

**DISSENTING STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *911 Governance and Accountability*, PS Docket No. 14-193; *Improving 911 Reliability*, PS Docket No. 13-75.

At last month's Commission meeting, we heard about a 911 outage that affected over 11 million people across seven different states.<sup>1</sup> As I said then, such outages are unacceptable.<sup>2</sup> Providers of 911 services have a special responsibility to ensure that they abide by best practices, including maintaining redundant and reliable networks. And the FCC has an important role to play. There are steps we can and should take to help improve 911 reliability, facilitate the transition to NG911, and guard against multi-state outages. In fact, the law requires us to support the lead role state and local public safety officials play in overseeing the provision of 911 service.

Unfortunately, today's Notice of Proposed Rulemaking heads in an entirely different direction. It proposes to supplant the efforts of our nation's first responders with what the NPRM says is a new and "comprehensive" "national governance structure"—one that would apply federal regulation to every aspect of 911 service.<sup>3</sup> Replacing state and local governance with Washington-knows-best bureaucracy will leave 911 systems less nimble and responsive to the needs of local communities. It will deter the introduction of innovative and reliable 911 services. It will impose unnecessary costs on state and local 911 officials. And it will do all this in the glaring absence of legal authority. Because I cannot support this proposed federal takeover of the 911 system, I dissent.

Turning to the specifics, the NPRM's proposals will deter the introduction of reliable and innovative 911 solutions that public safety officials want and need. How so? Well, any 911 provider that wants to enter the market would first need to certify its qualifications to the FCC, including (the NPRM suggests) obtaining and submitting third-party certifications. The information required could cover such wide-ranging areas as supply chain risk management and analysis of the software the provider would use.

Think about that for a second. A local PSAP that wants to take advantage of a new, innovative 911 offering could very well hear from the FCC: Sorry, you can't receive that service. But how is this agency better positioned than local 911 officials to determine what offerings are appropriate to meet their communities' particular needs? How many 911 providers will simply decide not to offer an innovative, new capability because of the FCC's all-encompassing process? Micromanagement from Washington is neither appropriate nor effective, even if we were equipped to carry it out.

Yet the item goes still further. If for any reason a covered provider wants to reduce or stop offering a 911 capability, it would first have to get the FCC's permission. For example, if you launch a smartphone app that has 911 functionality, the FCC would decide when, if, and on what terms you can limit or stop offering the capability. It doesn't matter why you want to do so. This federal chokepoint on exiting a market will deter providers from entering it in the first place.

Additionally, the proposed rules will hamstring 911 service providers and prevent them from quickly making necessary improvements. Before making any number of changes—including how they

---

<sup>1</sup> FCC Public Safety & Homeland Security Bureau, *April 2014 Multistate 911 Outage: Cause and Impact*, PS Docket No. 14-72, PSHSB Case File Nos. 14-CCR-0001-0007 (Oct. 2014), <http://go.usa.gov/sztw>.

<sup>2</sup> Remarks of Commissioner Ajit Pai on the Presentation on the April 2014 Multistate 911 Outage Report (Oct. 17, 2014), <http://go.usa.gov/sfuC>.

<sup>3</sup> See, e.g., NPRM at para. 36.

route 911 calls or assign responsibility for technical support—they would need to file a public notice with the FCC, provide detailed information about the proposed change, and then wait at least 60 days before moving forward. Imposing mandatory, across-the-board waiting periods will not produce an agile, responsive 911 system.

We ought not neglect or understate the Rubicon the FCC aims to cross with this action. The Commission may soon dismantle the longstanding governance structure of the 911 system, in which state and local authorities take a leading role. Many in the public safety community have repeatedly warned the federal government against doing this. Just last week, local 911 authorities told the FCC that “[l]ocal and state authorities[,] rather than the Commission, should take the lead in 9-1-1 governance and oversight, and drive 9-1-1 policy and regulation[.]”<sup>4</sup> They stated that “[g]overnance and oversight should be at the state level, where it can be most responsive to local constituents’ and public safety agency needs and considerations.”<sup>5</sup> Others, like the National Emergency Number Association, have stated that “there is a clear consensus that states will play a central role in the deployment of NG9-1-1, and that the Federal government’s chief role will be facilitation, rather than control.”<sup>6</sup>

The Commission itself agrees—at least, it used to. Just last year, when the FCC provided Congress with recommendations for an NG911 statutory framework, it didn’t even ask for authority to create the federal regime we propose today. Instead, it noted the consensus view that “state and local authorities should retain their primary role in the management and development of NG911.” It was unambiguous in stating that state and local “oversight authority . . . should not be supplanted by the federal government.”<sup>7</sup> It told Congress that the federal government should remain “focused on supporting and coordinating state and local transition efforts.” And it “recommend[ed] that Congress recognize the importance of state 911 boards and state-level governance entities in the cost-effective and efficient implementation of emergency services.”<sup>8</sup>

Retaining the primacy of state and local authorities is not simply a matter of choice. It is the law. State and local governments take the lead oversight role because that is what the law requires. Congress created both a clear and limited role for the Commission. The Communications Act affords us the power to “encourage and support efforts by States”<sup>9</sup> and to “work cooperatively . . . to develop best practices[.]”<sup>10</sup> Our role is a supplementary one—and no more.

There simply is no law that gives the FCC the authority to create the comprehensive federal 911 regime we propose today. In straining to reach a contrary conclusion, the NPRM goes so far as to rely on a statutory provision that expressly states that it does not “authorize . . . the Commission to impose obligations . . . on any person.”<sup>11</sup> I realize objections about legal authority exasperate those who just want

---

<sup>4</sup> Letter from Joseph P. Benkert, Counsel to Boulder Regional Emergency Telephone Service Authority (BRETSA), to Marlene H. Dortch, Secretary, FCC at 2 (Nov. 14, 2014), <http://go.usa.gov/sF25>.

<sup>5</sup> Letter from Joseph P. Benkert, Counsel to Boulder Regional Emergency Telephone Service Authority (BRETSA), to Marlene H. Dortch, Secretary, FCC at 6 (Nov. 14, 2014), <http://go.usa.gov/sF2V>.

<sup>6</sup> Reply Comments of NENA at 2, PS Docket No. 12-333 (Jan. 14, 2013), <http://go.usa.gov/sF2H>.

<sup>7</sup> FCC, Legal and Regulatory Framework for Next Generation 911 Services, Report to Congress and Recommendations at 4.1.1 (2013), <http://go.usa.gov/sFTG>.

<sup>8</sup> *Id.* at 4.1.1.2.2 and 4.1.1.2.

<sup>9</sup> 47 U.S.C. § 615.

<sup>10</sup> 47 U.S.C. § 615a-1.

<sup>11</sup> *See NPRM* at paras. 38, 76, 87 (relying on 47 U.S.C. § 615).

to “do something,” but this borders on the absurd. And batting aside these objections won’t do us any favors if and when our decisions are challenged in court.

Yet here we are. Without any legal backing, we are proposing to regulate any entity that operates in the 911 space. Entry and exit requirements will be determined by the FCC, and every component of a 911 provider’s offering will be subject to agency review. That doesn’t leave much room for local and state authorities to play a “lead” oversight role—except, of course, if we are telling them to lead from behind.

Obviously, when there are breakdowns in the 911 system, the FCC should not just sit around twiddling its thumbs. We do have a critical role to play, even if it’s a limited one. There is more we can and should do to support and encourage state and local responses to 911 outages. There is more we can and should do to help develop best practices that ensure the reliability of the 911 system. And there is more we can and should do to help coordinate state and regional responses to 911 failures, particularly those that impact consumers across state lines. That is why, for example, I suggested that this item seek comment on how the FCC can facilitate the ability of state or regional bodies to coordinate on 911 outage and governance issues that transcend state boundaries. And I am glad that at least some of the original NPRM’s more intrusive entry regulation proposals are no longer on the table.

But in the end, our differences on this item proved too great to bridge. I cannot support proposals that we have no legal authority to adopt, that will ossify the 911 system, that will impede innovative and reliable solutions, and that will make the FCC an ill-suited but all-powerful gatekeeper for providers seeking to enter or exit the market. And I will not support an effort to supplant those public safety officials who are on the front lines in communities across our nation every single day. For all of these reasons, I respectfully dissent.