

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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

Less than a year after the Commission adopted the 911 reliability order, and before carriers have even filed their first certifications, we are seeking comment on further expanding the requirements in an overly broad and highly prescriptive manner. Maybe the Commission should have paid more attention to those of us pleading that that item not be rushed forward without greater thought and effort. Unfortunately, I am afraid we are doing the same thing now. While it is critical to ensure the reliability and resiliency of 911 service, this Notice is so deeply flawed that I cannot support it.

First, the Notice proposes to expand the scope of covered 911 providers to nearly every entity that provides 911 capabilities, regardless of whether they have direct contractual relationships with a PSAP. It is so broad that even non-interconnected texting apps could conceivably be brought within the ambit of these rules (although I have no idea what they could certify to in any meaningful way). Yet, these entities had nothing to do with the recent “Sunny Day” outages this item supposedly addresses. Moreover, because the definition of a covered 911 provider is carried forward throughout the rest of the item, a whole host of new requirements would apply to the expanded universe. This sprawling definition taints the entire item in a completely unacceptable way.

Tellingly, the Notice does not even bother to attempt a cost-benefit analysis for this greatly expanded regulatory scheme. Perhaps that is because the current rules are already so burdensome. According to the estimates that the FCC provided to the Office of Management and Budget in order to obtain approval for its existing information collection, the current 911 reliability rules apply to an estimated 1,000 covered 911 service providers, and “each one will incur an average annual burden of approximately 170 hours.” Moreover, the FCC estimated that the rules will create a total in-house cost of over \$14 million annually.

Second, the Notice proposes overbearing and unnecessary entry certifications and exit approvals, as well as a notice regime for “major changes”, and would even apply these requirements to non-carriers. For decades, the Commission has worked to streamline such regulation for carriers. Yet the Notice does not even mention, much less attempt to distinguish, this precedent. And the idea that we would impose such rules on non-carriers, including over-the-top providers, shows that the Commission is seriously reconsidering its traditional, light touch approach for these services.

Third, the concept of 911 Network Operations Center (NOC) providers seems completely unworkable. I understand that this proposal has been described benignly as carriers “sharing a heartbeat” during emergencies. But this is not what the Notice says and the regime designed was not presented accurately to carriers who were briefed. Instead, the Notice proposes to require all covered 911 providers to share information on their networks to the 911 NOC (typically, the incumbent LEC) who may, in some cases, be their competitor. Moreover, the 911 NOC, who does not appear to be compensated for this new role, could be tasked with additional responsibilities, such as “addressing cybersecurity risks in 911 networks”.

Fourth, I continue to believe that the Commission lacks legal authority for these requirements, especially with respect to non-carriers. The Notice points to a couple statutes that provide targeted authority for specific 911 issues and reads them together to provide expansive authority – as if the whole can be more than the sum of its parts. This is simply untrue. The proposal on ancillary authority is just

preposterous and should be rejected. In the end, we should accept a simple fact: statutes mean what they say and say what they mean.

Finally, I continue to believe that these items are a distraction from what should be our priority: moving quickly to NG911 and the public safety benefits that will bring. Indeed, rather than issue a Policy Statement that is needlessly full of hyperbole and is patently misguided to lack any real value, I would prefer that the Commission commit itself fully to NG911.

Separate from the particular problems just identified, it is clear from this overall effort that the real goal is not to solve the challenge at hand to the extent needed, but instead capture any and all market participants in an overly prescriptive and unnecessarily regulatory labyrinth. The item harkens back to an earlier time where competition didn't exist, as if that were a realistic direction we should be going towards. The global marketplace is much more complex than ever before and problems are going to occur despite everyone's best efforts. Unfortunately, the steps proposed in this item would only add more costs to providers, and ultimately consumers, for little to no benefit.