

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY
CONCURRING IN PART, DISSENTING IN PART**

Re: *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket No. 11-153; *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255

Last week, I visited New York City's bustling Public Service Answering Point (PSAP) located at MetroTech Center in Brooklyn. This PSAP serves all of New York's five boroughs—which cover more than 300 square miles, approximately 8 to 11 million people depending upon the time of day, not to mention the subway system, rivers and harbors—and handles over 11 million calls a year.¹ I should start by thanking the men and women of the New York Police Department, Fire Department and Emergency Medical Services who spent many hours showing me the facilities and answering my many questions. Specifically, let me single out Chris Carver, the Deputy Director for Dispatch at the FDNY, for letting me test out a number of basic premises about 911, showing me the PSAP system's capabilities, and giving me a glimpse into what the future holds. Moreover, I commend the City of New York for bringing such disparate units under one roof to improve coordination, enhance public safety, and reduce costs.

My fundamental takeaway from the visit was that advanced technology provides great opportunity and promise for emergency communications, but it is planning and execution that determines ultimate success. Here is just one lesson learned from building New York City's unified PSAP: if you expect public safety officials to perform at their best during catastrophes, the facility better account for the needs of these dedicated public servants to stay on the job hour after hour. In the rush to open the building, the architects forgot to account for the basics—they didn't build enough bathrooms and there are no sleeping facilities.

The Commission seems to be making a similarly hasty decision here. When it comes to 911 in particular, we repeatedly discount or ignore simple truths about what we can force technology to do in a set timeframe. Successful technology development involves in-depth analysis and planning, software design cycles, and rigorous testing. It requires a methodical process that includes time, money, and a whole lot of effort to get to the desired outcome. Some, however, appear completely comfortable in placing blind faith in artificial deadlines. The theory seems to be: if we mandate it, the technology will come. Technology development, however, cannot be premised on a 1980s Kevin Costner movie about baseball.

Another overarching concern of mine is the Commission's pursuit of a regulatory scheme that presents private sector participants with the choice of either voluntarily implementing someone's preferred policy or facing onerous regulation. With all due respect, this model—which some have called the regulatory seesaw—is problematic. Conceptually, it is inherently unfair to have the heft of the Federal government on one side of the seesaw. Where is the voluntary part of this equation? Even more worrisome, in those instances where voluntary agreements were reached, the goalposts were moved to justify imposing rules on the participating industry. Here, the large wireless carriers rose to the challenge and “voluntarily” enabled text-to-911, but that did not free them from regulation. It may be hard finding companies to play this game in the future.

In this item, the Commission also extends the text-to-911 requirement to smaller Commercial Mobile Radio Services (CMRS) carriers. I find the arbitrary compliance deadlines troubling, especially for SMS technology which was never intended to be a secure communications platform. At least, in this case, there appears to be a defined technological path to offer SMS text-to-911, as demonstrated by the larger providers pursuant to their voluntary agreement. Although this is not my preferred approach, I will

¹ NYC Analytics, 911 Performance Reporting, <http://www.nyc.gov/html/911reporting/html/home/home.shtml> (Aug. 8, 2014).

concur with the portion of the order pertaining to CMRS providers. I suspect that many smaller carriers may request waivers and hope such relief is appropriately and quickly granted when justified. I appreciate that the majority is willing to look closer at PSAP consolidation issues, which would eventually reduce compliance costs by reducing the millions spent to reach particular connection points.

What I am unable to support are the mandates imposed on interconnected text providers—the Over The Top (OTT) providers. I embrace what technology offers and oppose the efforts to pigeonhole these apps into the CMRS/PSAP paradigm, especially based on dubious legal authority. It has been clear since the notice of proposed rulemaking was issued that technological solutions for interconnected text apps were uncertain. Yes, we were able to draw schematics of how it might work on napkins, but three of the four supposed options do not exist.

When looking into the one available approach, a model tied to requiring access to the CMRS network, I had a series of questions about how the technology and regulations would work. Would CMRS providers have burdens or not? What happens if CMRS providers and interconnected text providers don't agree on terms to access the CMRS network? If an OTT text cannot access the CMRS providers SMS-API path, would the interconnected text provider be immediately noncompliant? Unfortunately, I couldn't get consistent answers in which I could place any confidence as to their accuracy. The prudent approach would have been to hold back on this portion and address it when this technology was tested and when the other models were available. Alas, we seem committed to moving forward on a predetermined timeline. The phrase “perfection is the enemy of good enough” has been used recently and it makes me cringe to think our work should be measured as just good enough. Don't we owe the American people more than good enough?

Good enough seems particularly perilous when talking about emergency communications. We do not want Americans relying on a system that does not work. And, we are partly to blame for increasing consumer expectation that text-to-911 is available via all communications platforms. Let me be clear: it is not and will not be for the foreseeable future. The Commission generates headlines by adopting items, such as the one today, but consumers—especially the millennials that are heavy users of OTT texting apps—are not provided the full story. Even if everything goes perfectly, the vast majority of consumers will not have text-to-911 anytime soon. The simple reason is that individual PSAPs have to be ready and capable of receiving such information. Today, less than 1.8 percent of PSAPs (121 of the approximately 6800) can receive text messages. If people just happen to live in the other 98.2 percent of America, they are out of luck. Additionally, text-to-911 is not available if you use non-interconnected text apps. We have not required it, and I don't think we should do so on closed systems. Accordingly, consumers should not have expectations that they can text-to-911 using a closed system that does not permit texts to phone numbers. Perhaps, we should share reality with consumers rather than false promises.

I also must dissent on the further notice. It prematurely proposes to adopt enhanced location and roaming support requirements and seeks comment on expanding text-to-911 to other texting services. Take, for instance, the portion on delivering enhanced location information by text providers in a short timeframe. The item sets out quotes from the Rural Wireless Association and Heywire in which they all raise problems with any particular timeframe, especially since the technology doesn't exist.² Further, NENA states in its comments that a “Commission mandate for enhanced text location capabilities would, at this juncture, be premature.”³ But, the further notice concludes and endorses adoption within a two-

² Rural Wireless Association, PS Docket No. 11-153, Comments on the Second Further Notice, at 3 (Apr. 4, 2014); MediaFiends, Inc. (d/b/a HeyWire), PS Docket No. 11-153, Comments on the Second Further Notice Comments, at 7 (Apr. 4, 2014).

³ National Emergency Number Association, PS Docket No. 11-153, Reply Comments on the Second Further Notice, at 6 (May 5, 2014) (stating that “the focus of the Commission, the industry, and the public safety community should

year timeframe and then seeks comment on such a mandate. I am equally disturbed by the notion that the Commission could require that consumers' privacy settings be completely overridden to enhance location detection. This raises tremendous privacy considerations, including the U.S. government having access—via U.S. text providers—to an American citizen's every move in granular detail.

Lastly, the so-called cost benefit analysis contained in this item is seriously flawed. Specifically, the item establishes a benefit floor of not less than \$63.7 million. But this figure was calculated by using the number of cardiac emergency 911 calls. However, there is no hard evidence that more lives of those suffering cardiac emergencies would be saved by texting 911. The item is full of such conjecture and assumptions, instead of credible facts and data. Further, we do not consider many of the costs or repercussions of our actions. For instance, will innovation in OTT texting be stifled, will interconnected text providers convert their offerings to non-interconnected platforms, will the costs end free OTT text apps, and is the cost worth it when Next Generation 911 communications systems are coming soon? I repeat my call for outside parties to help us by commenting on these calculations in this proceeding and others.

Although I disagree with the majority of today's item, I thank the Commission staff for their efforts and the Chairman for the dialogue on this topic.