

March 6, 2024

***Ex Parte* Notice**

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

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

Dear Ms. Dortch:

On Monday, March 4, 2024, NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> and representatives of the “RLEC Parties” met with Staff from the Federal Communications Commission (the “Commission”). Attendees are listed in Appendix A. The subject was the Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> in the above-referenced Next Generation 911 (“NG911”) proceeding that, among other things, would require all voice service providers to transmit 911 calls to destination point(s) designated by NG911 providers and in Internet Protocol (“IP”) format (the “Proposed NPRM NG911 Default Framework”).<sup>3</sup> NTCA and the RLEC Parties discussed as well their February 6, 2024 written *ex parte* submitted in this proceeding that included the “*RLEC Alternative Proposal*.”<sup>4</sup>

As an initial matter, NTCA and the RLEC Parties made clear that they recognize the benefits of a transition to NG911. However, such a transition must be based on the facts and application of the law to those facts. Thus, NTCA and the RLEC Parties expressed concern that, in certain cases, incomplete facts would lead to erroneous conclusions, such as the *NPRM*’s discussion as to the nature and extent of the costs that would be imposed on RLECs should the Proposed NPRM NG911 Default Framework be adopted.

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<sup>1</sup> 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.

<sup>2</sup> *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47 (rel. Jun. 9, 2023) (“*NPRM*”).

<sup>3</sup> *Id.*, ¶ 2.

<sup>4</sup> See *Ex Parte* submission of NTCA and the RLEC Parties, PS Docket 21-479 (Feb. 6, 2024) (the “*February 6<sup>th</sup> Ex Parte*”). While the *February 6<sup>th</sup> Ex Parte* included citations to the record established in this proceeding, for convenience only, relevant record citations included in the *February 6<sup>th</sup> Ex Parte* are made which may not be exhaustive of the comments and reply comments filed by NTCA and the RLEC Parties that support the assertions underlying the *RLEC Alternative Proposal*. NTCA and the RLEC Parties recognize that it is the entire record developed by them in this proceeding that must be used to ensure that reasoned decision-making is applied to the issues being raised.

NTCA and the RLEC Parties then noted that, as the record indicates, application of the Proposed NPRM NG911 Default Framework would require RLECs to assume substantial transport costs for the delivery of traffic to points beyond their network boundaries. These are significant costs that RLECs do not incur today in connection with the provision of 911 service to their end users. However, such a result can be avoided by the adoption of the *RLEC Alternative Proposal* since it is grounded in the requirements of Sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (“the Act”) to the interconnection arrangements facilitating implementation of NG911.

With respect to the *NPRM*'s attempt at sidestepping Sections 251 and 252 of the Act, it is based on the erroneous conclusion that the interconnection at issue herein is between RLECs (as originating service providers (“OSPs”)) and “government entities.”<sup>5</sup> To the contrary, the record confirms that the relevant parties to any interconnection are NG911 providers and the OSPs from whom they are demanding interconnection.<sup>6</sup> The state and associated Public Safety Answering Points (“PSAPs”) are the customers of the NG911 provider offering NG911 service pursuant to a contractual agreement with the states, and it is the NG911 provider – a government contractor and not a state actor – that is the party seeking interconnection with RLECs.

As to examples of the incomplete facts that form the basis for the proposed rules, NTCA and the RLEC Parties discussed the following examples:

- The *NPRM* conflates IP switching and IP transport. These are two network elements that perform separate functions, yet the *NPRM*'s failure to recognize this distinction leads to the erroneous tentative conclusion that an RLEC utilizing IP switching will incur minimal costs to transport calls to points far beyond its network boundary.<sup>7</sup> The record reflects that despite the presence of IP switching within an RLEC's network, that same provider will incur substantial, ongoing costs for IP transport of 911 traffic if required to deliver it to a point beyond its network boundary.<sup>8</sup>

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<sup>5</sup> *NPRM*, ¶ 56. The *February 6<sup>th</sup> Ex Parte* made clear that the application of a reference within the *U.S. Cellular Corp. v. F.C.C.*, 254 F.3d 78 (D.C. Cir. 2001) to the application of Sections 251 and 252 to PSAPs is misplaced. See *February 6<sup>th</sup> Ex Parte*, p. 10.

<sup>6</sup> Comments of the Pennsylvania Telephone Association (“PTA”), PS Docket No. 21-479 (fil. Aug. 9, 2023), p. 6; Comments of NTCA–The Rural Broadband Association (“NTCA”), PS Docket No. 21-479 (fil. Aug. 9, 2023), pp. 11-12.

<sup>7</sup> More specifically, 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.” *NPRM*, ¶ 72.

<sup>8</sup> Comments of the Rural Telephone Company Consortium (“RTCC”), PS Docket No. 21-479 (fil. Aug. 9, 2023), pp. 23-24; NTCA, pp. 5-10.

- The *NPRM* errs in applying the *King County Decisions*.<sup>9</sup> Specifically, the issue presented in those decisions – the costs of mobile wireless network upgrades and trunking facilities on mobile wireless operators’ *owned and operated network facilities or otherwise within their licensed service areas* – is a materially different proposition from RLECs being asked in this proceeding to *build or otherwise procure connectivity or services that will extend far beyond the RLECs’ existing network footprints* and potentially across the country.<sup>10</sup> Yet the *NPRM* fails to recognize this distinction, and here again, the supposition that the *King County Decisions* supports the *NPRM*’s approach cannot be reconciled with critical facts with regard to network costs.

With this as the backdrop, NTCA and the RLEC Parties urged the Commission to move forward with the NG911 transition consistent with the *RLEC Alternative Proposal*. In doing so, the Commission can avoid a set of decisions that flow from incomplete facts and lead to unintended consequences. Adoption of the *RLEC Alternative Proposal* would ensure that NG911 implementation costs do not have an adverse impact on the broader mission of affordable universal service.<sup>11</sup> RLECs’ networks are limited in geographic scope and serve less densely populated rural areas,<sup>12</sup> and the unrefuted evidence submitted by several RLEC representatives confirms that the costs of transport beyond an RLEC’s network would be significant. Foisting these transport costs to reach NG911 provider-defined Points of Interconnection (“POIs”) far beyond an RLEC’s network is contrary to reasoned decision-making and, at the very least, should not be based on an incomplete set of facts that such transport costs are “relatively small,” particularly as that erroneous conclusion is not supported by any data.<sup>13</sup>

Moreover, the *RLEC Alternative Proposal* has several additional advantages, as it relies on the long-standing Sections 251 and 252 interconnection framework and practices. This framework and the practices it has produced: (1) allow for the specific facts and circumstances of the interconnection request by the NG911 provider to be considered; (2) rely on state commissions – as Congress intended<sup>14</sup> – that have a long history of sorting through facts and resolving costs and

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<sup>9</sup> *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*) (collectively the “*King County Decisions*”).

<sup>10</sup> NTCA, pp. 10-11; RTCC, pp. 20-21.

<sup>11</sup> *February 6<sup>th</sup> Ex Parte*, p. 10.

<sup>12</sup> *Id.*

<sup>13</sup> *NPRM*, ¶ 70.

<sup>14</sup> Reply Comments of the South Carolina Telephone Coalition, PS Docket No. 21-479 (fil. Sep. 8, 2023), p. 7 (“While the Commission cites ‘shared jurisdiction’ in the *NPRM*, ignoring Sections 251 and 252 in the context of 911 traffic improperly denies the states their role in addressing and resolving local interconnection

other issues that arise in interconnection negotiations; (3) offer both parties a clear process and time certain for resolution of interconnection agreement issues (9 months);<sup>15</sup> and (4) allow the Commission to step in should a state commission fail to act.<sup>16</sup> Many of the “disputes” that NG911 providers cite as a reason to move forward with the *NPRM*’s approach could have already been resolved pursuant to this oft-utilized approach.

As a legal matter, there is no basis to sidestep Sections 251 and 252. The record here makes clear that NG911 providers are “telecommunications carriers” as defined in the Act, and as such are subject to obligations under Sections 251 and 252. A 911 emergency call placed today or in the future when NG911 is deployed is “telecommunications” as defined by the Act, as it is “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>17</sup> This “telecommunications,” in turn, is offered “for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used”<sup>18</sup> by a “telecommunications carrier.” Any contention that these services are not offered “for a fee directly to the public” is incorrect. As explained by NTCA and the RLEC Parties, the service is offered by NG911 providers to states acting on behalf of PSAPs, and consequently, is an offering to a “class of user as to be effectively available directly to the public.”<sup>19</sup>

By contrast, assuming the NG911 provider demonstrates that it is *not* a telecommunications carrier, then the only alternative is that it is a user of such services; there is quite simply no other option under the Act to characterize or classify the NG911 provider’s status. If the NG911 provider is not a telecommunications carrier, then it has no right to demand interconnection and instead it is merely a *purchaser of a telecommunications service from the RLEC* as an input for fulfillment of the NG911 provider’s contract with the state – that telecommunications service being connectivity with the RLEC’s network for the receipt of 911 traffic that the RLEC will

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issues as intended by Congress.”), citing *NPRM* ¶ 62. *See also*, Comments of the Pennsylvania Public Utility Commission (“PA PUC”), PS Docket No. 21-479 (fil. Aug. 9, 2023), pp. 12-13.

<sup>15</sup> 47 U.S.C. § 252(b)(4)(C).

<sup>16</sup> 47 U.S.C. § 252(e)(5).

<sup>17</sup> 47 U.S.C. § 153(50).

<sup>18</sup> 47 U.S.C. § 153(53).

<sup>19</sup> Characterization of this offering as “wholesale” does not alter the application of the Section 251/252 framework. *See In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket N. 06-55, DA 07709) released March 1, 2007; *In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, Declaratory Ruling, WC Docket No. 10-143, et. al (DCC 11-83), released Mar 26, 2011.

originate on behalf of its end-users.<sup>20</sup> In short, NG911 providers have a choice. They can be telecommunications carriers who seek interconnection under the framework specified in the Act, or they can be customers who purchase connectivity from telecommunications carriers to deliver a non-telecommunications service to their customers. But they cannot have it both ways, demanding the rights of interconnection without adherence to the provisions that govern telecommunications carriers. Certainly, what NG911 providers *cannot do or be allowed to do* is use this “in-between” status to demand that RLECs expand their network obligations and assume new transport costs to deliver 911 traffic beyond their network boundaries and, under the Proposed NPRM NG911 Default Framework, demand that such transport be provided at RLECs’ sole expense.

In further discussions with Commission Staff, NTCA and the RLEC Parties confirmed that the cost estimates provided in the record were made in good faith and in response to the *NPRM*’s request.<sup>21</sup> To the extent that Staff believes additional transport cost information from other classes of OSPs is necessary to fully understand the extent of these costs (despite no evidence to the contrary in the record today), the Commission could use its authority under the Act<sup>22</sup> to seek additional data from the very same transport providers to which RLECs and other OSPs will turn to comply with the *NPRM* should it be adopted. Specifically, the Commission could seek data as to what those transport providers would charge RLECs for dedicated routing of NG911 calls to POIs scattered across the country as chosen by NG911 providers. Moreover, as part of doing so, the Commission should seek data from NG911 providers as well to determine both where these providers might envision requiring such calls to be delivered and the extent to which these NG911 providers are already being compensated for these costs as part of the remuneration they are receiving pursuant to state contracts to establish NG911 networks.

NTCA and the RLEC Parties then noted that, as Eligible Telecommunications Carriers (“ETCs”),<sup>23</sup> they are obligated to offer access to 911 services, and that this obligation is fulfilled in one of two ways: (1) a direct connection with the PSAP, should the latter be located within the

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<sup>20</sup> By analogy, and as discussed in the meeting, this same type of input is necessary for a long-distance toll provider to complete an intrastate or intrastate toll call.

<sup>21</sup> *February 6th Ex Parte*, pp. 12-13. NTCA and the RLEC Parties note that their cost estimates are based on NG911 providers’ proposed POIs (to the extent the exact location of the POIs has been provided by an NG911 provider) for NG911 service for each state. These POIs are often outside of the state in which the RLEC operates. Should the Commission sidestep Sections 251 and 252 as the *NPRM* proposes, there is nothing stopping NG911 providers from moving, for example, to one or two national POIs for all NG911 traffic exchange, requiring RLECs to obtain and pay the cost of transporting NG911 traffic for even greater distances than is proposed today.

<sup>22</sup> 47 U.S.C. § 220.

<sup>23</sup> *See* 47 U.S.C. § 214(e). Since the RLECs are “rural telephone companies” the geographic area for their respective ETC designation and their obligations for the provision of universal service is the geographic area comprising their “study area” unless that area has been changed. *See* 47 U.S.C. § 214(e)(5). Thus, the fact of an RLEC’s ETC status cannot be used to require a transport obligation beyond that network. Nor does the *NPRM* point to any provision of the Act that would require any such ETC area expansion or, for that matter, independent of ETC status any obligation to expand an RLEC’s network transport obligations beyond the very geographic service area that the relevant state commission has approved for that RLEC.

geographic area of the RLEC's network; or (2) more typically, a "jointly provided" service arrangement under which the RLEC's routing and cost responsibilities end at a meet point that is within the RLEC network boundary, at which point routing and cost responsibility is then assumed by a third party tandem or transport provider.<sup>24</sup> Thus, the *NPRM*'s proposal to require RLECs to assume transport costs to POIs beyond their respective networks would upend the current and long-standing allocation of 911 service costs and in fact would impose substantial new costs on RLECs that they do not bear today. In addition, current 911 arrangements are consistent with Section 54.101 of the Commission's rules<sup>25</sup> that require ETCs to provide "access" to 911 service, with their financial obligation for the provision of this service ending at their network boundary. Indeed, RLECs' receipt of High-Cost universal service support to help cover the provision of such access is similarly limited to local "loop" costs incurred as part of access to voice and broadband service for rural end-users.<sup>26</sup> As costs beyond their network boundaries are not recoverable via High-Cost support, their responsibility for the costs of their subscribers' access to 911 should continue to be similarly limited to "local" network costs.

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<sup>24</sup> As one state-specific example, in Pennsylvania, currently, PSAPs are connected to RLECs through a third-party operated selective router. This has historically been the regional tandem provider and a Regional Bell Operating Company ("RBOC"). In Pennsylvania, RLECs connect to the selective router/tandem provider on their local exchange network, with the tandem provider accepting the call at the RLEC's local service boundary demarcation point and transporting the call to the appropriate PSAP. The PSAP is the customer for such service and pays the RLEC a state tariffed private line rate for their portion of the transport. In cases where a competitive local exchange carrier ("CLEC"), Intrado for example, has stepped into the selective router function in Pennsylvania, the RLEC arrangement is the same as that with the RBOC (*i.e.*, hand off within the RLEC's local network). The arrangements have been undertaken pursuant to an interconnection agreement the selective router CLEC. In Pennsylvania, the NG911 provider, Comtech for example, has replaced the ILEC/CLEC selective router with their own ESInet operation. However, conceptually and legally, the same Pennsylvania policies and practices apply and the NG911 provider is responsible for meeting the OSP on its networks and transporting the 911 call. The *NPRM* would reverse these current practices and historically defined responsibilities of the carriers involved in a Pennsylvania-originated 911 call. Based on existing regulatory regimes applicable to the Pennsylvania RLEC, that RLEC has no reasonable means to recover this new transport expense and the *NPRM* offers none, unless the state were to do so. If the Commission does not offer a means of funding and makes state funding optional, then there is no reason for the state to do so. On the other hand, in Pennsylvania, the NG911 providers are paid hundreds of millions by the PSAPs and the organizing governmental entity to design, construct, and operate a network that the 911 provider owns. The cost of connectivity to the RLECs should be considered part of that compensation and the 911 delivering carrier's responsibility.

<sup>25</sup> 47 C.F.R. § 54.101(a) ("Voice telephony services shall be supported by Federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.").

<sup>26</sup> See 47 CFR § 54.901, *et seq.* and 54.1301, *et seq.*

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Finally, NTCA and the RLEC Parties pointed to liability concerns that exist for OSPs required to deliver 911 calls beyond their service area or even outside the state in which the OSP is located. Existing state statutes addressing the liability issue may not extend such protections beyond state boundaries, and federal provisions merely address parity among providers with respect to state liability limitation provisions. This is a concern that the *NPRM* seemingly overlooks entirely.

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



By: /s/ Brian Ford

Brian Ford

Vice President – Federal Regulatory

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cc: John Evanoff  
Brenda Boykin  
David Sieradzki  
Timothy Hoseth  
Daniel Spurlock  
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Thomas Eng  
Rachel Wehr  
Victoria Goldberg  
Albert Lewis  
Irina Asoskov  
Douglas Klein  
Keith McCrickard  
Erika Olsen

## Appendix A

### Attendees from the Federal Communications Commission

#### Public Safety and Homeland Security Bureau:

John Evanoff  
Brenda Boykin  
David Sieradzki  
Timothy Hoseth  
Daniel Spurlock  
Rasoul Safavian  
Gerald English  
Christopher Fedeli  
Thomas Eng  
Rachel Wehr

#### Wireline Competition Bureau:

Victoria Goldberg  
Albert Lewis  
Irina Asoskov

#### Office of General Counsel:

Douglas Klein  
Keith McCrickard  
Erika Olsen

### Attendees for NTCA and the RLEC Parties

#### NTCA

Brian J. Ford  
Tamber Ray

#### The Rural Telephone Company Consortium:

Thomas J. Moorman

#### The South Carolina Telephone Coalition:

Bradley S. Wright  
Margaret M. Fox

#### The South Dakota Telecommunications Association:

Kara Semmler

#### The Pennsylvania Telephone Association:

Norman Kennard  
Steve Samara



The Kansas Rural Local Exchange Carriers:

Colleen R. Jamison

Mark Doty

Anthony K. Veach

The Iowa Communications Alliance:

Dave Duncan

Home Telephone ILEC LLC:

Keith Oliver