

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Improving 911 Reliability*, PS Docket No. 13-75; *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60.

When our citizens call 911, they expect and deserve to reach emergency personnel. Making that happen for each and every 911 call is not easy. Unlike normal calls, a consumer's provider—whether a traditional telephone carrier or a wireless operator, a cable company or an over-the-top, interconnected VoIP provider—cannot simply transmit a 911 call to a destination based on the number dialed. Instead, that provider must transmit the call to a selective router to determine which public safety answering point (PSAP) should receive the call. Then it must determine how to connect that caller to that PSAP. The PSAP in turn queries an automatic location information (ALI) database to determine the location of the caller so that emergency personnel can respond immediately. PSAPs themselves purchase communications services from 911 system service providers (SSPs), all under the oversight of state governments.

Notably absent from this arrangement is the FCC. We do not establish 911 service tariffs. We do not negotiate 911 service contracts. And we do not collect or distribute 911 funds. Instead, Congress has given us a supplementary role when it comes to 911 SSPs: We are charged with “work[ing] cooperatively with public safety organizations [and] industry participants . . . to develop best practices” for “network diversity requirements,” “call-handling in the event of call overflow or network outages,” and “certification and testing requirements” for service to PSAPs.¹

For years, the Commission has carried out this statutory duty through its Communications Security, Reliability, and Interoperability Council (CSRIC), and its predecessors. CSRIC has developed and maintained best practices for network reliability and disaster preparedness. Most 911 SSPs have claimed that they voluntarily follow these best practices. Unsurprisingly, many PSAPs have relied on these promises in evaluating the service of 911 SSPs.

The 2012 derecho storm that swept across the Mid-Atlantic states revealed a flaw in this voluntary scheme. Although some 911 SSPs claimed to follow best practices, their performance during and after the derecho confirmed that they did not do so consistently. And because these providers' claims of compliance were never formally made to the Commission, we had little authority to take action against those who had broken their promises.

Given this background, the Commission needed to take steps within its power to correct the situation. For example, we could have required 911 SSPs to formally certify whether or not they comply with industry best practices. This would let PSAPs know which providers do not conform to best practices and enable PSAPs to order corrective action. This would also make providers' promises enforceable and enable the Commission to sanction those filing false certifications. As a second step, we could have required an across-the-board audit of critical 911 circuits so that all 911 SSPs—and, crucially, their customers, the PSAPs—could identify weaknesses in today's 911 service infrastructure. Indeed, I would have supported today's item had we taken just these steps, and I proposed to align this order with that vision.

¹ Wireless Communications and Public Safety Act of 1999, Pub. L. 106-81, § 6(h), *as amended by* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, § 101(2).

But today's order goes a hop, skip, and a long jump further. For example, while the *Order* claims to adopt a certification scheme, it in fact adopts extremely prescriptive and mandatory standards. Take new rule 12.4(b). This rule requires 911 SSPs to "take reasonable measures to provide reliable 911 service." This sounds anodyne in theory. But in practice, it gives the Commission carte blanche to fine 911 SSPs that do not comply with whatever particular practices the Commission demands.² As such, a 911 SSP must comply with new federal rules, such as annual diversity audits. It must do so even if that information reveals nothing new to the providers or their PSAP customers. And it must do so even though across-the-board annual audits do not come cheap; they are likely to cost the industry anywhere from \$8.96 million to \$22.4 million each year.³

Another problem is that the *Order* claims to leave network design decisions to PSAPs and 911 SSPs but instead delegates freewheeling authority to the Public Safety and Homeland Security Bureau to "order remedial action on a case-by-case basis to ensure the reliability of 911 service."⁴ In other words, the Bureau now has the largely unconstrained authority to order a carrier to redesign its network, to purchase new equipment, or to deploy new facilities, if someone in Washington says so. This level of micromanagement, even if the Commission were equipped to carry it out, is neither appropriate nor effective. We at the Commission have not trenched fiber, have not tested back-up power facilities, and have not designed network monitoring facilities. The experience reviewing the performance of 911 networks after a single storm that affected barely one percent of the country's PSAPs does not qualify us to second-guess the negotiated agreements of thousands of PSAPs and their 911 SSPs nationwide.

A third and final problem with the *Order* is that it imposes burdensome regulations that stray far beyond CSRIC best practices. For example, best practices require only "periodic[]" diversity audits "when called for by network design"⁵ and advise providers, "where appropriate, to design networks . . . to minimize the impact of a single point of failure."⁶ Industry is implementing these practices with audits every two or three years,⁷ in part because other best practices, such as circuit tagging, help prevent the need for more frequent audits.⁸ Against this backdrop, the NPRM in this proceeding stated that circuit audits should occur every two years and were only "necessary for roughly half of these PSAPs because that is the portion likely to be served by more than one selective router."⁹ But what does the *Order* require? Annual audits of *every 911 circuit in the country*.

This will obviously burden 911 SSPs. But ultimately, our nation's PSAPs (and hence taxpayers) will bear these costs. For 911 SSPs, like most other businesses, generally pass on such costs to their customers. Shouldering these additional costs may make some PSAPs think twice before investing in innovative approaches to reliability, such as adopting Next-Generation 911. And ironically, it is not the PSAPs that serve large suburban areas that are most likely to suffer these costs, but those who serve rural areas and tribal lands, flood-prone bayous, soaring mountain communities, and the remote Alaska bush.

² See, e.g., *Order* at para. 63.

³ Audits are expected to take 16–40 man-hours, see *Order* at notes 244, 255, at a cost of \$80 per hour for each of 7,000 PSAPs.

⁴ Rule 0.392(j).

⁵ CSRIC Best Practice 8-7-0532.

⁶ CSRIC Best Practice 8-7-0402.

⁷ See, e.g., Frontier Comments at 9; Verizon *Ex Parte* Notice at 1 (July 3, 2013); CenturyLink *Ex Parte* Notice at 1 (Sept. 18, 2013).

⁸ See, e.g., Fairfax County Comments at 4; Frontier Comments at 9.

⁹ NPRM at para. 41.

Those PSAPs must confront how to allocate scarce resources every day. If a Commission-ordered network redesign costs so much that a PSAP must reduce the number of operators it employs—the consequences could be dire.

I understand the urge to take action. Some 911 SSPs did not live up to their commitments in the derecho, and accountability is necessary. But the people these providers failed are their customers, the PSAPs, and those Americans who could not reach emergency services in a time of need, not us in federal government. And it is the PSAPs, the states and municipalities that oversee them, and on-the-ground first responders, not those working in this building, who must be empowered to take the lead. I respectfully dissent.