntca.org

/s/ Brian J. Ford
Vice President – Federal Regulatory
bford@ntca.org

The Rural Telephone Company Consortium

By: /s/ Thomas J. Moorman
Paul M. Schudel
Woods Aitken LLP
tmoorman@woodsaitken.com
pschudel@woodsaitken.com
Its Attorneys

The South Carolina Telephone Coalition

By: /s/ Bradley S. Wright
Margaret M. Fox
Burr & Forman LLP
Post Office Box 11390
Columbia, South Carolina 29211
Tel: (803) 799-9800
Email: bwright@burr.com; pfox@burr.com
Its Attorneys

The South Dakota Telecommunications Association

By: /s/ Kara Semmler
Kara Semmler
General Counsel and Executive Director
South Dakota Telecommunications Association
320 East Capitol Avenue
P.O. Box 57
Pierre, SD 57501-0057
karasemmler@sdtanline.com

The Pennsylvania Telephone Association

By: /s/ Steve Samara
President
30 N. 3rd Street, Suite 780
Harrisburg, PA 17101

The Kansas Rural Local Exchange Carriers

By: /s/ Colleen R. Jamison
JAMISON LAW, LLC
colleen.jamison@jamisonlaw.legal

/s/ Mark Doty
GLEASON & DOTY, CHTD.
doty.mark@gmail.com

/s/ Anthony K. Veach
ANTHONY VEACH LAW, PLLC
anthonyveach@anhonyveachlaw.com

The Iowa Communications Alliance

By: /s/ Dave Duncan
Chief Executive Officer

Home Telephone ILEC LLC

By: /s/ Keith Oliver
Keith Oliver
Executive Vice President
Home Telephone ILEC LLC

cc: David Furth
John Evanoff
Brenda Boykin
David Sieradzki
Rasoul Safavian
Gerald English
Christopher Fedeli
Thomas Eng
Timothy Hoseth
Daniel Spurlock
Rachel Wehr
Carmen Scurato
Elizabeth Cuttner
Greg Watson
Lauren Garry

Justin Faulb
Shiva Goel
Marco Peraza
Deena Shetler
Edyael Casaperalta
Michele Ellison
Trent Harkrader
Victoria Goldberg

Exhibit 1: RLEC Alternative Proposal

Table of Contents

I. THE CONTROVERSY THAT THE *NPRM* RAISES FOR RLECS CAN BE READILY ADDRESSED BY ADOPTING THE *RLEC ALTERNATIVE PROPOSAL* WHICH RECOGNIZES THAT AN RLEC’S NETWORK TRANSPORT RESPONSIBILITY ENDS AT ITS NETWORK EDGE/BOUNDARY 1

A. Concerns with the *NPRM* and a proposed resolution. 1

B. NTCA and the RLEC Parties’ *RLEC Alternative Proposal* is based on existing interconnection standards and rational cost recovery principles 3

1. The NG911 Network Provider Service being offered is a Telecommunications Service offered by a Telecommunications Carrier.3

2. Assuming *arguendo* that some demonstration is provided that NG911 traffic is an “information service,” then the NG911 Network Provider is required to pay for the RLEC service it uses as would any other end user..... 6

II. ADOPTION OF THE *RLEC ALTERNATIVE PROPOSAL* AVOIDS THE NEED FOR THE COMMISSION TO ADDRESS THE SIGNIFICANT LEGAL AND FACTUAL ISSUES AND THE PUBLIC POLICY QUANDARIES THAT THE PROPOSED *NPRM* NG911 DEFAULT RECOVERY FRAMEWORK RAISES. 6

A. Commission assertion of legal authority regarding its “general NG911 jurisdiction” is misplaced. 7

B. Additional assertions of legal authority – specifically, the NET 911 Act, the Ray Baum’s Act and the CVAA – are insufficient for the Commission to adopt the Proposed *NPRM* NG911 Default Framework..... 7

C. Also misplaced is any reliance within the *NPRM* on the “*U.S. Cellular Corp.*” court decision and the “*King County Decisions*” as precedent for the Proposed *NPRM* NG911 Default Framework. 9

III. BECAUSE OF THE NUMEROUS FACTUAL ERRORS UPON WHICH THE PROPOSED *NPRM* NG911 DEFAULT IS BASED, ADOPTION OF THAT FRAMEWORK WOULD RUN AFOUL OF REASONED DECISION-MAKING REQUIREMENTS..... 11

IV. APPLICATION OF THE PROPOSED *NPRM* NG911 DEFAULT FRAMEWORK RAISES A SERIES OF QUESTIONABLE PUBLIC POLICY RESULTS THAT CAN AND SHOULD BE AVOIDED..... 14

V. THE *RLEC ALTERNATIVE PROPOSAL* PROVIDES THE CLARITY NECESSARY TO ACCELERATE THE NG911 TRANSITION AND WOULD CURE THE LEGAL, FACTUAL, AND PUBLIC POLICY QUANDARIES OF THE PROPOSED NPRM NG911 DEFAULT FRAMEWORK..... 16

Attachment A: RLEC Members of the Rural Telephone Company Consortium

Attachment B: RLEC Members of the South Carolina Telephone Coalition

Attachment C: RLEC Members of the Pennsylvania Telephone Association

Attachment D: Kansas RLECs

Attachment E: RLEC Members of the South Dakota Telecommunications Association

Exhibit 1
RLEC Alternative Proposal

I. THE CONTROVERSY THAT THE *NPRM* RAISES CAN BE READILY ADDRESSED BY ADOPTING THE *RLEC ALTERNATIVE PROPOSAL*, WHICH RECOGNIZES THAT AN RLEC’S NETWORK TRANSPORT RESPONSIBILITY ENDS AT ITS NETWORK EDGE/BOUNDARY.

NTCA and the RLEC Parties seek to ensure that existing intercarrier relationships with respect to the transport of NG911 calls originated by RLEC end users comply with applicable law. As a general matter, two primary methods exist today by which RLEC end users’ originated 911 calls are delivered to the appropriate Public Safety Answering Point (“PSAP”).

The first method is through a connecting carrier arrangement wherein the RLEC subtends a tandem operated by one of the larger incumbent local exchange carriers operating within an adjacent service area to the RLEC. In this type of arrangement, the RLEC delivers its end users’ originated 911 calls to a point of interconnection (“POI”) on or at the RLEC’s network edge. This interconnection point is where the RLEC’s obligations end for transporting the call and where the tandem provider’s network and obligations then begin. Under these arrangements, 911 traffic is managed as a jointly provided service by the originating carrier and tandem provider, each bearing responsibility for its portion of the transport carried on its network for delivery of the 911 call to the appropriate PSAP.

The second method is where the RLEC provides transport of its originated 911 calls directly to a PSAP where the latter is within the geographic service area covered by the network of the RLEC. These arrangements do not require the RLEC to bear transport costs for 911 traffic beyond its network boundaries pursuant to established state-assigned interconnection obligations, including appropriate cost recovery by each provider involved in the transport of the 911 call.¹

A. Concerns with the *NPRM* and a proposed resolution.

The Proposed *NPRM* NG911 Default Framework would enable private NG911 network providers to unilaterally determine NG911 POIs to which originating service providers (“OSPs”) would be required to deliver 911 calls in Internet Protocol (“IP”). This would expand the transport responsibility of RLECs beyond their existing networks, foisting new and substantial costs onto RLECs and their rural consumers. The *NPRM*’s proposal would also allow the NG911 network provider to determine the size and type (dedicated or otherwise) of the required connection.

The proposed Commission framework impermissibly allows a private party (the NG911 network provider²) to determine RLECs’ transport responsibility and without regard to the interconnection directives found in Section 251 of the Act. This would also be allowed despite the

¹ See Comments of Rural Telephone Company Consortium (“RTCC”), (fil. Aug. 9, 2023), at 3, n. 6.

² The record amply demonstrates that the NG911 Network Provider is a telecommunications carrier providing telecommunications services when it provides its end-to-end services for originating callers to PSAPs. For convenience, NTCA and the RLEC Parties will refer to this entity as the “NG911 Network Provider.”

fact that a NG911 network provider is not a state governmental entity but rather is a telecommunications carrier with which a state governmental entity has contracted to provide an end-to-end NG911 service connecting originating callers to the appropriate PSAPs located within the state.³

Consequently, when viewed properly in light of the record developed in response to the *NPRM*, the Proposed *NPRM* NG911 Default Framework improperly imposes transport costs on RLECs and their rural end user customers. *These costs should be placed on the cost causer – the NG911 network provider – that, on its own initiative, chooses where and how to live up to its contractual duties (for which it is paid) to establish and operate the NG911 system for a given state.*⁴

Parties supporting the Proposed *NPRM* NG911 Default Framework may contend that the opt-out proposed by the Commission – a state-established NG911 cost recovery mechanism – addresses these concerns and the controversy. However, it is difficult to envision why a state would have an incentive to establish (or keep in place should one exist now) such a NG911 cost recovery mechanism in the wake of a Commission order requiring OSPs to absorb these costs if a recovery mechanism is not in place. Moreover, the Commission fails to explain its authority to avoid responsibility for establishing a cost recovery mechanism that addresses the costs that its own order would create.

NTCA and the RLEC Parties respectfully submit that the controversy raised by the Proposed *NPRM* NG911 Default Framework can be summarized in the following questions:

- Who should bear the costs of transporting NG911 traffic?
- Should the responsible party be the private entity that holds itself out as a commercial NG911 network provider to a state and promises (and receives payment) to undertake the obligations to implement such a system?
- Or, as the Proposed *NPRM* NG911 Default Framework suggests, is the cost responsibility to be borne by the RLECs which serve customers that originate 911 emergency calls?

The record demonstrates that the *RLEC Alternative Proposal* best answers these questions by applying time-honored and time-tested interconnection requirements, cost causation principles

³ See Comments of the Pennsylvania Telephone Association (“PTA”), PS Docket No. 21-479 (fil. Aug. 9, 2023), at 6-7; Comments of NTCA–The Rural Broadband Association (“NTCA”), PS Docket No. 21-479 (fil. Aug. 9, 2023), at 11-12; Comments of the South Dakota Telecommunications Association (“SDTA”), PS Docket No. 21-479 (fil. Aug. 9, 2023), at 6-9; Comments of the South Carolina Telephone Coalition (“SC Coalition”), PS Docket No. 21-479 (fil. Aug. 9, 2023), at 5-6; RTCC Comments at 13-14, fn. 31.

⁴ The “NG911” network provider as discussed herein is not to be confused with OSPs or the state 911 authority. The NG911 network 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.

and the resulting benefits of predictability regarding NG911-related transport costs and obligations to the RLECs and the rural end users they serve.⁵

B. NTCA and the RLEC Parties' *RLEC Alternative Proposal* is based on existing interconnection standards and rational cost recovery principles.

1. The NG911 Network Provider Service being offered is a Telecommunications Service offered by a Telecommunications Carrier.

The record supports the conclusion that the RLEC NG911 originating traffic at issue is being delivered to a “telecommunications carrier.” As such, the connecting arrangements between the RLEC and the NG911 network provider are subject to Sections 251 and 252 of the Act and are governed by that framework.

The Section 251/252 framework has established principles that cannot be sidestepped by the *NPRM*.⁶ Among those principles are:

- (1) Since the interconnection obligations found in Sections 251(a), (b) and (c) of the Act reflect an escalating set of interconnection obligations, there can be no more onerous requirements imposed upon an ILEC under a Section 251(a) or a Section 251(b) obligation or a combination of both than that required of the ILEC under Section 251(c) of the Act (*see In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order*, File No. E-97-003, FCC 01-84, released March 13, 2001 at ¶ 25);
- (2) The Act is clear that a point of interconnection must be at a technically feasible point “*within the ILEC’s network*” (47 U.S.C. § 251(c)(2)(B) (emphasis added)); and
- (3) The Act establishes the notion that it is unlawful to impose a transport requirement upon the ILEC that is superior to that which the ILEC provides to its own end users and/or affiliates and thus violates the “equal in quality” requirement found in Section 251(c)(2)(C) of the Act. *Compare* 47 U.S.C. § 251(c)(2)(C) (The duty to provide interconnection must also be one “that is at least equal in quality to that provided by the local exchange carrier to itself. . . .”); *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997) at 813 (Competitive carriers requesting interconnection should have access “only to an incumbent LEC’s *existing* network – not to a yet unbuilt superior one” (emphasis in original) *overruled on other grounds by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)).⁷

⁵ The foundational demonstrations for this framework are already on the record. *See, e.g.*, NTCA Comments at 9-10; RTCC Comments at 7-9; SDTA Comments at 8-10; SC Coalition Comments at 4-8.

⁶ *See NPRM* at ¶ 56 (proposing a purported “clarification” that the Section 251/252 is inapplicable in the context of NG911 traffic delivery between connecting telecommunications carriers).

⁷ RTCC Comments at 8-9, fn. 17.

These time-honored principles establish that the RLEC only bears cost responsibility for transport of a 911 call originated by one of its end users to a POI located within the RLEC's network. Thus, no serious contention can be sustained that this framework and the principles that the Commission and the courts have established can be subject to the end-run proposed by the *NPRM*. Yet, that end-run is what the Proposed *NPRM* Default Network achieves. This proposal requires transport to a POI beyond the RLEC's network, imposes an obligation on an RLEC that is more onerous than any transport requirement under Section 251 (and beyond even the most onerous requirements of Section 251(c)⁸) and requires a greater transport service to the NG911 network provider than that provided by a RLEC to its end users under the current 911 regime.

Moreover, the inescapable fact based on the record is that NG911 network providers squarely fit within the definition of telecommunications carriers, and as such are subject to obligations under Sections 251 and 252 of the Act. 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."⁹ 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"¹⁰ by a "telecommunications carrier."¹¹

In an effort to sidestep the Sections 251/252 interconnection framework,¹² the *NPRM* erroneously asserts that this interconnection framework is inapplicable because state and local 911 authorities are "government actors" and not commercial "telecommunications carriers."¹³ To the contrary, the record overwhelmingly demonstrates that the interconnection at issue in this proceeding does not occur between a voice provider and a state or local governmental authority, but rather between a voice provider and a private entity (the NG911 network provider) that has voluntarily contracted with and been paid by the state to provide a finished NG911 service. It should be self-evident that government contractors (*i.e.*, state-designated NG911 network providers) are not somehow made part of state government by virtue of being awarded a contract pursuant to a state-sanctioned NG911 RFP.¹⁴

⁸ Except where the state commission has removed the exemption associated with Section 251(c)(2) pursuant to 47 U.S.C. § 251(f)(1), Section 251(c)(2) does not apply to a rural telephone company.

⁹ 47 U.S.C. § 153(50).

¹⁰ 47 U.S.C. § 153(53).

¹¹ *See* 47 U.S.C. § 153(51).

¹² *See* 47 U.S.C. §§ 251 and 252.

¹³ *NPRM* at ¶ 56.

¹⁴ In addition, it must be noted that the NG911 network provider is being paid by the state to design, deploy and operate an NG911 network. The carrier/customer relationship between the NG911 network provider and the state provides the state with no interest in the NG911 network being deployed; rather, the state (and a PSAP) receives the right to use the service being established by the NG911 network provider solely as

In addition, the Commission cannot sidestep the Section 251/252 provisions by accepting the argument that NG911 services are an “information service.” The presence of “location data” and “reformatting information for display”¹⁵ in the call path to the PSAP has not been shown to magically transform the underlying call into an information service. These are merely “add on” features inserted into the call path and delivered to the PSAP in addition to the connectivity that the NG911 network provider requires from an OSP, such as the RLEC, to enable the NG911 network provider to fulfill its contractual service commitments to the state.

Moreover, any assertion that NG911 services are “IP-based”¹⁶ and thus somehow fall outside the purview of the Commission’s Section 251/252 interconnection framework is misplaced. The Commission has indicated that Sections 251 and 252 of the Act are effectively technology agnostic. As the Commission reasoned in 2011,

In this regard, we observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM [Time-Division Multiplexing], IP, or another technology in their underlying networks.¹⁷

Finally, states have acknowledged the application of Sections 251/252 to 911 services provided by third party 911 network providers by entertaining and approving interconnection agreements between incumbent carriers and the 911 carrier. For example, Intrado Communications was an early entrant into the CLEC provisioning of 911 services to PSAPs. Certificated as a CLEC,¹⁸ state commissions ruled on and approved Intrado

customers. Nor are the NG911 network providers seeking any relationship with the state other than a contractual one to provide a finished product/service to the state in response to a NG911 RFP. *See, e.g.*, State of South Dakota Contract with CenturyLink Communications, LLC, [20-1400-002.pdf \(sd.gov\)](https://open.sd.gov/contracts/14/20-1400-002.pdf), ¶ 27 (<https://open.sd.gov/contracts/14/20-1400-002.pdf> (last visited January 25, 2024)) ((the “SD NG911 Contract”) stating that CenturyLink is an independent contractor and not an officer, agent or employee of the State of South Dakota. Nor can contractual commitments to deliver services to a state rationally be construed to suggest, as the *NPRM* proposes, that the NG911 network provider and the state are now one entity for purposes of interconnection for provision of NG911 service. No demonstration has been made that an award of an RFP modifies the corporate existence of the NG911 network provider as separate and apart from the state, or that any relationship between the NG911 network provider and the state is established other than the “carrier/customer” relationship associated with the NG911 service arrangement.

¹⁵ Reply comments of Comtech Telecommunications Corp. (“Comtech”), PS Docket No. 21-479 (fil. Sep. 8, 2023), at 10.

¹⁶ *Id.*

¹⁷ *See In the Matter of Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff’d sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), ¶ 1342; *see also* RTCC Comments at 16.

¹⁸ In Pennsylvania, for example. *See, Application of Intrado Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunication Services as a Competitive Local Exchange Carrier to the Public*, Pa PUC Docket Nos. A-2008-2027726, A-2008-2027733, and A-2008-2027713, order entered

Communications interconnection agreements (including the requirement to meet within the incumbent’s network).¹⁹

2. **Assuming *arguendo* that some demonstration is provided that NG911 traffic is an “information service,” then the NG911 Network Provider is required to pay for the RLEC service it uses, as would any other end user.**

Even if these entities were considered “information service providers,” (a contention the undersigned parties do not concede) this is not dispositive, as even information service providers obtain no special ability to use telecommunications services and networks of others for free simply by virtue of that status. Instead, because the use of these other networks and services is an input to the service that NG911 network providers deliver to states, this means that they must purchase a telecommunications service from these other carriers as the inputs needed to fulfill their contractual duty to a state. As broad as the Commission’s policy mandate may be to promote public safety and resilient emergency services, that policy must be based on the Commission’s statutory authority. In that regard, no policy mandate enables the Commission to create from whole cloth an entirely new category of entity that that can use transport networks free of charge or that can impose (and thus cause) transport costs on RLECs and their end users.

II. ADOPTION OF THE *RLEC ALTERNATIVE PROPOSAL* AVOIDS THE NEED FOR THE COMMISSION TO ADDRESS THE SIGNIFICANT LEGAL AND FACTUAL ISSUES AND THE PUBLIC POLICY QUANDARIES THAT THE PROPOSED NPRM NG911 DEFAULT FRAMEWORK RAISES.

An administrative agency has only that authority which Congress has provided to it.²⁰ There has been no showing by the Commission that, whatever level of general oversight Congress may have provided to the Commission in the context of NG911, delegates authority to establish a “default” rule with respect to an end-to-end intrastate call.²¹ Nor can the Commission preempt state commission jurisdiction under Section 251/252 of the Act or the oversight of intrastate arrangements absent further state action.²² Nor does the Commission possess the legal authority to

August 1, 2008 (<https://www.puc.pa.gov/PCDOCS/1017553.doc>;
<https://www.puc.pa.gov/PCDOCS/1014665.doc> (last visited Feb. 5, 2024).

¹⁹ See, e.g., *Joint Petition of Verizon North Inc. and Intrado Communications Inc. for Approval of an Interconnection Agreement Under Section 252€ of the Telecommunications Act of 1996*, Pa PUC Docket No. A-2010-2173674, Opinion and Order entered June 17, 2010.

²⁰ See, e.g., *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988); see also 5 U.S.C. § 706(2)(c) (A “reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”).

²¹ See RTCC Comments at 13-14.

²² Congress made clear that States are authorized to mediate and arbitrate disputes that may arise in the context of negotiating Section 251 agreements (see 47 U.S.C. §§ 252(a)(2) and 252(b)), unless, in the context of an arbitration request, the state commission fails to act. See 47 U.S.C. § 252(e)(5).

create an entirely new category of entity from whole cloth for the purposes of overriding Sections 251 and 252 of the Act or otherwise to enable NG911 network provider to obtain, from an RLEC and entirely at the latter's expense, an input the former need to fulfill a contractual duty to a state.²³

A. Commission assertion of legal authority regarding its “general NG911 jurisdiction” is misplaced.

The *NPRM*'s assertion that the Commission may enact the cost allocation methodology it proposes based on the agency's “general jurisdictional grant [that] includes the responsibility to set up and maintain a comprehensive and effective 911 system”²⁴ misses the mark. Even assuming, *arguendo*, a basis exists to impose transport obligations upon an RLEC beyond the latter's existing network, the *NPRM* entirely fails to demonstrate how the FCC can require an OSP, such as the RLEC, to bear the entirety of such transport costs for an NG911 call rather than the private commercial providers who are contracted (and compensated) by state governmental entities to deploy NG911 capabilities. The Commission fails entirely to demonstrate how requiring OSPs to bear such costs, rather than the private commercial providers who are contracted (and compensated) to deploy NG911 capabilities, is linked to a “comprehensive and effective 911 system.” 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. Moreover, one would be hard pressed to argue that this cost shifting result is the only path towards an NG911 system that will be “comprehensive and effective.” Further, no sustainable basis is provided within the *NPRM* to link such a system to a “comprehensive and effective 911 system,” particularly when States have established the 911 system and the necessary wherewithal to resolve intercarrier disputes as reflected in the implementation of the Section 251/252 negotiations/arbitration framework.

B. Additional assertions of legal authority – specifically, the NET 911 Act, the Ray Baum's Act and the CVAA – are insufficient for the Commission to adopt the Proposed NPRM NG911 Default Framework.

Beyond a “general” assertion of authority, the individual statutory provisions cited in the *NPRM* are not on point. The 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.²⁵ That “preamble” states that the purpose of the NET 911 Act is to “promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services, encourage the Nation's transition to a national IP-enabled emergency network.”²⁶ It is

²³ The Commission asserts that the “nationwide framework” being proposed within the *NPRM* “expressly empowers state and local authorities and affords them flexibility to make decisions regarding the configuration, timing, and cost responsibility for NG911 implementation in their jurisdictions.” *NPRM* at ¶ 62. Such statement begs the question of where within the Act the FCC's authority to establish the Proposed NPRM Default Framework exists.

²⁴ *NPRM* at ¶ 60.

²⁵ *Id.*

²⁶ *Id.*

perhaps most telling that the *NRPM* fails to cite a single provision of the NET 911 Act’s operative provisions; 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.”²⁷ Likewise, the Commission has already found that “Congress mandated that the Commission issue regulations to ... ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.”²⁸ As the Commission decision implementing the NET 911 Act went on to find, incumbent LECs, CMRS (“Commercial Mobile Radio Service”) providers and other entities control access to things such as “interconnection to the Selective Router,” the Automatic Location Identification database, and the Master Address Street Guide²⁹ that VoIP providers might be unable to access absent the adoption of this particular statute and implementing Commission rules.

Most importantly as to the invocation of the NET 911 Act here, the issue in this context is not whether any given party will have access to 911 traffic generated by an OSP. Rather, the critical issue within the Proposed NG911 Default Recovery Framework is ultimately who pays for the transport of such traffic. The NET 911 Act is thus inapplicable to the instant controversy.

The *NPRM*’s reliance on the “RAY BAUM’S Act”³⁰ fares no better. The 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.”³¹ “Dispatchable location information,” in turn, is defined as not only the calling party’s street address but also a room number and floor number necessary for first responders to identify callers’ location more accurately within a structure.³² Conspicuously absent from the *NPRM* is any connection to this directive in the Proposed *NPRM* NG911 Default Framework. As 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, no rational basis has been demonstrated that the RAY BAUM’S Act provides any jurisdiction for the Commission to enact the Proposed NG911 Default Recovery Framework.

Finally, the 21st Century Communications and Video Accessibility Act (the “CVAA”) offers no better foundation for the proposed mandatory offering of telecommunications services or compelled interconnection at no cost to commercial NG911 network providers that the Proposed

²⁷ *Implementation of the NET 911 Improvement Act of 2008*, WC Docket No. 08-171, Report and Order, FCC 08-249 (rel. Oct. 21, 2008), ¶ 1.

²⁸ *Id.*

²⁹ *Id.* at ¶¶ 14-19.

³⁰ *NPRM* at ¶ 60.

³¹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348, Division P, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act) § 506(a), (c)(1) (codified at 47 U.S.C. § 615 Notes).

³² RAY BAUM’S Act, § 506(a).

NPRM NG911 Default Recovery Framework envisions.³³ Much like the RAY BAUM’s Act, the CVAA does not address how the costs should be allocated among various entities. Rather, the CVAA directs the Commission to “achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network.”³⁴ 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.” At the same time, however, the Commission can ensure that access to 911 for consumers with disabilities can be achieved without the need to establish default cost recovery rule such as the Proposed NPRM NG911 Default Framework that effectively foists costs on one set of connecting carriers – OSPs.

C. Also misplaced is any reliance within the *NPRM* on the “*U.S. Cellular Corp.*” court decision and the “*King County Decisions*” as precedent for the Proposed NPRM NG911 Default Framework.

The Commission cannot rely upon the *King County Decisions*³⁵ and *U.S. Cellular Corp.*³⁶ as precedent or support for establishing the Proposed NPRM NG911 Default Framework.³⁷ The *NPRM* asserts that the *King County Decisions* confirm that “the costs of installing, maintaining, and upgrading components necessary to continue to deliver 911 traffic to 911 networks are required costs for wireline, CMRS, interconnected VoIP, and Internet-based TRS providers to continue to provide 911 service.”³⁸ What the *NPRM* fails to address is the fact that, unlike the facts in the cited cases, here the RLEC is a “wireline” carrier. The *King County Decisions* involve a materially different and much narrower proposition – the costs of CMRS network upgrades and trunking facilities on their *owned and operated network facilities or otherwise within the CMRS licensed service areas*.

The record facts confirm that RLECs, as OSPs, are being asked in this proceeding not only to undertake the costs of upgrading their own networks as necessary to continue to deliver 911 traffic, *but to build or otherwise procure connectivity or services that will extend far beyond the*

³³ *NPRM* at ¶ 60.

³⁴ Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat 2751 § 106(g) (2010) (CVAA) (codified at 47 U.S.C. § 615c(g)).

³⁵ See *NPRM* at ¶ 7, fns. 21 and 22 referencing Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, to Marlys R. Davis, E911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services, King County, Washington, 2001 WL 491934, at *1 (WTB May 7, 2001) and *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request of King County, Washington*, CC Docket No. 94-102, Order on Reconsideration, 17 FCC Rcd 14789 (2002) (*King County Order on Reconsideration*).

³⁶ *U.S. Cellular Corp. v. F.C.C.*, 254 F.3d 78 (D.C. Cir. 2001) (“*U.S. Cellular Corp.*”).

³⁷ See *NPRM* at ¶ 56 citing *U.S. Cellular Corp.* at 84; see also *NPRM* at ¶ 7 citing the “*King County Decisions*.”

³⁸ *NPRM* at ¶ 36.

*RLEC's own network and potentially across the country.*³⁹ The FCC has not demonstrated any authority to expand the RLEC service area beyond that which the state has authorized.⁴⁰ Moreover, the *NPRM* fails to address the *King County Reconsideration Order* findings that allowed for the differing treatment of wireless carriers and wireline carriers vis-à-vis cost recovery.⁴¹

NTCA and the RLEC Parties also respectfully note that any reliance by the Commission on *U.S. Cellular Corp.* is factually misplaced, and certainly does not offer the Commission a path to exempt NG911 network providers from Sections 251 and 252 of the Act. As the record reflects, the matter addressed in *U.S. Cellular Corp.* “involved a dispute between wireless carriers and PSAPs over cost allocation but did not involve Section 251, LECs or covered 911 service providers whatsoever.”⁴² The treatment of Section 251, LECs and covered 911 providers under the Proposed NPRM NG911 Default Framework is unquestionably at issue in this proceeding.

Moreover, the conclusion in *U.S. Cellular Corp.* that “PSAPs are governmental entities playing a critical role in the provision of public safety services”⁴³ is wholly irrelevant in this context. As the record confirms, “the central issue before the FCC ... is the allocation of interconnection costs and duties as between two types of commercial entities: NG911 network providers on one hand, and rural LECs on the other.”⁴⁴ Moreover, that PSAPs are governmental entities has nothing to do with what the record confirms are the *only* two entities involved in the interconnection arrangements required for the end-to-end NG911 service – the NG911 network provider and the given RLEC.⁴⁵ The PSAP/government entity is not the party with whom an RLEC OSP will interconnect. Rather, it is the commercial NG911 network provider that needs the interconnection with the RLEC’s network in order for the NG911 network provider to fulfill its contractual commitment to provide a finished service to the state. Thus, *U.S. Cellular Corp.*, like the *King County Decisions*, has no applicability here when addressing the issues that NTCA and the RLEC Parties have raised.

³⁹ See, e.g., NTCA Comments at 9-10; RTCC Comments at 2; SDTA Comments at 6-9; Reply Comments of the SC Coalition, PS Docket No. 21-479 (fil. Sep. 8, 2023), at 10-11.

⁴⁰ See RTCC Comments at 20-21.

⁴¹ See *Id.* at 21.

⁴² Comments of the Pennsylvania Public Utilities Commission (“PA PUC”), PS Docket No. 21-479 (fil. Aug. 9, 2023), at 9.

⁴³ *NPRM* at ¶ 56.

⁴⁴ PA PUC Comments at 9-10.

⁴⁵ See, e.g., NTCA Comments at 11-12; RTCC Comments at 17-19; SC Coalition Reply Comments at 5-6.

III. BECAUSE OF THE NUMEROUS FACTUAL ERRORS UPON WHICH THE PROPOSED NPRM NG911 DEFAULT FRAMEWORK IS BASED, ADOPTION OF THAT FRAMEWORK WOULD RUN AFOUL OF REASONED DECISION-MAKING REQUIREMENTS.

The Commission’s decision-making process must have a basis in fact. Unfortunately, a number of critical factual errors form the basis of the Proposed NPRM NG911 Default Recovery Framework. More specifically, two critical factual and technical errors appear to drive the *NPRM*’s erroneous conclusion that the transport costs that will be imposed on RLECs and their end-users are “relatively small.”⁴⁶

First, the NPRM conflates intra-network switching costs with inter-network transport costs, thereby erroneously assuming RLEC OSPs will incur relatively small on-going costs. The NPRM states that, “[o]ngoing costs will be incurred by the small percentage of providers that do not yet have IP switching facilities for voice traffic.”⁴⁷ But this statement erroneously presumes, based on a NTCA survey that included data on IP switching⁴⁸ that switching is the same as transport. This presumption overlooks the fact that switching and transport are in fact two separate network functions involved in routing voice service (911 included).⁴⁹ Whether an RLEC OSP has IP-enabled switching functionality within its own network has no bearing on whether transport between networks is also IP based or whether that network function is “owned” by the RLEC as part of the RLEC’s network or must be “leased” from another operator.

*Second, the NPRM compounds its switching-equals-transport error to provide a vastly understated number of RLECs that will incur transport costs,⁵⁰ even inferring some relationship with on-going transport charges based on one-time POI location change charges.⁵¹ Such compounded error results in the *NRPM* understating its transport cost estimate of approximately \$11.5 million.⁵² Nothing in the record suggests that transport charges are one-time events or for*

⁴⁶ *NPRM* at ¶ 70.

⁴⁷ *Id.* at ¶ 72.

⁴⁸ *See Id.*

⁴⁹ *Accord* NTCA Comments at 4; RTCC Comments at 23-24.

⁵⁰ *See NPRM* at ¶ 72.

⁵¹ *See Id.* at ¶ 71.

⁵² *See Id.* at ¶ 72. To the extent that the FCC questions the good faith estimates provided in the record by NTCA and The RLEC Parties, the record reflects that the Commission has already demonstrated the ability to seek data regarding carrier services such as those that may be required to be contracted for by the RLECs to transport NG 911 originated traffic beyond that RLEC’s network. *See* RTCC Comments at 22-23 and fn. 51 (Good faith estimates are sufficient but if further action is required by the FCC, such action has been demonstrated to be within the FCC’s authority to direct.).

that matter the estimate of POI changes within the *NPRM* is accurate.⁵³ Moreover, the record amply confirms that transport cost estimates are considerable.⁵⁴

1. The RTCC's reliance on the Nebraska companies' "good faith cost estimates demonstrate that the FCC's estimates miss the mark as these twenty-four (24) RLECs' combined averaged additional transport costs would be slightly more than three percent (3%) of the *total nationwide* \$11,524,912 NG911 related transport costs estimated by the FCC." (footnote omitted)⁵⁵
2. One South Carolina RLEC estimates its cost of SIP-based trunking to be \$3,000 per month.⁵⁶ Another South Carolina RLEC, Sandhill Telephone Cooperative, recently obtained 2 separate quotes of approximately \$2,700 per month and approximately \$3,500 per month for this third-party transport service.⁵⁷
3. Over two dozen RLECs in Kansas commented that these "RLECs have, for the most part, only been provided cost estimates by AT&T ranging from approximately \$1200 per KS RLEC, per month to \$5000 per KS RLEC per month" with one small RLEC serving "only 387 end users" being able to obtain a "slightly firmer cost estimate of \$700 per month for each of the two SIP trunks being required by AT&T Corp., for a total of \$1,400 per month at today's rates."⁵⁸ As to the latter estimate, the KS RLECs noted that this RLEC would need to transport the call to "California, over 1,700 miles" from the RLEC with one SIP trunk, and "to Dallas TX, over 400 miles" from the RLEC with the other SIP trunk.⁵⁹ Moreover, the KS RLECs stated that for this RLEC to receive the "\$1,400 per month rate, the intermediate carrier

⁵³ Such a presumption has also been shown to be factually in error. As stated by the SC Coalition:

Transitioning to an ESInet is not as simple as flipping a switch. Providers must secure a brand-new connection to an ESInet, which will require consulting with the ESInet regarding technical requirements, figuring out how transport will be handled and an appropriate demarcation point, procuring transport circuits to connect, configuring the lines and switching equipment, and then managing cut over of existing 911 traffic and testing ensure the trunk is operable. This process will take far more than the one hour allocated by the Commission.

SC Comments at 9-10.

⁵⁴ *See, e.g.*, Reply Comments of NTCA, PS Docket No. 21-479 (fil. Sep. 8, 2023) at 5-6; SDTA Comments at 11-12.

⁵⁵ RTCC Comments at 25.

⁵⁶ *See* Comments of Home Telephone ILEC, LLC ("Home"), PS Docket No. 21-479 (fil. Nov. 17, 2023) at 10, n 4.

⁵⁷ South Carolina Telephone Coalition *ex parte* notice, PS Docket No. 21-479 (fil. Nov. 17, 2023), at 1-2.

⁵⁸ Comments of the KS RLECs, PS Docket No. 21-479 (fil. Aug. 9 2023), at 2.

⁵⁹ *Id.* at 3.

requires a 60-month term commitment agreement, plus connection and installation charges totaling well over \$84,000 over the life of the 60-month term agreement.”⁶⁰

4. The PTA confirmed that, because the “NG911 POIs are typically located in more populous areas considerably outside of the RLEC territory,” the PTA RLECs “have found that the use of a 3rd party NG911 network provider connection to separate state POIs had increased transport costs by 1,710%” with “[e]stimates received for purchasing TDM trunks from the RLEC switched to the POIs would more than double that cost.”⁶¹
5. US Telecom – The Broadband Association (“US Telecom”) stated that, where “[d]emarcation points may be outside an OSP’s service area, or even outside of the relevant state,” the delivery of “calls at such distances involves either building out or purchasing transport from a third party – and the greater the distance, the more expensive it is to accomplish”⁶² and, that “transport to reach points beyond an OSP’s service area may be difficult – or even impossible – to find, or very costly”⁶³ with “[c]osts to provide NG911 services include both initial build costs and annual operating costs” with on-going costs for “one US Telecom member” located “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.”⁶⁴

Absent adoption of a POI for NG911 traffic being within the RLEC certification service area/network as reflected in the *RLEC Alternative Proposal*, the record reflects the traffic at issue under the *NPRM*’s framework will be required to be delivered to points outside of the service boundaries of most small RLEC’s networks.⁶⁵ The record also supports the finding that, to the extent any IP-enabled transport arrangements are available to enable delivery of this traffic, most RLECs will be required to lease this transport from other operators because RLECs generally do not own networks outside of their own serving areas. *Thus, the cost estimate for the NPRM’s proposal is factually and technically flawed because it is based upon the technical conflation of switching*

⁶⁰ *Id.*

⁶¹ PTA Comments at 7.

⁶² Comments of US Telecom, PS Docket No. 21-479 (fil. Aug. 8, 2023), at 4.

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 4-5.

⁶⁵ Comments of NTCA at 8; RTCC Comments at 2, 4 fn. 9; SDTA Comments at 6-8.

and transport and a related factual mistake that there are no ongoing costs associated with procuring or providing such transport to the commercial NG911 network provider.⁶⁶

In addition, these estimates are based on the POIs that NG911 network providers suggested should be located outside of an RLEC's network. If the Proposed NPRM NG911 Default Framework is adopted in its current form, those POIs may change to further accommodate NG911 providers' desire to cut their own costs. Additionally, the POIs may be subject to change every time the state's contract is renewed or re-bid, imposing a whole new set of costs on RLECs.

IV. APPLICATION OF THE PROPOSED NPRM NG911 DEFAULT FRAMEWORK RAISES A SERIES OF QUESTIONABLE PUBLIC POLICY RESULTS THAT CAN AND SHOULD BE AVOIDED.

Absent its rejection, the Proposed NPRM NG911 Default Framework results in a number of questionable public policy results. Should this framework be adopted in lieu of the *RLEC Alternative Proposal* of NTCA and the RLEC Parties, it would only be proper for the Commission to address such results so that rural end users and the RLECs will understand what policy objectives are being pursued at their cost by the FCC.

First, no rational explanation is provided as to why it is reasonable and appropriate to foist upon the RLECs and the end users they serve the entire cost of compliance with the Proposed NPRM NG911 Default Framework. Allocating the costs of a service (like 911) that has a "community-wide" and thus state-wide benefit to only a subset of the community misses the mark when the cost causer for these costs – the NG911 network provider – is exempted from incurring the costs of transport it requires. This exemption is proposed by the *NPRM* despite that fact that the state has paid them a considerable amount of money to establish and operate a network that provides to the PSAPs an end-to-end service just as is the case for 911 services today. Yet, the *NPRM's* default rule would impose these costs only on those members of a community subscribing to voice service.

⁶⁶ Although left unstated specifically, NTCA and the RLEC Parties note that NG911 traffic will be through a dedicated connection with the NG911 network provider, just like dedicated trunks are used today for 911 traffic. *See, e.g.*, RTCC Comments at 23-24; SDTA Comments at 11. Thus, the *NPRM's* statement that "many rural incumbent LECs offer broadband in addition to telephony, and these providers likely have already established IP peering relationships with other providers" (*NPRM*, ¶ 74), is problematic. First, RLECs generally do not have settlement-free peering arrangements for broadband traffic and the *NPRM* cites to no information to suggest otherwise. Most RLECs route broadband data through paid-for middle mile arrangements paid-for transit arrangements that provide access to one of several distant Internet Exchange Points ("IXPs"). NTCA Comments at 6. Furthermore, even if it were to be presumed that the Commission wants NG911 traffic routed through existing "best efforts" broadband connections, the FCC has failed to address whether such arrangements can provide the necessary quality and call termination levels that a dedicated connection would provide and is in use today for 911 calling. Moreover, nothing has been suggested that would allow the conclusion that a self-defined POI for NG911 delivery would necessarily be in the same locations as the POIs that the NG911 network provider will designate, meaning incremental cost for dedicated routing of NG911 traffic would be required to comply with the *NPRM* proposed rules in any event.

Even worse, such costs would have a disproportionate impact on rural end users and the RLECs' commitment to provide service to such end users in higher-cost-to-serve, lower density areas.⁶⁷ RLECs 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 – 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. Because the new operating costs at issue, should the Proposed NPRM NG911 Default Framework be adopted, are not be recoverable via USF,⁶⁸ these costs will necessitate recovery through increased end-user rates thereby creating a direct challenge to the Commission's statutory mission of universal service.

Second, that the Proposed NPRM NG911 Default Framework is a dramatic departure from existing 911 recovery mechanisms is readily apparent. Today, RLECs and their end users do not assume all costs for the provision of 911 services. To the contrary, RLECs recovery for their costs is based on their network boundaries/edges through connecting carrier arrangements or RLEC originated traffic being delivered to a local PSAP under an RLEC tariffed arrangement pursuant to which the PSAP procures and pays for this transport service.

Third, the Commission should confront what the record confirms are concerns about the potential “double recovery” to the NG911 network provider that could occur here where the transport costs incurred by OSPs may have already been recovered pursuant to the terms of the contract between the state governmental entity and the NG911 network provider.⁶⁹ Likewise, the *NPRM* does not justify the situation where, if the transport costs were not included in the scope of the NG911 network provider's bid in response to the RFP or otherwise in the contract with the state governmental entity, why the NG911 network provider should be rewarded for such mistake when a finished end-to-end NG911 service would be expected to be provided, just as 911 is offered today.⁷⁰

To avoid any doubt, however, central to the public policy quagmire arising from adopting of the Proposed NPRM NG911 Default Framework is the fact that the NG911 network providers made the contractual commitment to establish and operate NG911 service for a particular state. These NG911 network providers will receive substantial remuneration for doing so. As such, these private NG911 network providers should be responsible for any costs necessary to secure any and all inputs necessary to fulfill their contracts rather than being able to demand free transport network use from RLECs. Yet, the *NPRM* appears to turn a blind eye to these facts.

In all events, however, there is no basis to suggest that adoption of the *RLEC Alternative Proposal* will somehow lead to a carrier “refus[ing] to deliver 911 calls if states and jurisdictions

⁶⁷ NTCA Comments at 15.

⁶⁸ 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).

⁶⁹ NTCA Comments at 15.

⁷⁰ *Id.*

don't agree to pick up 911 calls within the LECs service area.”⁷¹ Such a notion is, at best, misplaced and effectively overlooks the fact that the issue is the proper terms for the interconnection arrangement between the NG911 network provider as the cost causer and the RLEC, and the Act requires arrangements that require the POI to be within the RLEC's network. In the end, however, the CoPUC and Comtech contentions assume that the Commission is incapable of crafting NG911 rules that lead to an orderly transition to this new service. The inference that the NG911 transition can only assured by alleviating costs of a NG911 network provider when it is the cost causer and foisting them on the RLECs is not only breathtaking, but any such inference is based on a misapplication of the facts, the law, and public policy.

V. THE RLEC ALTERNATIVE PROPOSAL PROVIDES THE CLARITY NECESSARY TO ACCELERATE THE NG911 TRANSITION AND WOULD CURE THE LEGAL, FACTUAL, AND PUBLIC POLICY QUANDARIES OF THE PROPOSED NPRM NG911 DEFAULT FRAMEWORK.

As stated at the beginning of this written *ex parte*, NTCA and the RLEC Parties do not seek to undermine or delay the NG911 transition.⁷² Throughout their participation in this proceeding, NTCA and the RLEC Parties have sought to ensure that any transition to NG911 proceeds on a legally and factually accurate basis and does so while advancing rational public policy. With respect to the Proposed NPRM NG911 Default Framework in particular, the cost of one specific aspect of this transition – the transport of NG911 calls to POIs chosen unilaterally by private commercial NG911 network providers – cannot legally be foisted upon RLECs and the rural consumers they serve. If adopted, the Proposed NPRM NG911 Default Framework would undermine the affordability of voice service.

For all of the reasons stated herein and in the written submissions of the signatories to this document, NTCA and the RLEC Parties respectfully submit that the better path forward here – one that cures the technical, factual, legal, and policy flaws of Proposed NG911 Default Framework – is to establish each RLEC's existing “network edge” as the POI for determining the allocation of costs related to NG911 call routing. Such POI is the central focus of the *RLEC Alternative Proposal*. Pursuant to this approach, to the extent that destination points for the delivery of NG911 traffic are located outside an RLEC's network boundary, the financial responsibility for the delivery of such traffic would fall to the NG911 network provider in the absence of a state cost recovery mechanism.

⁷¹ Colorado Public Utilities Commission (“CoPUC”) Comments (fil. Aug. 8, 2023) at 10-11. Comtech Reply Comments at 12.

⁷² Numerous of the PTA RLEC members have filed a Petition asking the PAPUC to arbitrate an interconnection agreement with NextGen, the Comtech affiliate owning and operating the ESInet in Pennsylvania. This Petition is pending and the PTA offers these comments consistent with that Petition and without prejudice to the state outcome. Petition And Complaint of Citizens Telephone Company et al, PA PUC Docket No. P-2024-3045797; <https://www.puc.pa.gov/pdocs/1813921.pdf>.

Attachment A
RLEC Members of the Rural Telephone Company Consortium¹

Arapahoe Telephone Company
Benkelman Telephone Company
Consolidated Telco, Inc.
Consolidated Telecom, Inc.
Consolidated Telephone Company
Curtis Telephone Company
Diller Telephone Company
Glenwood Telephone Membership Corporation
Glenwood Network Services
Great Plains Communications, LLC
Hamilton Telephone Company
Hardy Telecommunications, Inc. (WVA)
Hartington Telephone Company
Hemingford Cooperative Telephone Company
Hershey Cooperative Telephone Company
K & M Telephone Company
Mainstay Communications
Mound Bayou Telephone and Communications, Inc. (MS)
Nebraska Central Telephone Company
Northeast Nebraska Telephone Company
The North-Eastern Pennsylvania Telephone Company (PA)
Pierce Telephone Company, Inc.
Sodtown Communications, Inc.
Southeast Nebraska Communications, Inc.
Stanton Telephone Company
State Telephone Company (NY)
Three River Telco
Wauneta Telephone Company
Wilkes Telephone & Electric Company (GA)

¹ All listed Companies operate within the State of Nebraska except as otherwise noted.

Attachment B
RLEC Members of the South Carolina Telephone Coalition

Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Comporium, Inc. (f/k/a Rock Hill Telephone Company)
TruVista Communications, Inc. (f/k/a The Chester Telephone Company)
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company d/b/a Comporium
Hargray Telephone Company, Inc.
Home Telephone ILEC, LLC
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company d/b/a Comporium
Lockhart Telephone Company d/b/a TruVista
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
PBT Telecom d/b/a Comporium
Ridgeway Telephone Company d/b/a TruVista
Sandhill Telephone Cooperative, Inc.
West Carolina Rural Telephone Cooperative, Inc.

Attachment C
RLEC Members of the Pennsylvania Telephone Association

Citizens Telephone Company of Kecksburg
Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company
Frontier Communications of Breezewood, LLC
Frontier Communications of Canton, LLC
Frontier Communications of Lakewood, LLC
Frontier Communications of Oswayo River, LLC
Frontier Communications of Pennsylvania, LLC
Consolidated Communications of Pennsylvania, Inc.
Hickory Telephone Company
Lackawaxen Telecommunications Services, Inc.
Laurel Highland Telephone Company
The North-Eastern PA Telephone Company
Palmerton Telephone Company
Pennsylvania Telephone Company, Inc.
South Canaan Telephone Company
Venus Telephone Corporation
Windstream Buffalo Valley, Inc.
Windstream Conestoga, Inc.
Windstream D&E, Inc.
Windstream Pennsylvania, LLC
Yukon-Waltz Telephone Company

Attachment D
Kansas RLECs

Blue Valley Tele-Communications, Inc.
Columbus Communications Services, LLC
Craw-Kan Telephone Cooperative, Inc,
Cunningham Telephone Co., Inc,
Golden Belt Telephone Association, Inc.
Gorham Telephone Co., Inc.
H&B Communications, Inc.
Haviland Telephone Co., Inc.
Home Telephone Co., Inc.
JBN Telephone Company, Inc.
KanOkla Telephone Association
LaHarpe Telephone Co., Inc.
Madison Telephone, LLC
Moundridge Telephone Co., Inc.
Mutual Telephone Company
Rural Telephone Service Company, Inc. d/b/a Nex-Tech
Peoples Telecommunications, LLC
Pioneer Telephone Association, Inc.
Rainbow Telecommunications Association, Inc.
S&A Telephone Company, LLC
S&T Telephone Cooperative Association, Inc.
South Central Telephone Association, Inc.
Southern Kansas Telephone Co., Inc.
Totah Communications, Inc.
Tri-County Telephone Association, Inc.
Twin Valley Telephone, Inc.
United Telephone Association, Inc.
Wamego Telecommunications Company, Inc.
Wheat State Telephone, Inc., d/b/a Wheat State Technologies
Wilson Telephone Co., Inc.
Zenda Telephone Co., Inc

Attachment E
RLEC Members of the South Dakota Telecommunications Association

Alliance Communications Cooperative
Beresford Municipal Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
Faith Municipal Telephone Company
Fort Randall Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative
James Valley Telecommunications
Kennebec Telephone Company
Midstate Communications
RC Technologies
Santel Communications Cooperative
Swiftel Communications/Brookings Municipal Telephone
TrioTel Communications
Valley Telecommunications Cooperative
Venture Communications Cooperative
West River Cooperative Telephone Cooperative
West River Telecommunications Cooperative